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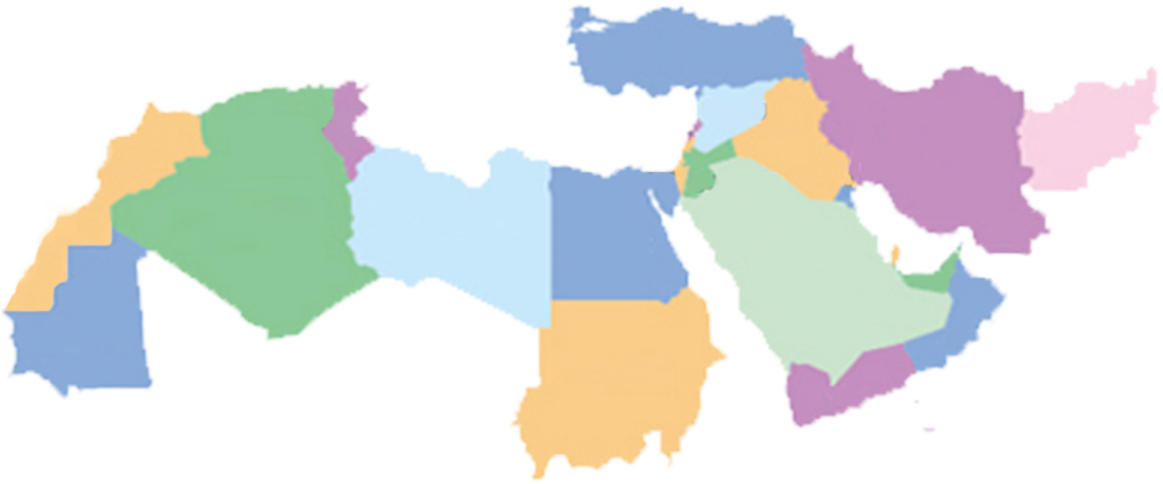

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The Concept of the Civic State in the Middle East and North Africa: Between Constitutional Text and Practice

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The Legitimacy and Civicness in the Arab World research project aims to address the gap between the local perception and the production of knowledge regarding legitimacy and civil society and civic values in the Arab world.

The local vernacular perception of civil society and its values does not always match the normative framing often used in the literature and policy papers. From the local perspective, civic action and values have, historically, unfolded differently, with different connotations than those typically associated with the normative Western understanding. The local context and connotations provide valuable inside understanding that is often excluded from the literature or brought in as a 'local voice' to reinforce an external narrative.

The concept of civic (madani) has also been used in many Arab countries to refer to a state system, the civic state, which does not have an equivalent in the West. But even in the Arab world, the concept itself is vague, and the constitutional interpretations of civic state in various Arab states are vague, contradict the concept of civicness and at times are used to conceal very un-civic arrangements.

The project aims to address these issues because they lead to three main impediments. First, they limit the scholarly understanding of key social and political processes. Second, they obstruct the efforts of local civic actors pushing for equal rights and inclusive societies as they battle against local and international misconceptions and mis-framing of their actions that undermine their agency and ownership. Third, they hinder the effectiveness of local and international democratisation efforts.

The project team works closely with institutional partners and scholars from the region to produce nuanced knowledge and to publish policy and academic papers while also provide capacity building for early career researchers and integrate them into the knowledge production process.

The project funded by the Carnegie Corporation of New York. The project, previously hosted by LSE IDEAS, is now based at the Middle East Centre at the London School of Economics and Political Science (LSE).

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Introduction to the Special Issue on "The Concept of the Civic State in the Middle East and North Africa: Between Constitutional Text and Practice"

Dr. Reem Turkmani *
and Dr. Tamara El Khoury **

Few concepts in contemporary Arab political life have been invoked as widely, or defined as differently, as *al-dawla al-madaniyya* —the civic or civil state.[1] Islamist movements, secular parties, transitional governments, constitution drafting bodies, and street protesters have all claimed it, frequently without agreement on what it means. It serves simultaneously as a revolutionary slogan, a constitutional principle, and an ideological battleground. That it can hold all of these functions at once is not a sign of conceptual poverty. Rather, it reflects the term's particular semantic structure: expansive enough to gather coalitions, indeterminate enough to sustain disagreements, and politically charged enough to matter in any context where questions of sovereignty, religion, and legitimate authority remain unresolved.

This special issue of the *Journal of Constitutional Law in the Middle East and North Africa* (*JCL-MENA*) takes this concept as its central object of inquiry, under the title "**The Concept of the Civic State in the Middle East and North Africa: Between Constitutional Text and Practice**." The issue is a product of collaboration between *JCL-MENA* —a double-blind peer-reviewed bilingual journal managed by the Arab Association of Constitutional Law (AACL)— and the "Civicness and Legitimacy in the Arab World" research project at the London School of Economics and Political Science (LSE), and it builds on a regional workshop held in Madrid in February 2025.

The central premise of the issue is that the "civic state" should not be read as a fixed constitutional model that some states have achieved and others are still approaching. Rather, it is a contested and context-dependent term that has different meanings depending on the political orientation, institutional environment, and the historical context.

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1 The terms "civic" and "civil" are used here and throughout the issue interchangeably.

As the papers of this special issue demonstrate, the concept functions simultaneously as an ideal-type analytical construct (in the Weberian sense) and as a site of ongoing normative and political debate. The contributors engage with the concept across three interrelated aspects: its intellectual genealogy, its mobilisation by political and social actors, and its translation, or distortion, within constitutional and political practice.

Conceptual and theoretical foundations

The issue opens with three thematic studies that establish the conceptual terrain.

Housamedden Darwish opens with a foundational study titled **"The 'Civil State' in Arab Thought: A Conceptual and Historical Approach**." Drawing on conceptual history, conceptual analysis, and a deconstructive reading after Derrida, he traces the shifting meanings of "state," "civil," and "civil state" in modern Arab thought. His argument begins with the concept of the state itself —a move that much Arab debate has neglected by focusing almost entirely on the adjective. Arab intellectual discourse, dominated for much of the twentieth century by the supranational frameworks of Arabism, Islamism, or socialist ideology, was slow to theorise the state as such. Only in the 1980s did a sustained reckoning begin, with figures such as Laroui, Ghalioun, and Bishara calling for a scientific theory of the state as a precondition for theorising democracy.

Darwish shows that *madaniyya* carries multiple and not always compatible meanings in modern Arabic: both what might now be called secular (institutions without religious foundation) and what might be called civilised (associated with progress and freedom from coercion). The contrasts between the civil and the religious, the civil and the military, and the civil and the communal (*ahliyya*) all operate in Arabic usage, and none fully overlaps with the others. The concept is simultaneously normatively positive and semantically unstable. Darwish argues it should be understood as a "thick," inherently "contested" normative concept; not one that is reducible to a single definition, while not being void of content either. What makes the concept analytically useful is rigorous mapping of its internal tensions, understood as historically produced rather than accidental.

Azzam Al Kassir examines how Islamist movements have engaged with the concept of civil state in **"Islamist Perspectives on the Concept of the Civic State in the Arab World."** His starting observation is a practical one: Islamist actors have not developed a coherent or theoretically grounded position on the concept. Their engagement tends to be pragmatic, context-dependent, and shaped by political strategy rather than principled ideological commitment. Some reformist currents —including movements that repositioned themselves as Muslim democratic parties in the wake of the Arab Spring — have attempted to reconcile civic governance with an Islamic frame of reference (*marja'iyya*), arguing that the civic state is compatible with Islam because all human institutions are, by definition, civil in character: the question is not their civic nature but the source of their authority. Others reject the concept as a Western import incompatible with divine sovereignty.

The most unsettling dimension of Al Kassir's analysis is his examination of Hay'at Tahrir al-Sham (HTS) in Syria — a case that crystallises a broader risk: the appropriation of civic language as a tool of authoritarian legitimation. Since the collapse of the Assad regime in December 2024, HTS has adopted the administrative and institutional vocabulary of civic governance — civilian administration, rule of law, institutional frameworks — while retaining concentrated control in its security and religious bodies. The formal language of the civic state coexists with centralised, unaccountable power. This case makes visible a possibility that runs through several contributions to this issue: the discourse of the civil state can be strategically deployed not to constrain power but to legitimise it, producing what Al Kassir describes as a new and more sophisticated form of authoritarian rule under civic terminology.

Shaimaa Magued situates the civil state within the political economy of Arab authoritarianism in "**Social Protest Movements and Civil Society in the Arab World: Attitudes Towards the Civil State**." She develops a structural argument, contending that the Arab Spring uprisings expressed demands aligned with the principles of a civil state, encompassing political rights, public freedoms, social justice, and accountability. Yet these demands ran into the well-entrenched political and material hurdles: military institutions whose legitimacy rested on claims of historic revolutionary nationalism, rent-based economies that tied elite survival to external dependency, and a history of elite formation in which ruling classes consolidated power in ways that barred genuine civilian governance. Drawing on cases from Egypt, Tunisia, Syria, Libya, and the Gulf, she argues that the civil state is not absent from the Arab world because the concept is unclear. It is absent because the conditions for its existence have been systematically disallowed to form.

Country case studies

The issue turns from these thematic foundations to six country case studies, each of which traces how the tension between civil state aspiration and political reality has unfolded in a specific constitutional and historical context.

Wissam Lahham opens with a counterintuitive argument in "**The Civil State in Lebanon: An Inevitable Outcome of Sectarian Pluralism**." Against the dominant assumption that Lebanon's confessional system is by definition a departure from civic order, Lahham argues that Lebanon is, in its constitutional architecture, already a civil state. Sovereignty formally resides in the people, legislation is secular in origin, and no religious authority holds a constitutional veto over lawmaking. Within this framework, sectarian recognition functions primarily as an administrative mechanism rather than a foundational constitutional principle. The persistence of sectarian politics, therefore, does not stem from constitutional failure but from political practice and obstruction, which distort and constrain the implementation of civil constitutional guarantees. The Lebanese case thus complicates dominant narratives by distinguishing between a civil constitutional form and a non-civil political reality, highlighting the gap between formal institutional design and lived political practice.

Ibrahim Daraji and Reem Turkmani take a long historical view in "**The Civil State in Syria: Early Origins of Restrictions on Civil Society (1918–1958)**." They trace the structural roots of civil society's weakness in Syria to the founding decades of the modern Syrian state, examining how legal, administrative, and political mechanisms combined, across very different regimes, to hollow out the civic public sphere.

Their study pinpoints three main mechanisms through which the Syrian state regularly attempted to restrict organised civic action. First, the repeated general dissolution of all political parties and organisations —a practice that was enacted four times between 1925 and 1958, under the French Mandate, and later under successive military regimes. Second, the systematic draining of human resources from civic life, through broad and often absolute prohibitions on political activity for civil servants and students —groups that historically constituted civil society's organisational base. Third, the legal codification of executive discretion through legislation that granted the political authorities far-reaching powers to license, supervise, dissolve, and punish associational activities. The state consistently treated civil organisation as an object to be managed, co-opted, or suppressed, rather than as a partner in public life. Contemporary Syrian civil society's fragility is therefore not a recent development. It is the culmination of a century-long process.

Kaouthar Debbeche reads Tunisia as a long-term civil state project with a contested trajectory in "**The Civil State in Tunisia's Constitutional Trajectories: Between the Explicit and the Implicit**." The project began before any constitution: the *Ahd al-Aman* of 1857 established equality among subjects regardless of religion. The 1959 Constitution offered what Debbeche calls a silent endorsement, embedding civic principles implicitly rather than prescribing them. Under that framework, Tunisian legislation made real progress: the Personal Status Code criminalised polygamy and established judicial divorce; property law was progressively freed from the *waqf* system; the judiciary was unified in 1957. The 2014 Constitution then made the civil state explicit, defeating Ennahda's attempt to introduce sharia as a source of legislation. The 2022 Constitution marked a rupture. Its introduction of *maqasid al-sharia* transforms interpretive authority over the constitutional order, creating conditions under which the civil state's normative foundations can be contested from within the text itself.

Mohamed Tozy examines the paradoxical effects of Morocco's 2011 constitutional reforms in "**The Stakes of Secularising the Political Sphere in Morocco**." The 2011 Constitution formally strengthened constitutional supremacy and subjected royal decrees to judicial review. But it simultaneously entrenched the religious foundations of monarchical authority. The king's role as "Commander of the Faithful" became, under Article 41, the only power he exercises independently of other constitutional institutions. Constitutional reform strengthened the monarch's religious monopoly rather than diluting it. Tozy's account of the bureaucratisation of religion under Mohammed VI is among the most original contributions to this issue: a rationalised administrative project equipping the state with public management techniques, performance metrics, and reformed training structures for religious scholars, transforming independent religious authority into a state function. The vivid exchange between Morocco's Minister of Endowments and the former PJD Prime Minister over whether Morocco is secular, with the minister coining "secularism" in English to avoid the negative Arabic *al-'ilmaniyya*, encapsulates the conceptual instability Morocco's constitutional arrangements produce rather than resolve.

Heba Raouf Ezzat approaches the Egyptian case with broad conceptual scope in "**The Constitution between the 'Civil' and the State: A Study of the Egyptian Case**." Rather than treating the civil state as a settled category to be located or not in constitutional texts, she begins by questioning whether the state itself can be civil in any meaningful sense, since sovereignty by definition involves the capacity to declare exceptions and exercise coercive power exceeding the civil sphere.

The civil is better understood as a complex space, encompassing civic virtues, civil rights, the public sphere, and common goods, within which the state operates and which it has a duty to protect rather than consume. Against this theoretical background, Ezzat shows that the codification of Islamic law, often attributed to Sadat's political use of religious legitimacy in the 1970s, actually began under Nasser: the Islamic Research Academy's codification committee was established in 1967, and Al-Azhar proposed a full Islamic constitution in 1978. The trajectory is longer and more complex than the standard periodisation suggests. She concludes that Egyptian constitutional identity is essentially hybrid: civil and religious categories are not in stable opposition but are continuously renegotiated within broader struggles over state authority.

Sami Abdelhalim Saeed examines Sudan's transitional period (2019-2021) in "**The Concept of the Civil State in the Constitution and Political Charters of Sudan**." The case of Sudan is particularly interesting because the civil state appeared not as inherited constitutional furniture but as a revolutionary demand. An explicit aspiration from a movement that had overthrown a thirty-year regime grounded in the ideology of political Islam. Yet the transitional documents were constitutionally underspecified on precisely these points. The 2019 Constitutional Charter omitted explicit reference to the civil state and failed to establish meaningful civilian oversight of military institutions. The Juba Peace Agreement of 2020 included provisions for separation of religious and state institutions, without specifying enforcement mechanisms. The Declaration of Principles of 2021 went furthest, explicitly prohibiting an official state religion. Saeed traces a clear pattern: as civilian forces gained more leverage in negotiations, civil state provisions in constitutional texts became more explicit. Where military actors retained effective power, those provisions remained dead letters.

Comparative threads

Three comparative threads run across the case studies. First, the civil state appears consistently as a floating normative reference whose content is produced contextually rather than given in advance. Tunisia's swaying between implicit civic constitutionalism and religious reinterpretation, Sudan's revolutionary but institutionally ungrounded civic demands, Lebanon's constitutional civicness coexisting with sectarian political practice, Syria's founding suppression of the very civic activity a civil state requires. Each of these cases illustrates what Darwish theorises as the concept's character as a simultaneously "thick," "floating," and "empty" signifier.

Second, the relationship between constitutional text and political reality is, in every case, uneven and historically produced and analytically irreducible to a single logic. Morocco shows that constitutional reform can deepen rather than diminish religious embeddedness. Lebanon shows that a formally civil constitution can coexist with the permanent subordination of civil guarantees to sectarian practice. Egypt shows that rights provisions and structural conditions preventing their realisation can occupy the same constitutional moment. Syria shows how a permissive legal framework can be hollowed out through administrative accumulation over decades.

Third, several contributions document actors invoking civic language precisely to evade civic accountability. HTS deploys the vocabulary of institutional governance while monopolising power. Moroccan monarchical authority presents itself through the framework of constitutional legitimacy while concentrating religious authority beyond institutional check.

Sudan's military leadership signed transitional documents affirming the civil state while preventing its realisation. The civil state is not always opposed; it is sometimes appropriated, absorbed into the legitimation strategies of the very actors whose power it was supposed to constrain.

Nimer Sultany's concluding reflections on the Madrid workshop, which are echoed in several contributions to this issue, underscore a point that the case studies collectively demonstrate: constitutional design operates within a field of competing political interests, social inequalities, and institutional constraints. Divergent interpretations of civicness generate markedly different constitutional trajectories not because the concept is too vague to do any work, but because it does its work in a terrain shaped by power.

The contributions in this special issue suggest that the civil state in the Arab world operates at three interconnected levels: as an inherently indeterminate and relational concept at the analytical level, as theorised by Darwish; as a frequently instrumentalised language of legitimacy at the discursive level, deployed by state elites, Islamist movements, and transitional actors alike; and as a structurally constrained project at the institutional level, shaped by historically embedded patterns of state formation, elite reproduction, and constitutional design.

An Ongoing Process of Contestation

The contributions in this special issue do not resolve the question of the civil state. Instead, they make a different case: that the concept continues to function as a site of struggle between competing conceptions of sovereignty, between secular and religious normative orders, between constitutional aspiration and political reality, and between civic language and the power relations that language may serve or subvert. It is not a settled model but an ongoing process of negotiation among law, power, and society.

What emerges from all the papers is a regional picture of profound conceptual productivity and structural blockage. The structural settings that would enable its fulfilment remain deeply contested and subject to reversal. The cases of Tunisia in 2014 and Sudan in 2019 showed that constitutional moments could produce explicit civic commitments. But also, Tunisia in 2022 and Sudan after October 2021 showed, however, that those commitments could be dismantled or overtaken by force.

By incorporating views and experiences from across the region, this issue advances an empirically based (and therefore "grounded") understanding of Arab constitutionalism. One that incorporates both the intellectual complexity of the concept of civil state and the structural conditions and realities that expand or bar its possibilities. And one that does not fall into the trap of reading those conditions as static, as predetermined by culture, or as immune to the kind of political and constitutional contestation that the history surveyed in these papers so richly records.

The "Civil State" in Arab Thought: A Conceptual and Historical Approach

Dr. Housamedden Darwish *

ABSTRACT

This study examines the concept of the "civil state" (*al-dawla al-madaniyya*) as a "thick" and "contested" normative notion within intellectual and political spheres in general, and modern and contemporary Arab thought in particular. Our approach involves a series of foundational questions concerning the concept's meanings, its origins, the contexts in which it has been employed and transformed, and its relationship to related concepts (such as the "secular state" and the "religious state") or other foundational concepts.

To explore these questions, the research leverages tools of conceptual analysis to uncover the semantic and pragmatic dimensions of the core terms ("state," "civil," and "civil state"), alongside the methodology of conceptual history to trace their emergence, evolution, and transformation within Arab thought and culture, at least until the 1970s. In addition, the study adopts a hermeneutic interpretive approach —based on the internal coherence and plausibility of the texts— along with Derrida's deconstructive reading, aimed at exposing the tensions and binaries that shape discourses and texts concerning the civil state.

Analytically, the study proceeds in four stages: it first examines the (il)legitimacy of employing the concept of the "civil state"; then, in three successive stages, it analyses the concepts of the "state" (*al-dawla*), the "civil" (*al-madaniyya*), and the "civil state" (*al-dawla al-madaniyya*) within their respective intellectual and historical contexts. These four stages collectively offer a critical examination of the most significant theoretical and political debates surrounding the concept in modern and contemporary Arab thought.

Keywords: *Civil state* (dawla madaniyya)*, secular state, religious/Islamic state, Arab thought.*

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INTRODUCTION

This study examines the concept of the "civil state" (*al-dawla al-madaniyya*) within modern and contemporary Arab thought. It is structured around several interrelated questions: What does the term "civil state" signify? How has it been employed in Arab intellectual discourse? When, and under what conditions, did this concept emerge? How has it evolved over time, and what transformations has it undergone? Finally, what are the actual or potential relationships between this concept and the constituent and related concepts with which it is associated?

To address these questions, the study primarily employs conceptual analysis and conceptual history. Secondarily, it draws on hermeneutic interpretation and deconstruction, particularly as developed by Jacques Derrida. Conceptual analysis is used to elucidate the semantic and pragmatic dimensions of the key concepts under examination — namely the "state" (*al-dawla*), the "civil" (*al-madaniyya*), and the "civil state" (*al-dawla al-madaniyya*)— as well as their normative and non-normative aspects. It also seeks to uncover the underlying assumptions, foundations, and value judgements embedded within these concepts, and to examine the interrelations among them, given their character as "thick normative" and "highly contested" terms.

The historical dimension of the study focuses on tracing the origins and early development of these concepts, identifying pivotal historical contexts and moments that contributed to their formulation and to the crystallisation of their meanings. This approach also examines how these meanings have shifted over time and become entangled with other ideas and conceptual frameworks. The investigation into the intellectual history of the "civil state" focuses on the 1970s —a period marking the onset of the neoliberal era both globally and within the Arab world.

The adoption of hermeneutics in this study rests on the assumption of internal coherence and rationality within the texts under examination —an assumption that is upheld unless compelling evidence suggests otherwise. By contrast, deconstruction, as developed by Jacques Derrida, involves uncovering the dualities embedded within the texts or phenomena under study and demonstrating how these dualities are interwoven and mutually constitutive. This approach also allows for the possibility of identifying a positive dialectic between such oppositions, extending beyond the negative dialectic explored by thinkers such as Theodor Adorno and Jacques Derrida.

The study proceeds by first addressing the (il)legitimacy of employing the concept of the "civil state" and analysing the principal arguments advanced by both its proponents and its detractors. It then moves through three successive stages involving the conceptual and historical analysis of the terms "state," "civil," and "civil state," respectively. Each stage seeks to clarify the conditions of emergence, historical development, and semantic specificity of these concepts within both Western and Arab intellectual contexts. Finally, the fourth stage offers a critical examination of several of the most significant theoretical and political issues associated with the concept of the "civil state," both in general terms and with a focus on its articulation in Arab thought.

I. The (Il)Legitimacy of the Concept of the "Civil State"

There are significant objections to the use of the term or concept of the "civil state." The most prominent of these are outlined and critically examined below, with further engagement and responses to specific claims developed in subsequent sections of the study.

The most frequently cited and widely accepted objection concerns the conceptual ambiguity of the term "civil state," as well as its inconsistent and often contradictory usage. One of the clearest manifestations of this ambiguity is the wide divergence in its interpretations —not only between Islamists and secularists, but also within each of these groups. There is no single, consistent, or universally accepted definition of the "civil state," even within Islamist or secularist circles considered independently.

This conceptual ambiguity is partly attributable to broader cultural and linguistic confusion in the Arab context surrounding the notions of the "state" (*al-dawla*) and the "civil" (*al-madaniyya*). However, the more significant source of ambiguity lies in the fusion of these two terms into the composite expression "civil state" (*al-dawla al-madaniyya*).

To better grasp the nature of this ambiguity and the uncertainty surrounding the concept, it is useful to recall René Descartes' criteria for certain knowledge: clarity and distinctness.[1] Knowledge is valid when it is both clear —meaning intelligible and comprehensible in its nature— and distinct —meaning sufficiently defined to be differentiated from other concepts. In the Arab context, the vagueness of the term "civil state" can be attributed primarily to a lack of clarity, in the sense that its defining features remain elusive or insufficiently specified. Conversely, the term is often invoked and understood in negative or contrastive terms, particularly in opposition to the "secular state," the "religious state," or the "military/security state."

The importance of distinguishing the concept of the "civil state" from other related concepts should not be underestimated, provided that such distinctions are both clear and analytically useful. At the same time, the absence of conceptual clarity necessarily undermines the effectiveness of any such distinctness. Any serious theorisation of the "civil state" must therefore begin with an articulation of its defining features, particularly those that set it apart from neighbouring concepts. It is precisely the lack of such definitional clarity that has led the term "civil state" to be equated at times with the secular state and at other times with the Islamic state, even though many proponents of these competing interpretations regard the secular and Islamic states as fundamentally incompatible, if not overtly antagonistic.

[1] A practical presentation of these two criteria can be found in two of Descartes' works. See, for example: René Descartes, *Principles of Philosophy*, translated by Othman Amin (Cairo: Dar al-Thaqafa for Printing and Publishing, 1975), 84; René Descartes, *An Essay on Method*, 2nd ed., wtranslated by Mahmoud Muhammad al-Khudairi, revised by Muhammad Mustafa Hilmi (Cairo: Dar al-Kateb al-Arabi for Printing and Publishing, 1968), 131.

Attempting to clarify the nature of the "civil state" by relying on its distinction —real, assumed, or claimed— from the concepts of the religious state or the military/security state renders the clarity of the "civil state" concept contingent upon the clarity of these other concepts, which themselves are fraught with semantic ambiguities and contestation. Debates and divergences surrounding both the religious state and the military/security state are extensive, both within Arab intellectual traditions and beyond. For example, many Islamists assert that the Islamic state is not a religious state, but rather a form of "civil state." This suggests that reliance on contrastive definitions alone is insufficient to capture the core meaning of the "civil state." Instead, it is necessary to engage directly with the substantive and essential features of the concept itself. In short, conceptual clarity facilitates meaningful distinction, just as precise distinctions enhance clarity; a deficiency in inevitably undermines the other.

The ambiguity surrounding the meaning of the "civil state" has made the term, and its proponents or users, a frequent target of fierce criticism in the Arab context, often to the extent of denying the legitimacy of the concept and questioning the reasonableness of its use. Jad al-Karim al-Jabai offers a particularly forceful example of this critique, describing the civil state as an "intellectual fabrication and political deception"[2] that exposes "the ignorance of secularists and the cunning of Islamists."[3] Proponents of the "civil state" are consequently characterised in starkly contrasting terms, either as cunning, malicious, or conspiratorial, or as naïve, foolish, or intellectually deficient. The nature of these assessments varies considerably according to the ideological orientation of the critic. Islamists who reject the concept tend to portray fellow Islamists who embrace it as ignorant or naïve, while regarding secularist supporters as potentially deceitful or manipulative. Conversely, extreme secularist critics often employ similar language but invert the direction of attribution, depicting Islamists as cunning and manipulative, while secularist proponents are characterised as naïve or intellectually deficient.

This tendency towards personalisation is particularly evident in the discourse of Aziz al-Azmeh, one of the most prominent and uncompromising figures of Arab extreme secularism. In a recent interview with Hammud Hammud, al-Azmeh stated that "those who spoke about the civil state —of whom there are many— used it to mislead, either deliberately or out of naivety […] in language that reflects a remarkable degree of stupidity."[4]

In a similar critical vein, Sarbest Nabi concludes his study of the concept by arguing that the civil state is "an ideological concept par excellence that served as a deceptive expression of the ideological ambition to circumvent the notion of the political state and its secular, worldly obligations. It also reflected both overt and covert political desires to monopolise power under non-religious labels, while simultaneously avoiding any explicit commitment to a pluralistic democratic system that guarantees political equality among citizens[5]."

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2 Jad al-Karim al-Jabai, "'Al-Dawla al-Madaniyya': Talfiq Fikri wa Talbis Siyasi" ['The Civil State': An Intellectual Fabrication and Political Misrepresentation], *Al-Democrati*, 23 July 2012.

3 Jad al-Karim al-Jabai, "Ba'd Thaqafat al-'Abid Ta'ti Thaqafat al-Hurriyya" [After the Culture of Slavery Comes the Culture of Freedom], interview with Ammar Almamoun, *Al-Arab Weekly*, 12 April 2015.

4 Aziz al-Azmeh, "'An Suriyya bayn Suqut al-Nizam wa Su'ud al-Islamiyyin" [On Syria between the Fall of the Regime and the Rise of the Islamists], interview with Hammud Hammud, *Syria Untold*, 17 January 2025.

5 Sarbest Nabi, "The Concept of the Civil State (Critical Approach)," *Kufa Journal of Arts* 56, no. 2 (2023): 520.

We shall set aside the psychological or psychoanalytic dimensions that tend to personalise the debate and upon which many prevailing critiques rely. These dimensions are evident in the frequent use of terms such as "awareness," "naivety," "denial," "deception," "cunning," "ignorance," "malice," and similar expressions. It is more productive, in our view, to focus on the intellectual substance of these critiques, which include a number of arguments, assumptions, claims, and interpretations —some of which are inaccurate, and others highly debatable.

One such claim is that "theorists of political Islam are the ones who invented the concept of the civil state" —a position advanced by Sarbest Nabi and many others. Another common assertion, articulated by figures such as Jad al-Karim al-Jabai, is that the concept "has no grounding in political science, political philosophy (particularly Western philosophy), or jurisprudence."[6] As we shall demonstrate in subsequent sections, the term was not coined by political Islam theorists; proponents from secular intellectual traditions have also contributed to its conceptual formulation. Moreover, the notion of the "civil state" does have a presence —albeit nuanced and contextually specific— within Western political science and philosophy. It is therefore inaccurate to claim, as some do with unwarranted certainty, that the concept is entirely absent from these domains.[7]

To clarify the concept of the "civil state" meaningfully, it is first necessary to examine its two constituent terms, "state" and "civil." Only then can we proceed to a conceptual analysis of the "civil state" itself.

II. The Concept of the "State"

Much of the discourse and debate surrounding the concept of the "civil state" has been rightly criticised for concentrating almost exclusively on the adjective "civil," while neglecting to engage critically with the concept of the "state" itself. To quote Elias Morcos —albeit in a different context— one might observe that, in this discourse, the adjective "civil" appears to consume or overshadow the subject it qualifies, namely the "state."[8] The concept of the state, particularly within the Arab context, is itself no less ambiguous or inconsistent than the concept of the civil, and contributes equally —if not more— to the overall ambiguity of the term "civil state."

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6 See Nabi, "The Concept of the Civil State," 519; Al-Jabai, "'The Civil State'."

7 See Eric M. Uslaner, "The Civil State: Trust, Polarization, and the Quality of State Government," in *Public Opinion in State Politics*, ed. Jeffery E. Cohen (Stanford, CA: Stanford University Press, 2006); John Boyd Kinnear, *Principles of Civil Government* (London: Smith, Elder & Co., 1887); Roy E. Jones, *Principles of Foreign Policy: The Civil State in Its World Setting* (New York: St. Martin's Press, 1979), 94–104, 128–129, 144, 190, 252; Bryan H. Massam, *Conditions of the Civic State* (Jerusalem: Magnes Press, 2000), 26, 121–122, chap. 6; Feliks Gross, *The Civil and the Tribal State: The State, Ethnicity, and the Multiethnic State* (London: Greenwood Press, 1998), 137; Eric Peter Kaufmann, "Ethnic or Civic Nation? Theorising the American Case," *Canadian Review of Studies in Nationalism* 27, nos. 1–2 (2000): 55–133; Taras Kuzio, "The Myth of the Civic State: A Critical Survey of Hans Kohn's Framework for Understanding Nationalism," *Ethnic and Racial Studies* 25, no. 1 (2002): 20–39.

8 Elias Morcos, *Critique of Arab Rationality* (Damascus: Dar Al-Hasad, 1997), 188–189.

The question of the state in the Arab world is marked by a particular specificity.[9] This specificity—often referred to as the "Arab ordeal"—is perhaps best captured by the formulation "the state versus the nation," the title of a seminal work by Burhan Ghalioun.[10] Prior to the emergence of this framing, Arab discourse in this field was largely dominated by the idea of the nation, conceived in both its Islamic-religious and Arab (or broader non-Arab nationalist) forms. Allegiance to the existing nation-state frequently stood in tension with —if not in direct conflict with— other forms of identity and affiliation that possessed greater emotional or ideological resonance. These included supranational affiliations, such as Arabism, Islamism, Ottomanism, or Syrian nationalism, as well as subnational affiliations rooted in ethnicity, sectarianism, tribe, clan, or local and regional identities.

As a result of these tensions and conflicts, sustained Arab discussions of the nature and essence of the state began to gain traction only in the 1980s. During this period, Arab intellectuals increasingly advocated recognition of the reality of fragmentation in the Arab world, as well as acknowledgment of the "actual, realistic, and irreducible Arab state —the Arab nation-state in its various forms" as a "certain and stubborn reality […] that cannot be ignored."[11]

Abdallah Laroui, followed by Mohammed Abed al-Jabri, emphasised the need to develop a (scientific) theory of the state, even if the "price" of doing so was to grant it (temporary) legitimacy. Without such a theory, it would be difficult, if not impossible, to develop a "scientific theory of unity"[12] or to "find realistic ways to achieve unity and reconcile the state with unity and rationality."[13] In the same vein, Azmi Bishara criticised "the shift of Arab nationalist thought away from the theory of the state and its conception of the future Arab nation-state," arguing that the task of such thought lies, more specifically, in beginning from the reality of fragmentation and the centrality of the state in order to focus on democratic theory.[14]

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9 It is necessary to emphasise, following Nazih Ayubi, that references to an Arab, Islamic, or Middle Eastern specificity do not —and should not— imply any form of exceptionalism or claims of "authenticity" that would render the region or its cultures incomprehensible within broader social-scientific theoretical frameworks. In elaborating the implications of this specificity, Ayubi writes: "The specificity of the Middle East stems from a number of factors, including in particular: (1) the arid ecology of the region and its significant economic and social consequences; (2) the dominance of Islam as both a religion and a way of life; (3) spatial proximity to Europe, with the attendant sensitivities and potential exposure to external attack; and (4) the decisive economic, social, and political role played by oil over the past two decades, particularly —though not exclusively— in the region's oil-exporting countries." Nazih N. M. Ayubi, *Over-Stating the Arab State: Politics and Society in the Middle East*, translated by Ahmed Hassan, revised by Faleh Abdul Jabbar (Beirut: Arab Organisation for Translation, 2010), 34.

10 Burhan Ghalioun, *The Arab Ordeal: The State versus the Nation,* 4th ed. (Beirut: Arab Center for Research and Policy Studies, 2015).

11 Mohammed Abed al-Jabri, *Problematics of Contemporary Arab Thought*, 2nd ed. (Beirut: Center for Arab Unity Studies, 1990), 80–81.

12 Ibid., 97.

13 Abdallah Laroui, *The Concept of the State*, 10th ed.(Casablanca: Arab Cultural Center, 2014), 231.

14 Azmi Bishara, *On the Arab Question: Introduction to an Arab Democratic Manifesto* (Beirut: Center for Arab Unity Studies, 2007), 300.

In addition to concentrating on the Arab nationalist question and the tension between the nation-state and the Arab nation in the works of Zaki al-Arsuzi, Michel Aflaq, Sati al-Husri, and Ismat Seif al-Dawla, among others, these discussions also addressed political, economic, and social issues concerning the degree of democracy within the state —whether existing or aspired to— as well as its authoritarian or liberal character, its socialist or non-socialist orientation, its right- or left-wing alignment, and its relationship to modernity and rationality, as opposed to traditionalism and "Orientalism."

Nevertheless, the primary focus remained on the extent to which the state was secular, religious, Islamic, or civil. This dimension has been present since the earliest debates on the modern state in the nineteenth century and has persisted over time, gaining renewed momentum since the 1970s and receiving significant impetus in the aftermath of the Arab Spring revolutions.

Ghalioun has argued that "the general crisis facing Arab society today is [almost] entirely focused on the state, which we continue to view, according to the prevailing conception of politics, as if it were an impregnable fortress whose occupation is an indispensable condition for complete control over the nationalisation process."[15] In contrast, Nazih Ayubi has spoken of what he terms the paradox of "over-stating the Arab state," referring, on the one hand, to the enormous excesses of the Arab state in terms of growth, spread, and expansion —both in the size of the state apparatus and in the role of the state in the economy and society— and, on the other hand, to "the exaggeration of the power, effectiveness, and true importance of that state."[16]

The transformation of the reality of the emerging Arab states was faster and more profound than Arabs' own perception of that reality, exceeding the capacity of Arab and Islamic thought to adjust to and keep pace with it. The weakness of this adjustment, or its absence, is identified by thinkers such as Nazih Ayubi, Abdallah Laroui, Burhan Ghalioun, Azmi Bishara, and Mohammed Abed al-Jabri as one of the principal reasons for the absence of a (modern) theory of the state in Arab thought.

Since the time when al-Afghani and Muhammad Abduh, followed by al-Kawakibi and Rashid Rida, spoke of "the nation (*umma*) or Islamic universalism," Arab thinkers have rarely overlooked the relationship between the state or politics and religion or Islam, with each contributing at least one position on this question. The relationship between religion and the state or politics —or, more specifically, whether the state should be secular or religious, civil or Islamic— has constituted a central theme of several major intellectual confrontations and debates in the Arab world throughout the twentieth century. In addition to the well-known exchange between Muhammad Abduh and Farah Antoun, notable examples include debates between Abdelwahab el-Messiri and Aziz al-Azmeh, as well as between Yusuf al-Qaradawi and al-Azmeh, among others.[17]

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15 Ghalioun, *The Arab Ordeal*, 35.

16 Ayubi, *Over-Stating the Arab State*, 36.

17 Abdul Wahab el-Messiri and Aziz al-Azmeh, *Secularism Under the Microscope* (Beirut and Damascus: Dar al-Fikr al-Muasir, 2000).

In turn, Abdallah Belkeziz links the history of debates on the relationship between the state or politics and religion in the Arab world to successive waves of political Islam and argues that the Arab Spring revolutions have cast intense light on this relationship in contemporary Arab society, bringing it once again to the forefront of attention.[18]

Several factors contributed to the Arab world's heightened interest in this issue following the Arab Spring revolutions. In addition to the prominent role of political Islam in the immediate aftermath of the uprisings in a number of Arab countries, and the significant electoral victories of some Islamist movements, notably in Tunisia, Morocco, and Egypt, jihadist movements also emerged in Syria, Libya, and Yemen. This period was further marked by the publication of numerous important texts addressing the Islamism (whether existing or aspired to) or secularism of the state.

The focus of discussions on the state's attributes —the civil, Islamic, or secular nature of the state— rather than on the state itself, has obscured the clarity of the concept of the state in both elite and popular Arab culture, and has undermined the robustness of its theoretical foundation in particular. This suggests that the relationship between an attribute and the entity it qualifies is more analytical than synthetic: the modern state, understood in its contemporary conception, is necessarily civil, insofar as "civil" denotes modernity and a form of association grounded in contract rather than kinship or tribal lineage. Accordingly, the Islamic characteristic may be regarded as incompatible with the modern concept of the state, insofar as such a state is conceived as serving only Muslims or particular groups of Muslims, rather than all its citizens. While an Islamic state may have existed and held meaning in the Middle Ages —when states functioned more as empires, lacking clearly defined legal borders and absolute internal sovereignty— such a notion appears untenable in the modern era, where sovereignty is the defining feature of the state. Modern sovereignty entails that no authority external to the state holds power over it. When a democratic dimension is added, sovereignty must rest entirely with the people, rather than with a deity or a sacred text. The sovereignty of the modern state involves "the exclusive right to legislate, enforce legislation, and exercise jurisdiction over a politically defined territory and its inhabitants. This generally presupposes the actual capacity to exercise such sovereignty, which requires a monopoly on the legitimate use of violence, without which it would be impossible to enforce a unified legal code and system. It also necessitates a bureaucratic apparatus, namely, institutions responsible for managing governance and public affairs."[19]

Clearly, analysing the relationship between the concepts of the state and the civil, and arguing that the state, in the modern sense, is necessarily civil, requires further discussion of the meanings of the "civil" and the "civil state." Since this will be addressed later, it suffices here to note that discussions of the concept of the "civil state" often fail to consider, either fully or with the necessary seriousness, the modern meaning of the state and its contemporary reality. This is why it is sometimes easy to describe the Medina-state established by the Prophet Muhammad as a civil state in the modern sense of word.[20]

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18 Abdel Ilah Belkeziz, *State and Religion in the Arab-Islamic Sociology* (Beirut: Maaref Forum, 2015), 9–10.

19 Azmi Bishara, *The Question of the State: Philosophy, Theory, and Context* (Beirut: Arab Center for Research and Policy Studies, 2023), 16–17.

20 See Ali Moati, *The Political and Military History of the Medina State during the Prophet's Era: The Prophet's Political and Military Strategy* (Cairo: Maaref Library, 1998).

Moreover, there is a general lack of understanding regarding the fundamental differences between the (Islamic) imperial state that prevailed from the Middle Ages through the Ottoman period, on the one hand, and the modern nation-state or citizenship-based state, on the other. Attention is often drawn to the essential distinction between the classical Arabic meaning of the term *dawla* —namely, a temporary period or turn in governance, which may last for a short or extended time but ultimately ends following years or decades of upheaval—and the modern understanding of the state as a stable political entity. In the contemporary sense, the state constitutes the primary unit in international relations, in which sovereignties are, in principle, equal. It possesses clearly defined and fixed borders —recognised by itself and by others— and is governed by an internal and external legal and political framework regulating both its domestic affairs and its relations with the outside world.

In the ancient Arabic understanding, as well as in the political reality that prevailed prior to the emergence of the modern state, there were no fixed legal boundaries demarcating the limits of state empires. The concept of state sovereignty —together with its monopoly on the legitimate use of violence and the sovereignty of the people— had little or no significance. Discourse on citizenship, equality among citizens, or the fundamental human rights that all individuals should enjoy without discrimination was largely irrelevant. Similarly, no meaningful distinction existed between the state, the political system, and the ruler; the state was essentially the state of an individual (such as al-Ma'mun or al-Amin), or the state of a family, dynasty, or lineage (such as the Umayyads or the Ottomans), rather than the state of its citizens.

Before moving on to discuss the concept of the "civil," it is useful to note a normative (negative) dimension associated with the concept of the state, at least in some contexts. Despite the importance and necessity of the state in the contemporary world, many thinkers —especially proponents of liberalism, such as Thomas Hobbes— regarded it as a "necessary evil."[21]

This perceived evil appears as something that must be eradicated when the government exceeds its legitimate boundaries —manifesting in heightened interference in people's lives, and increased tyranny, violence, and corruption. Such overreach helps to explain the negative (secondary) connotations associated with the concept of the state among ordinary citizens in countries like Syria under the Assad regime. The use of phrases such as "we are the state, who are you?" and the authoritarian political/security apparatus's intrusion into, domination over, and near merger with state institutions, have led many to adopt a fundamentally negative view of the state as a concept, and in particular, of the specific state structure currently in place in Syria. As a result, there has emerged —either explicitly or implicitly— a belief that it is legitimate to oppose the state and to seize its funds and property when circumstances allow it.

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21 See Thomas Hobbes, *Leviathan, or the Matter, Forme, & Power of a Common-wealth Ecclesiasticall and Civil*, translated by Diana Harb and Bushra Saab, revised and introduced by Radwan al-Sayed (Abu Dhabi/Beirut: Abu Dhabi Authority for Culture and Heritage "Kalimat"/Al Farabi Publishing House, 2011), 175 ff.

III. The Concept of the "Civil"

If, in our explanation of the concept of the state,[22] we began with a descriptive account and concluded by referring to its normative content, we shall proceed in the opposite manner here. This is because the concept of the civil (state) constitutes a "thick normative concept" and an "essentially contested" one[23] (as is the case with the concept of the "secular state"), insofar as it is also a descriptive and analytical concept —perhaps to an even greater extent.

Drawing in part on the works of Ernesto Laclau, Chantal Mouffe,[24] and Jef Huysmans, the term may be understood as an "empty signifier," a "floating signifier," or a "thick signifier" in a descriptive–epistemological sense. In any case, its descriptive, analytical, and normative–evaluative meanings tend to become clear —at least in most instances— primarily through its descriptive and normative contrast with other concepts. In our analysis of the concept of the civil, we will focus on the contrast with the concepts of barbarism, religiosity, militarism, and communalism.

"Civilisation" (*madaniyya*), as a noun, refers to meanings associated with culture or modernity and their attendant positive values, such as progress, development, excellence, and morality. In this sense, civilisation stands in opposition to barbarism, backwardness, immorality, and the weakness or absence of urbanisation.

As Albert Hourani explains, the idea of "civilisation"—one of the central axes of nineteenth-century European thought— entered the Islamic world primarily through Jamal al-Din al-Afghani.[25] This occurred via the translation of the French historian François Guizot's *General History of Civilisation in Europe*, originally published in French in 1828 and translated into Arabic in 1877.[26]

Al-Afghani encouraged Muhammad Abduh to write an article welcoming the translation and outlining the book's theoretical framework. What al-Afghani found particularly significant in this work, and in similar writings, was the concept of civilisation, which he regarded as the most important historical phenomenon and the standard by which other events should be judged. The specific meaning he ascribed to the term was of particular importance to him, namely, the notion of progress that he both aspired to and advocated: the idea of a people actively transforming their condition. More precisely, he understood progress as oriented towards two primary goals: social development, defined as the enhancement of collective power and welfare, and individual development, defined as the cultivation of human talents, emotions, and ideas.[27]

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22 See Simon Kirchin, *Thick Evaluation* (Oxford: Oxford University Press, 2017); Pekka Väyrynen, *The Lewd, the Rude and the Nasty: A Study of Thick Concepts in Ethics* (Oxford: Oxford University Press, 2013).

23 Walter Bryce Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56 (1955–1956): 167–198.

24 See Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 1985 [2014]); Ernesto Laclau, *On Populist Reason* (London: Verso, 2005).

25 Albert Hourani, *Arabic Thought in the Liberal Age, 1798–1939*, translated by Karim Azkoul (Beirut: Dar al-Nahar Publishing, n.d.), 144.

26 François Guizot, *History of Civilisation in Europe*, translated by Hanin Neamat Allah Khoury (Alexandria: Al-Ahram Press, 1877).

27 Hourani, *Arabic Thought in the Liberal Age*, 144–145.

This normative or positive value of the concept of civilisation —as synonymous with culture, progress, urbanisation, and modernity, and as opposed to barbarism, savagery, and backwardness— remains present in Arabic language and culture more generally. At the same time, the word and concept of civilisation predate al-Afghani and his engagement with Guizot's work. We are not referring here to al-Farabi's use of the term in his treatise on *The Political Regime*,[28] nor to its usage or conceptual presence in the medieval period. Rather, it is the appearance of the term and the concept in earlier texts of the nineteenth-century Arab Renaissance that we have in mind.

The writings of Butrus al-Bustani, and to a lesser extent those of Ahmad Faris al-Shidyaq, are representative of this earlier moment.[29] Moreover, that history brings out another descriptive sense of *madaniyya*, without undermining its positive normative meaning. In these texts, the adjective *madani* or *madaniyya* (civil) was employed to denote what would later come to be understood as "secular,"[30] such that, as Aziz al-Azmeh argues, "the adjective *madani* was used to refer to institutions with non-religious foundations,[31] that is, to what was subsequently described or regarded as 'secular'."

The initial use of the term "civil" in this sense, together with an explicit structural and semantic distinction between the civil and the religious, can be traced to the work of Ahmad Faris al-Shidyaq. He launched a fierce critique of the Maronite Church, which had excommunicated his brother Asaad al-Shidyaq and subjected him to six years of imprisonment and torture, ultimately leading to his death in 1830 following his conversion to Protestantism. In *Al-Saq ala al-Saq fi ma huwa al-Fariyaq* (*Leg Over Leg; or, The Pigeon in the Tree, The Fariyaq What Manner of Creature Might He Be?*), al-Shidyaq emphasised that the Church possessed "neither religious nor civil authority"[32] over his brother Asaad. In a previous study,[33] we demonstrated the pioneering role of Butrus al-Bustani in formulating the concept of secularism by pursuing, deepening, consolidating, and expanding this distinction between the civil and the religious.

The issue is a relative one and depends on the specific meanings attributed to the terms "religious" and "Islamic" within particular contexts. It may initially appear counter-intuitive to suggest that "Islamic" can be distinguished from "religious," or that it may intersect with the concept of the civil in certain settings. Yet this distinction is evident in the discourse of many Islamist thinkers, who emphasise the difference between a religious state and the Islamic state they seek to establish, the latter being described as a civil rather than a religious state. In other contexts, it may be argued that the civil does not stand in opposition to the religious but is instead grounded in it.

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28 Abu Nasr al-Farabi, *The Political Regime (Al-Siyasa al-Madaniyya, Also Known as the Treatise on the Principles of Beings)*, edited, introduced, and commented on by Fawzi Mitri Najjar (Beirut: Catholic Press, 1964).

29 Contrary to Limor Lavie's view, the use of the term *civil* in Arabic, in the expression "civil authority," did not originate in the dialogue between Mohammed Abduh and Farah Antoun at the beginning of the twentieth century. Rather, it was in use more than five decades earlier. See: Limor Lavie, "The Idea of the Civil State in Egypt: Its Evolution and Political Impact following the 2011 Revolution," *Middle East Journal* 71, no. 1 (Winter 2017): 26.

30 Aziz al-Azmeh, *Secularism from a Different Perspective* (Beirut: Center for Arab Unity Studies, 1992), 17.

31 Ibid.

32 Ahmad Faris al-Shidyaq, *Al-Saq ala al-Saq fi ma huwa al-Fariyaq (Leg Over Leg, or, The Pigeon in the Tree, The Fariyaq What Manner of Creature Might He Be)* (Paris: Benjamin Dubray, 1855), 136–137.

33 Housamedden Darwish, "On Secularism and Extreme Secularism in the Arab-Islamic World: *The Clarion of Syria* by Butrus al-Bustani," in *Sharia, Secularism, and the State: New Horizons* (Nohood Center for Studies and Research, 2022).

The notion of the civil, understood here in terms of secularism —as the separation and differentiation between the religious and the non-religious— is already present in the work of al-Bustani, where it is rooted in a religious vision rather than constituting a departure from, or a rejection of, religion.

Perhaps the broad, dual, and somewhat "ambiguous" character of the concept of the civil helps to explain why it has retained positive connotations for both religious and non-religious actors, including Islamists and secularists alike —among them Butrus al-Bustani, Jamal al-Din al-Afghani, Farah Antun, Muhammad Abduh, Francis Marrash, and Rashid Rida. If, as Armando Salvatore contends, the soft distinction between literature (*adab*) and religion —*sharia* and *hadith*— constitutes the "mother of all differentiation" between the religious and the non-religious in Arab–Islamic culture,[34] then the distinction between the religious and the civil may be understood as the "modern father" of the distinction between the religious and the secular in Arab–Islamicate culture.

Alongside the contrast between the civil and the religious, the distinction between the civil and the military is among the most prominent and frequently invoked in discussions of the notion of the "civil state." It is not uncommon for Arab populations to find themselves, rightly or wrongly, compelled to choose between military dictatorship and religious dictatorship. These two forms of authoritarianism appear to be among the most prevalent and threatening in many Arab contexts. Consequently, the functional significance and moral role of the concept of the "civil state" should not be underestimated, insofar as it inherently and fundamentally excludes both the "religious state" and the "military state."

The clarification of the concept of the "civil" may be concluded by highlighting its contrast with, and opposition to, the notion of *ahliyya* (communalism/community-based or local affiliation). This opposition is most clearly expressed in the distinction between "civil society" and "communal society." The civil character of society or of human relations indicates that they are governed by individual will, or by conscious and voluntary orientations. By contrast, the community-based or local character refers to affiliations that are inherited and, in principle, not subject to individual choice. On this basis, a distinction may be drawn between lineage and affiliation, and between inherited local attachments and civil affiliations that individuals adopt freely and voluntarily. Religious, sectarian, doctrinal, ethnic, regional, tribal, and clan affiliations, among others, fall within the category of communal or local affiliations.

Civil affiliations, by contrast, are exemplified by membership in political parties, movements, or institutions founded on voluntary participation and free agreement. These are modern forms of affiliation, associated broadly with the modern era. Their principal value lies in their basis in freedom, enabling individuals to become what they choose to be. The prevailing tendency appears to be the ascendancy of civil orientations and the decline of communal or local ones; however, this trajectory is not guaranteed and may shift, reverse, or be disrupted. In such circumstances, civil orientations may experience regression or crisis, leading to the resurgence of communal tendencies even after they seemed to have vanished entirely.

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[34] Armando Salvatore, "Secularity through a 'Soft Distinction' in the Islamic Ecumene? *Adab* as a Counterpoint to Shariʿa," *Historical Social Research* 44, no. 3 (2019): 35–51; Armando Salvatore, "The Islamicate *Adab* Tradition vs. the Islamic Shariʿa, from Pre-Colonial to Colonial," *Working Paper Series of the HCAS 'Multiple Secularities – Beyond the West, Beyond Modernities'*, no. 3 (Leipzig: Leipzig University, 2018).

In view of condensing the various meanings associated with the term "civil" in modern Arabic language and culture, it can be said that it constitutes a thick normative concept, for it encompasses both a normative component and a descriptive, non-normative component. The normative is generally positive and is associated with the values and concepts of modernity, civilisation, progress, civilising process, and the like. This normative dimension of the "civil" also appears in its connection to values such as freedom, awareness, free will, and free contract. It is particularly evident in the contrast between the concept of the "civil" and religious, military, and communal concepts.

Indeed, in each of these contrasts, "civil" denotes that which is human, free, and voluntary, while the opposing concepts refer to what is either non-human (religious/divine), coercive (military/security), or predetermined, inherited, and involuntary (communal lineage: religious, ethnic, regional, etc.). "Civil" is thus associated with human freedom and self-determination, whereas the concepts opposed to it imply an objective condition that predetermines aspects of human fate. Thus, individuals, communal groupings, and civil groups in Arab societies and states remain caught between their "civil" and their "communal" destiny.

IV. The Concept of the "Civil State" in Arab Thought

The core meaning of the concept of the "civil state" is, to a large extent, embedded in the concept of the state itself. The state, in its modern sense, is inherently a civil state insofar as it is civil. In elucidating the concept of the civil state, we will revisit the fundamental characteristics previously identified as common to both the concepts of "state" and "civil." Naturally, the historical and conceptual analysis of the civil state involves more than a mere combination of two concepts. There exists a surplus of meaning that exceeds this combination, in the same way that Rousseau's general will—his "will of all"—transcends the sum of the individual wills of the people.

Our historical and conceptual approach to the notion of the civil state will proceed as follows. First, we will demonstrate, through a historical lens, the presence of the concept of the civil state in Arab thought and in the Arab world. Subsequently, we will examine the emergence of the term "civil state" in the writings of Muhammad Saed al-Ashmawi, and address the principal theoretical issues associated with this term or concept as it appears in al-Ashmawi's works and in the writings of Arab thinkers more broadly.

When addressing the history of the concept of the civil state in Arab thought, we must once again distinguish between meaning and structure, between the concept itself and the expression or term used to convey it. Based on this distinction, it may be said that the concept began to emerge in the mid-nineteenth century, with calls for civil politics and a civil system of government, and with criticism of the violence and tyranny of the authorities or the state, describing such violence and tyranny as uncivil. It also emerged through calls for a civil society in the literal sense.

To chronicle the discourse on the civil state in Arab thought, we will begin by briefly referring to a number of illustrative examples and typical cases that discussed and emphasised the civility of politics and/or political power, governance, and government. Among the prominent figures we will mention in this context are Ahmad Faris al-Shidyaq, Butrus al-Bustani, Farah Antun, Muhammad Abduh, Abd al-Rahman al-Kawakibi, Ali Abdul Razeq, and Khalid Muhammad Khalid. In a second step, we will move on to the 1970s, when the literal use of the term "civil state" emerged. In this regard, we will limit ourselves to discussing one prominent example: Muhammad Saed al-Ashmawi.

As previously noted, al-Shidyaq and al-Bustani played a pioneering role in the discussion of civil society in Arab thought. Ahmad Faris al-Shidyaq criticised the actions of the Maronite Church towards his brother Asaad al-Shidyaq, arguing that Asaad "did not commit an atrocity or treason, whether against his neighbour, his emir, or the state. If he had done so, he should have been tried by a legitimate judge." He subsequently emphasised the principle of equality of rights, asserting that the patriarch should not enjoy any additional privileges or rights in the civil sphere, particularly in such civil matters.[35]

Butrus al-Bustani authored *The Clarion of Syria* (*Nafir Suriyya*) in response to the civil war that erupted in 1860, calling for civility and urbanisation, which he linked to progress, knowledge, wisdom, noble morals, character, chivalry, generosity, and enthusiasm. He positioned these qualities in opposition to savagery, barbarism, corruption, destruction, brutal wars, and abhorrent actions —actions he associated with savage barbarians devoid of humanity, character, chivalry and faith.[36]

Al-Bustani's concern with the concept of civility in relation to politics reached such an extent that he devoted a separate text to the topic, in which he affirmed that one of the most important and specific means of achieving civility is a "government concerned with the welfare of its subjects, their prosperity, their professional success, and their progress in knowledge, wealth, and civilisation. In this sense, political authority becomes a model that offers strong and effective measures to spread civilisation among them." [37]

Due to its significance and the prominence of the two figures involved, the debate between Farah Antun and Muhammad Abduh —published in 1902-1903 in the pages of *Al-Jami'a* magazine (founded in 1898)— is widely regarded as a landmark and exemplary event, particularly in relation to the discourse on civility and the civility of authority, government, and rulers in Arab thought and society. In this exchange, Antun's writings reflect the adoption and further development of most, if not all, of al-Bustani's ideas and positions on the subject. He stresses the civility of politics and the political sphere, and the necessity of separating civil and religious authority in order to achieve what he terms "real culture and civilisation."

35 Shidyaq, *Al-Saq ala al-Saq*, 136–137.
36 See Butrus al-Bustani, *Nafir Suriya*, (Beirut: Dar Fikr, 1990), 11, 23, 26.
37 Ibid., 68.

He elaborates on the considerable harm caused to both religion and civilisation —or to the civil and political sphere— by the failure to separate the two,[38] arguing that "the main task of governments is, however, the protection of human freedom, including freedom of thought,"[39] and the "preservation of safety and absolute equality among the people of the nation regardless of their sects and beliefs, so that they may all form a single nation."[40] He asserts that "genuine civility requires that no person be discriminated against on the basis of their religion or sect, but rather on the basis of their competence and intellectual capacity."

This means that the "public interest is the basis for such distinction,"[41] and that the freedom of every person must be preserved within the scope of the constitution. It also implies that the ruler, that is, "the civil or constitutional ruler,"[42] is the "servant of the nation" and derives his power from it, or from the people. Thus, such a ruler should not be autocratic but rather constrained by the sovereignty of the nation or people and by representative councils that enact laws, statutes, and establish constitutions which the ruler or monarch must respect and obey.[43] Fundamentally, in a civil government, "power and will belong to the nation or the people, not to the ruler."[44]

Antun's theses, particularly those concerning the separation of religious and civil powers, can be regarded as secular; however, it should be emphasised that, like al-Bustani's secularism, they constitute a form of religious secularism, insofar as they are based on a positive view of religion rather than opposition to it. The term "religious secularism" —similar to the term "Islamic secularism" employed by Qasim Amin in his book *The Liberation of Women and The New Woman*[45] (published in 1900), to which Farah Antun refers in his dialogue with Muhammad Abduh[46] —does not contradict the call for distinction or separation between the religious/Islamic sphere and the civil sphere, but rather harmonises with, establishes, and is grounded upon it.

Antun not only asserts that the Christian religion contains texts permitting, and even commanding, the separation of religious and secular powers —such as the phrase "render unto Caesar what is Caesar's and unto God what is God's"— but also acknowledges the existence of such permission or command in every religion. He writes, "Consequently, we agree without any further investigation or discussion with anyone who says every scripture includes verses permitting the separation of civil from religious authority." [47]

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38 136 ff. Antoun concludes: "There is no genuine civilisation, nor justice, nor equality, nor security, nor concord, nor freedom, nor learning, nor philosophy, nor internal progress except through the separation of civil power from religious power. And there is no safety for states, nor dignity, nor external progress except through the separation of civil power from religious power".
Mohammed Abduh and Farah Antoun, *The Religious Debate between Sheikh Mohammed Abduh and Farah Antoun*, presented by Michel Jeha, 2nd ed. (Beirut: Bissan Publishing and Distribution, 2014), 151.

39 Ibid., 137, 163.

40 Ibid., 138, 141, 172.

41 Ibid., 232.

42 Ibid., 160.

43 Ibid., 155, 158.

44 Ibid., 160.

45 Ibid., 90–92.

46 Ibid., 236.

47 Ibid., 153.

However, it is civil authority that demands separation between itself and religious authority "to enjoy civil liberties for all," and it is "above religious authority […] because the interests of humanity in general take priority over the interests of a particular subset of it."[48]

According to Antun, as well as al-Bustani, only civil authority can achieve the desired national unity among the members of a single nation. Conversely, it is impossible for states or nations to be founded on religious unity, as this is simply unattainable. [49]

Muhammad Abduh seemingly opposed the thesis of the separation of powers[50] because, as Antun stated, "he does not want to see a world (*dunya*) without religion (*din*), or a religion without a world. Rather, he believes that the world and religion must be combined."[51] However, Abduh did not deny the civil dimension or the political character of the political sphere or political authority. In his explanation of "the fifth principle of Islam: the overthrow of religious authority," he asserted that Islam involves the overthrow of religious authority and the subordination of the sultan or caliph to the people. Abduh wrote, "Islam destroyed the edifice of that authority, and wiped out its trace, such that no name nor form of it remains for the masses."[52]

In his response to Farah Antun and to Gabriel Hanotaux, the French Minister of Foreign Affairs, who perceived a definite link between politics and religion in the Islamic world,[53] Abduh sought to demonstrate that Islam is no less civil than Christianity and, indeed, equals or even surpasses it in this regard.[54]

He spoke of "Muslim civilisation"[55] and of Europe's borrowing from Islamic civility.[56] In this context, he also adopted the principal argument that Islamists would later use to assert the secular nature of the state and government from an Islamic perspective, and to deny the religious nature of that state or government.

This argument is based on the claim that Muslims do not possess religious authority comparable to papal authority in Christianity, because "the caliph is not infallible, nor does he receive divine revelation,"[57] and "the community, or whoever speaks for the community, appoints him. The community is able to overrule him, and they can remove him from office when they see a benefit in doing so. Thus, he is a civil ruler in every sense of the word."

48 Ibid., 161.
49 Ibid., 179.
50 The Complete Works of Imam Sheikh Mohammed Abduh, Part Three, *Intellectual and Educational Reform and Theology*, edited and introduced by Muhammad Amara (Beirut/Cairo: Dar al-Shorouk, 1993), 293.
51 Abduh and Antoun, *The Religious Debate*, 207.
52 *The Complete Works of Imam Sheikh Mohammed Abduh*, 304.
53 Ibid.
54 Ibid.
55 Abduh, *Islam between Science and Civilisation*, 36.
56 Ibid., 49.
57 *The Complete Works of Imam Sheikh Mohammed Abduh*, 307.

Abduh adds: "No rational person can possibly confuse the office of the caliph of the Muslims with what the Europeans call 'theocracy'," that is, a divine ruler.[58] Furthermore, he notes that "Islam does not have a religious authority, other than good counsel and the encouragement of goodness and of avoiding evil, and that is authority which God has bestowed even on the lowliest Muslim, by which he can admonish the noblest Muslim, just as the noblest may do with the lowliest," and there is no combination of "political and religious authority in one person." The sultan is not "the one who stipulates the religion and the one who establishes its laws and ensures they are followed." This applies to the sultan, the mufti, the judge, and the shaykh of Islam, for "Islam did not give these people even the least amount of authority over creed or law. All the authority held by one of the above is a civil authority that Islam granted them."[59]

In short, "state authority has the final say,"[60] and "Islam will never be a stumbling block to civilisation. Rather, it will reform it and refine it from its dirt. Indeed, civilisation will be among its most ardent supporters when it and its proponents come to know it."[61]

In his pioneering and revolutionary book *Islam and the Foundations of Political Power*, published in 1925, Ali Abd al-Raziq went further than Muhammad Abduh and rejected the religious nature of the caliphate itself, arguing that Islam, in the time of Muhammad, was "a message from God rather than a system of government; a religion rather than a state."[62] He argues that "the end of Prophetic authority [was] with the death of the Prophet," and that leadership thereafter "was bound to be no more and no less than a temporal or political rather than a religious power." [63]

Governmental function or state office, he asserts, "exists by dint of nothing else but political fiat, with which religion has nothing to do whatsoever, which it wants neither to know nor to ignore; which it neither advocates nor repudiates. It is a matter which religion has left to humankind, for people to organise in accordance with the principles of reason, the experience of nations and the rules of politics."[64]

Abdul Razeq concludes his book by emphasising that "there is not a single principle of the faith that forbids Muslims to co-operate with other nations in the total enterprise of the social and political sciences. There is no principle that prevents them from dismantling this obsolete system, a system which has demeaned and subjugated them, crushing them in its iron grip. Nothing stops them from building their state and their system of government on the basis of past constructions of human reason, of systems whose sturdiness has stood the test of time, which the experience of nations has shown to be effective." [65]

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58 Abduh, *Islam between Science and Civilisation*, 36; *The Complete Works of Imam Sheikh Mohammed Abduh*, 308.
59 Abduh, *Islam between Science and Civilisation*, 83; *The Complete Works of Imam Sheikh Mohammed Abduh*, 309.
60 Abduh, *Islam between Science and Civilisation*, 69.
61 Ibid., 123.
62 Ali Abdel Razek, *Islam and the Foundations of Political Power: Study and Documents*, Muhammad Amara (Beirut: Arab Foundation for Studies and Publishing, 2000), 87 ff.
63 Ibid., 121.
64 Ibid., 137.
65 Ibid.

In 1950, Khalid Muhammad Khalid's book *From Here We Begin* was published, containing the assertion that "Islam is a religion, not a state." In the book, Khalid vehemently criticised religious government, describing it as "a failed experiment, an exhausting and tyrannical autocracy, as opposed to the civilised, democratic, renewed national government that rules by constitution and law and seeks to achieve the interests of the nation," which he advocated.[66] Khalid identified seven characteristics of such a government: "utter obscurity," due to its reliance on vague, ambiguous authority and the absence of clear constitutional foundations defining its responsibilities and obligations; "lack of confidence in human intelligence;" reliance on human weakness; sacred arrogance, rendering it unwilling to accept advice, guidance, opposition, or criticism; absolute monism, resulting in hostility towards intellectual and political or partisan pluralism; "stagnation" preventing it from adapting to life and its developments; and "beastly cruelty."[67]

Khalid later retracted the main theses of this book in a subsequent work entitled *The State in Islam*, in which he acknowledged his error, stating that he "attributed all the characteristics and shortcomings of autocratic dictatorial rule to what he called religious government."[68] He explained this error for two reasons. The first was his failure to recognise or understand that Islamic government is not religious government in the Western or Christian sense of the term. Echoing Muhammad Abduh's argument, Khalid emphasised that Islam did not confer upon the caliphs and rulers any "papal priestly authority, because it has no room for any priesthood, either in its teachings nor in its applications."[69] The second reason was his generalisation of the actions of the Muslim Brotherhood's secret apparatus carried out in the name of Islam.[70]

Contrary to the claims of many extreme secularists who reject the term "civil state," this term was not coined by Islamists and then adopted by secularists out of naivety or lack of awareness. To the best of my knowledge, the earliest occurrence of the term "civil state" appears in the work of the liberal Egyptian judge and thinker Muhammad Said al-Ashmawi, in his book *Harvest of Reason*. Al-Ashmawi was a vocal critic of what he termed "political Islam," and he was also the first to use this term —which is rejected by most, if not all, proponents of the movement— in a book entitled *Political Islam*, published in 1987.[71]

In al-Ashmawi's writings, we find the foundational ideas and problematics associated with the concept of the "civil state," many of which would later reappear and be further developed in subsequent Arabic writings.

In his book *Harvest of Reason*, al-Ashmawi distinguishes between five types of government: the government of God, the religious government, the racist government, the civil government, and the government of the Imam.[72]

66 Ibid., 169.
67 Ibid., 186–191.
68 Khaled Mohammed Khaled, *The State in Islam,* 4th ed. (Cairo: Dar al-Mokattam for Publishing and Distribution, 2004), 9.
69 Ibid., 11.
70 Ibid., 13.
71 Muhammad Said al-Ashmawi, *Political Islam,* 4th ed. (Cairo: Madbouly al-Saghir Library, 1996).
72 Muhammad Said al-Ashmawi, *Harvest of Reason: On the Directions of Human Destiny*, 3rd ed. (Beirut: Al-Intishar Al-Arabi Foundation, 2004), 55–77.

In the government of God, modelled on the Prophet Muhammad, sovereignty reverts to God, with the ruler on earth implementing God's will, which he receives through revelation.

The religious government—modelled on the rule of the Rightly-Guided Caliphs—is a government in which the system of government, law, and morality are linked to religious doctrine. The ruler in this system is a human individual who derives his authority from the governed community, not from God, although it is understood that God's will underlies this choice. He remains ruler only so long as he upholds the rulings of religion and the rules of sharia, which he must master as a condition for being chosen.[73]

Importantly, in this context al-Ashmawi emphasises the distinction between a religious government and the contemporary conception of governments and states, describing it as "the government of God's community"—an open society that transcends earthly borders, gender differences, tribal tendencies, racial claims, and nationalist claims.[74] In this sense, it "contradicts the systems of government of all contemporary governments," which, in the modern understanding, are founded on two fixed elements: a defined territory and a specific population.

Loyalty to the homeland alone is the basis for belonging to the territory and integrating with its citizens. A religious government, by contrast, is a government without territorial boundaries, existing wherever its believers reside.[75] This distinction between the systems of government associated with the modern state and those that prevailed in earlier eras is of critical importance. The absence or omission of this distinction in the writings of many Islamists who adopted the term "civil state" was one of the factors contributing to weak theoretical development, widespread misunderstandings, and the prevalence of unproductive or one-sided dialogue—whether intentional or not—in many later cases.

Al-Ashmawi addresses the concept of the "civil state" in two contexts: first, in relation to religious government, and second, in relation to civil government. In the context of religious government, he stresses that "confusing religious government with government in the contemporary sense is a confusion between two different systems and a mixing of two incompatible fabrics that leads to the creation of a racist state."[76]

He describes this racist state as "a civil state based on religion and exploiting it to give a certain group preference over other groups, or to tighten its grip on those it rules by threatening to brand those who deviate from it as infidels and atheists."[77]

In defining and clarifying the nature of a civil government —which he regards as a model "generalised by Western civilisation,"[78] — al-Ashmawi underscores that such a government is not religious and does not rely on religion to establish its foundations or to eliminate its opponents.

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73 Ibid., 60–61.
74 Ibid., 63–64.
75 Ibid., 64.
76 Ibid.
77 Ibid.
78 Ibid., 72.

He emphasises that "while a civil government is not religious and does not use religion as a tool of consolidation or suppression, it may nevertheless be influenced by religious values and sharia law, insofar as these values and rulings constitute part of the cultural heritage of the governed community."[79]

There is a discernible tension in al-Ashmawi's text —as well as in the writings of many others—who advocate for a "civil state with an Islamic frame of reference," particularly given the absence of a state whose citizens adhere uniformly to a single religion (Islam) and share a unified understanding of that religion. This raises a fundamental question: how can the influence of religious values and sharia law avoid producing a form of racial or sectarian privilege that favours one group of citizens over others? Al-Ashmawi maintains that all contemporary Arab and Islamic governments are, in fact, civil governments—even when they claim to be religious or implement certain aspects of sharia law, whether civil or criminal. This is because the essential components of a religious government are inherently lacking in the modern state and in the structures of possible contemporary political systems. A civil government, in his view, is one that exists within a "state possessing the defining elements of a state in the contemporary sense: a defined territory and a population, and whose primary objectives are the preservation of the land and the safeguarding of the interests of its citizens—regardless of their religion, ethnicity, language, or origin."[80]

Ashmawy maintains that the modern state is, in general, a civil state, regardless of whether it is labelled secular or religious. With the exception of the Imamate in Iran and states or governments that are entirely atheistic, all contemporary states and governments are, in his view, civil — including those that identify as secular (such as Western states) and those that present themselves as religious. Accordingly, he offers a unified definition of both the religious state and the civil state in the current era, writing, "A religious state in the current era is a state that encourages religious belief or protects its defenders, or applies civil and criminal law—as is the case in civil government—with only a difference in degree. A civil state, as mentioned above, is a state that nurtures the values of individuals and preserves the heritage of the community, and this preservation and nurturing extends to the source of values and the foundation of heritage, which is religion and religious thought."[81]

As noted earlier, the term or concept of the "civil state" is often used to denote opposing or even contradictory meanings. At times, it is invoked to describe an Islamic or religious state; at other times, it refers to a secular state. The basis for this dual usage can be found in the writings of Ashmawy himself, who holds that the form of governance in both secular and religious states—understood in the contemporary sense—is a civil form of government. This is the case despite the difference between a secular state, which "is not based on religion, but leaves religion to its subjects to be free in their beliefs and practices,"[82] and a religious state that "encourages religious diversity or protects its defenders or applies civil and criminal sharia law."[83]

79 Ibid.
80 Ibid., 73.
81 Ibid., 73–74.
82 Ibid., 73.
83 Ibid., 73–74.

Al-Ashmawi's lack of emphasis on the distinctions between a secular state and a religious state stems from his primary concern with the state, in both cases, being a state in the modern sense of the term. This stands in contrast to the concept of the Islamic religious nation or that of the empire— both of which refer to political entities that do not consist of a defined people within fixed borders.

For al-Ashmawi, it is of little consequence whether a state is secular or religious, so long as the government itself is civil in nature. It likewise makes little difference if the state is secular in a context where society is largely non-religious and religion is absent from public life. However, in cases where religion is present within society, the state, from Ashmawy's perspective, can and should be civil, that is, it may be informed by religion and take it into account, without this compromising its foundations as a state in the modern or contemporary sense of the term. In this way, the state remains a state for all its citizens, not merely for a particular group among them.

The purported or desired balance within a civil state, as articulated in the writings of al-Ashmawi and many Islamists who endorse the concept of a "civil state," is both theoretically problematic and practically challenging to realise. It remains unclear how a modern state and its civil government can fulfil its primary objectives—which, according to al-Ashmawi, are "preserving the land and caring for the interests of the governed, regardless of their religions, nationalities, languages, or origins"—while simultaneously relying on religion and integrating it into the framework of the state, its legislation, and its practices. A notable deficiency in al-Ashmawi's text is the lack of distinction between society and community. He refers to the citizens of the state as belonging to a community, or rather to the community, implying the existence of a single unified community within any modern state. However, he pays insufficient attention to the fact that the modern state is fundamentally a state of individuals and society, not of singular or homogeneous communities. In a modern state, each citizen or individual ought to possess fundamental freedoms and rights equal to those of other citizens, irrespective of their affiliation or descent from any particular group. The societal state, therefore, is composed primarily of distinct individuals with equal rights, rather than of groups the state seeks to represent. Furthermore, in a modern state, collective identities or trends should emerge from individual wills, and not the contrary.[84]

In his discussion of the civil and/or secular government/state, al-Ashmawi addresses the specificity of the term and its variations, as well as the differences among states according to cultural and political contexts. He contends that the designation of certain states as "secular states" is primarily a political label, specific to Western nations and rooted in the historical conflict between the state and the church in those contexts. He further argues that this label lacks particular significance in non-Western states, including those influenced by the "Islamic intellect." Al-Ashmawi associates the term "secular state" with the desire to oppose the church and with anti-religious atheism.

84 Housamedden Darwish, *Knowledge and Ideology in Contemporary Syrian Thought* (Paris/Istanbul: Maysalun for Culture, Translation, and Publishing, 2022), 49–52.

This association, however, can be challenged on the grounds that a secular state is not necessarily anti-religious. Nonetheless, it cannot be denied that the secularism of some states has taken on—or could take on—forms and content that are hostile or unfriendly to religion in principle, whether towards all religions generally or towards specific religions. Examples of such secular states may include the Soviet Union, North Korea, Ataturk's Turkey, France, and Mexico. It may be argued that a civil state is a secular state from a certain perspective insofar as it treats all its citizens equally and endeavours to serve their interests without discrimination based on religious belief. However, the assertion that the secular state is inherently civil can be contested, particularly when secularism functions as an ideological attribute of the state that adversely affects its democratic principles and religious freedoms, including the role of religion in the public sphere.

The concept of the "post-secular state" —or the state within a "post-secular society," as discussed by Habermas and others—[85] may be more fitting and closely aligned with the notion of the "civil state." In a post-secular entity, religion or a religious individual is afforded the right to co-exist with the secular or non-religious individual, with both enjoying equal legitimacy. In such an entity, religion is initially viewed positively and seldom perceived as a threat to society or individuals, nor as a contaminant of the public sphere in general or the political sphere in particular, as is the case of France for example. From the perspective of post-secular theory, religion can contribute constructively to the public sphere, serving as a source of moral guidance. It may be argued that the post secular entity remains a secular entity; however, it is important to emphasize that this represents a distinctive type of secularism-one among various diverse and sometimes contradictory forms. It is precisely this type of secularism, rather than atheistic or anti-religious variants, that most closely approximates the concept of a "civil state."

One may invoke here the argument that the concepts of the "secular state" and the "religious state" are preferable to that of the "civil state," given the universality of the former two terms, the relative clarity of their meanings, and their established presence within the social sciences. By contrast, the concept of the "civil state" is not universal, its meaning remains vague or ambiguous, and it is either absent or only marginally present within the conceptual frameworks of social sciences. If we are committed to preserving the universality of the knowledge we produce and maintaining a productive intellectual engagement with social sciences, then we must adopt the language and universality of these sciences and avoid deviating toward concepts that are unfamiliar or extraneous to them. This is the argument put forward, for example, by Sari Hanafi in his introduction to the book *On Thick Normative Concepts: Secularism, (Political) Islam, and the Renewal of Religious Discourse.* [86] In relation to this otherwise reasonable argument, two considerations must be taken into account.

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85 See Jürgen Habermas, *The Future of Human Nature: On the Way to Liberal Eugenics*, translated by George Kattoura, rev. Antoine El-Hachem (Beirut: Al-Maktaba al-Sharqiya, 2006), 123–139.

86 See: Housamedden Darwish, "Dense Normative Concepts and Transcending the Fact/Value Dichotomy," *Annals of Arts and Social Sciences* (Kuwait, 2025): 11–19.

First, it is important to recognize that most social sciences and their concepts were established within a Western/European intellectual context that theorised secularism and secularisation based on historical developments specific to Europe. These theories often elevated the European experience to the level of normative standard, prescribing it as the model against which other trajectories must be measured. In this context, social sciences constructed a close and seemingly necessary link between the theories/processes of secularisation and modernisation, suggesting that modernity or the modernisation process requires, or is inevitably accompanied by, secularisation. As José Casanova has noted, the classical theory of secularisation is typically based on three core propositions: (1) the decline of religion or religious beliefs and practices, (2) the privatisation of religion and its gradually increasing absence from the public sphere, and (3) the differentiation between religion and other social spheres, or between the religious and the non-religious or secular.[87]

Researchers have often regarded the "religious decline" proposition as the first and most foundational assumption of secularisation theory. Over the past four to five decades, however, this classical theory of secularisation has come under intense criticism for its Eurocentric orientation, which generalises the European experience of modernisation and constructs a purportedly necessary relationship between it and secularisation, without adequately accounting for the historicity of the phenomenon or the actual and potential variations in its historical expressions.[88]

Rather than acknowledging such variations, proponents of the theory have tended to describe them as exceptions that confirm the rule, such as the so-called American exception, where modernisation has not been accompanied by a general decline in religious belief or practice. This debate has since evolved into a polarised divide between two opposing camps. One insists on a unified, general theory that seeks to offer a singular model of secularisation[89] based on the European case; the other argues that the European experience is unique —even exceptional— and therefore cannot be generalised and retained as a basis for interpreting other trajectories of modernisation.

Initially, criticism focused on the propositions of religious decline and religion's privatisation or religion's retreat from the public sphere. At later stages, criticism extended to challenge the very premise of the "differentiation between the religious and the non-religious." Postcolonial criticism, such as that advanced by Talal Asad in his anthropological work,[90] went further, arguing that the concepts of religion, secularism, and the differentiation between them are mere constructs of a particular European historical experience. Asad contends that the imposition of these notions onto the universal discourse is the outcome of power and hegemonic relations and lacks sufficient cognitive justification.

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87 José Casanova, *Public Religions in the Modern Age*, translated by the Department of Living Languages and Translation at Balamand University, revised by Paul Wahba (Beirut: Arab Organisation for Translation, 2005), 18.

88 Christoph Kleine and Monika Wohlrab-Sahr, "Historicizing Secularity: A Proposal for Comparative Research from a Global Perspective," *Comparative Sociology* 20 (2021): 289–292.

89 David Martin, *A General Theory of Secularisation* (Oxford: Blackwell, 1978).

90 Talal Asad, *The Genealogy of Religion: Discipline and Reasons for Power in Christianity and Islam*, translated by and introduced by Muhammad Asfour, revised by Mushir Aoun (Beirut: Dar al-Madar al-Islami, 2017).

This line of criticism, in its engagement with the specificity of the European experience and/or the particularities of non-European societies, has at times been marked by a form of essentialism. Thus, the discourse shifted from a critique of the classical secularisation theory as essentialist and Eurocentric despite its allegations of universality and due to these allegations, to a focus on cultural and religious specificities that often, more than not, end up turning into a counter-essentialism that attributes fixed and even rigid characteristics to non-European cultures and religions, portraying them as inherently different from the European culture and incompatible with processes of modernisation and/or secularisation.

The above is not intended to deny the universality of scientific knowledge in this context. Rather, it highlights the importance of considering the ideological implications and the cultural and political specificities underlying (some) concepts and theses within these sciences. Ashmawi noted these cultural and political specificities associated with the concept of the secular state in the European context, as well as the differing specificities in the Arab world, which may require an alternative understanding of the state. It is important to stress that addressing these specificities does not imply reference to fixed essences or rigid entities. Those who adopt the concept of the civil state, along with related concepts, should remain mindful of this when discussing what is appropriate for society and its actual and/or perceived nature.

Accordingly, the nature of government and the political system—its civil nature and/or secularism—should consistently remain political matters to be periodically determined and re-determined through democratic means. The degree of religiosity and/or secularism among individuals in society, their political perspectives on these matters, and other related issues are subject to constant change and are marked by a plurality of viewpoints.

On this basis, there appears to be no justification for speaking of a fixed, non-civil authority within the framework of a civil state. This is precisely the issue when many Islamists assert that their state is a "civil state" with an "Islamic authority."

It appears evident that, from their perspective, the people do not possess the right to determine for themselves their authority or the authority of their state, whether Islamic or otherwise. Instead, that authority is predetermined for them, and they are deemed to have "no power or strength, not even from God" in this regard.

This external, coercive imposition stands in direct contradiction to the civil nature of the state and to every possible positive interpretation of the concept of the "civil state." It undermines the principles of popular sovereignty, freedom, the right to self-determination, and the actual or theoretical human social contract upon which the civil state is presumed to be based.

Conversely, although the issue of religion and its relationship to the state and politics frequently occupies a central position in the concepts of the "civil state," the "religious state," and the "secular state," the concept of the "civil state" also encompasses other fundamental issues that are equally, and in many cases more, significant, such as security or the military state, citizenship, and democracy more broadly.

This applies to both Western and Arab discussions of the concept. Therefore, the concept should neither be reduced solely to this issue nor be viewed particularly and specifically (only) from this particular perspective; but rather should (also) take into account these other issues on the one hand, and its functional role on the other.

The concept of the "secular state," and secular ideology more broadly, is politically and cognitively limited. For instance, it does not provide any definition regarding whether states or political systems characterised by secularism are democratic or non-democratic. In contrast, within Arab thought, the relationship between the concepts of the civil state and democracy appears more analytically integrated, with the former encompassing the latter.

In any case, regardless of whether the relationship between these two concepts is analytical or synthetic, discourse on the "civil state" in Arab thought is closely associated with democracy, often resulting in expressions such as the "civil democratic state."

This association endows the concept of the "civil state" with greater cognitive depth and enables it to fulfil a more constructive political role, thereby shifting the focus beyond the question of the state's religiosity or secularism — without disregarding it— and framing the discussion from a broader, more significant, and more nuanced perspective.

From this perspective, some proponents of the Islamic state may converge with some proponents of the secular state, while differing with others who advocate the concept of the Islamic state. The diversity of perspective broadens and enriches the horizon of vision, rendering agreement and disagreement on political issues more important, credible, and impactful.

Following Ashmawi's aforementioned text, the term/concept of the "civil state" gained increasing prominence in Arab thought and the Arab world in general, including among the proponents of secularism, and particularly among Islamists. The concept became a focus of interest and the subject of seminars and discussions that captured the attention of many. After the outbreak of the Arab Spring revolutions, the concept gained greater traction and relevance in the face of military-security tyranny on the one hand, and Islamic religious tyranny on the other[91]. We will follow up in a future research paper on the events of the Arab Spring.

CONCLUSION

In the intellectual and research field, the search for a comprehensive and exhaustive definition of concepts in general should not be oversimplified, especially for political concepts or those that are the subject of political and ideological debates in general, such as the concept of the civil state.

[91] Sari Hanafi, "The Transformation of the Discourse on Secularism/the Civil State in Arab Academic Writings Post Arab Spring," *Philosophy and Society* 35, no. 3 (2024): 625–644.

The most that can be achieved in this area is the construction of an ideal model —in the Weberian sense— for the concept, which encompasses its core ideas and features in their most robust form, while recognising the challenges of attaining consensus among political stakeholders concerning the ideal model and its foundational characteristics.

Constructing an ideal model for civility/civilisation and the civil state enables us to move beyond the binary question of whether an entity is civil or non-civil. An entity may exhibit civil characteristics in some respects and non-civil characteristics in others. Historical analyses of civil elements, regardless of the context or subject, must consider both the historical circumstances and the presence of non-civil or anti-civil elements.

In clarifying the concept of the civil state and its related notions, we have demonstrated the necessity of addressing (some) key issues and arguments concerning the ambiguity and confusion surrounding its meaning.

The first issue pertains to the nature and essence of the concept and its general meaning, specifically the concept of the civil state. The thesis advanced in this respect consists of two points. The first focuses on the necessity to distinguish between the concept and the term, recognising that a concept cannot be considered as a concept without disagreement over its content. Second, the concept of the civil state constitutes a normative (thick) concept that is highly contested, similar to the concept of the secular state. Employing linguistic and conceptual analysis, constructing the concept as an ideal type in the Weberian sense, and treating it as an "empty signifier," "floating signifier," and/or a "thick signifier" in the descriptive cognitive sense, can facilitate a better understanding of the essence of this concept and justify its presence and usage within contemporary Arab contexts, without necessitating a comprehensive or exclusive definition that categorises the state as either civil or non-civil.

The meanings of these concepts, based on Ferdinand de Saussure's dualism of signifier and signified, can be integrated, despite the possibility of an apparent contradiction between them.

Linking the three aforementioned adjectives of the signifier to the term "civil state" —understood here as a signifier— implies the denial of any fixed, essential relationship between such signifier [the civil state] and its signified. The "thickness" feature indicates that this signifier is associated with a wide array of meanings. The "floatation" feature suggests that these thick meanings are variable, or continuously, in principle, subject to change. Meanwhile, the "emptiness" feature underscores the absence, so far, of a fixed meaning, dominating the signifier or within it.

These concepts and terms implicated in political conflicts do not possess ready-made or stable meanings. This applies in particular to the concept of "civil state." The actual or presumed emptiness of this concept, along with the contradictions among the meanings attributed to it, reveal that the conflict surrounding it remains unresolved, or at best only partially resolved. Acknowledging this partiality implies that the signifier is not entirely empty of meaning; rather, there exists a foundational core upon which an analytical perspective and a constructive approach to the concept may—and indeed must—be developed.

Constructing an ideal model for civility/civilisation and the civil state offers a means of transcending binary oppositions and rigid conceptual frameworks—such as the principle of the excluded middle—and allows for a more nuanced exploration of the presence or absence of particular elements or components of the civil state. In this view, a state does not need to be wholly civil or entirely non-civil. Moreover, the meaning of the concept is inherently relational—that is, it gains coherence through its connections with other related concepts such as "state," "civility," "secular state," and "religious/Islamic state," etc.

The second issue concerns the factors that contribute to the ambiguity or confusion of this concept. The thesis we have adopted in this regard is that this ambiguity or confusion relates to the confusion surrounding its constituent concepts, "state" and "civility/civilisation," on the one hand, and to attempts to understand it through its relationship and comparison with the concepts of "secular state" and "religious or Islamic state," in particular or specifically, on the other hand. The main idea in this respect is that the meaning and richness of this concept lie in its departure from and adherence to the dualism of "secular (state) versus religious/Islamic (state)," and its connection to other concepts and other problems. Meanwhile, this meaning is reduced when its understanding is restricted to its difference from or agreement with the concepts of "secular state" and "religious/Islamic state," and related concepts.

The third issue intersects with the first two and relates to the dual role of this concept: its potential to serve as a basis for agreement and consensus between two conflicting ideological trends—secular and religious—and, conversely, its capacity to generate disagreement, division, and conflict among the supporters of these same trends. Here, the importance of the mediating function this concept can perform between conflicting ideological parties can be highlighted, while acknowledging the potential of this concept to incite ideological discord and cognitive confusion. It is also necessary to recognise the importance of the functional meaning and moral role of the concept of the "civil state," particularly in its capacity to serve as a point of convergence and a basis for consensus and compromise between two opposing ideological camps-secular and religious/Islamic. At the same time, emphasis must be placed on the fact that a superficial or insubstantial agreement, especially one grounded in misunderstanding or conceptual ambiguity, may be more detrimental than disagreement rooted in mutual misunderstanding or lack of understanding between the parties involved.

Disagreement over a concept does not prevent it from becoming a term with a specific meaning in certain political and intellectual contexts; however, its transformation into a term does not negate its existence and persistence as a concept in other contexts. As in any process of terminological convention, the agreed-upon term should be part of the possible meanings of the concept, to avoid the convention and the resulting term falling into arbitrariness that is contrary to reason and subjectivity that is contrary to objectivity. The process of defining a precise meaning for a concept produces terms without the possibility of restricting the concept into a single meaning or definition. A single definition is conventional, political, and ideological, while a cognitive/philosophical definition always acknowledges the plurality of meaning, the constant disagreement about it, and the impossibility of reducing that meaning to any single definition.

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Islamist Perspectives on the Concept of the Civic State in the Arab World

Dr. Azzam Al Kassir *

ABSTRACT

In contemporary Arab political discourse, the "civic state" (*dawla madaniyya*) has emerged as a deeply contested concept, often framed against both theocratic and secular models. Islamist movements hold diverse views, with reformists seeking to harmonise the civic state with an Islamic reference (*marja'iyya*), while rejectionists denounce any system not grounded in divine sovereignty. This paper interrogates these tensions through a critical examination of the positions adopted by leading Islamist formations and thinkers towards the civic state, with particular attention to the case of Hay'at Tahrir al-Sham (HTS) in Syria.

HTS has skilfully adopted the language and structures of civic governance to legitimise its rule; however, its approach is a facade for an authoritarian core. Both in its Idlib proto-state and after the collapse of the Assad regime in December 2024, power has been monopolised by its security and religious bodies, subverting the principles of institutional independence and the rule of law. Syria's recent trajectory therefore highlights a significant regional risk: what if civic rhetoric is used by illiberal actors to mask and entrench a new, more sophisticated form of authoritarian rule?

Keywords: *Civic state; civil state, Islamism, Hay'at Tahrir al-Sham (HTS), Syria, governance.*

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Introduction

The concept of the "civic state" (or "civil state") has become a focal point of political debates in the Arab world, particularly in the wake of the Arab Spring uprisings. The term, which lacks a singular definition, is often positioned as an alternative to both "theocratic" and secular state models. While it broadly refers to a state governed by laws and institutions rather than religious authorities or military rule, its interpretation varies among different political actors, particularly Islamist movements.

Islamists are not in agreement on the meaning of th "civic state", nor have they developed a uniform stance regarding it. While some Islamists advocate for a civic state with an Islamic reference, aligning with democratic norms while maintaining the role of sharia as a guiding principle, others reject the civic state altogether as a Western import that is incompatible with Islamic governance. This paper explores these varying perspectives, examining the positions of different Islamist actors in the Arab world, particularly in the Levant, and assessing the broader ideological and political implications.

I. The Civic State: Concept and Context

A. Theoretical Framework of the Civic State

In its broadest theoretical sense, the civic state is the antithesis of a theocratic state, where religious authorities hold the reins of power. It is also distinct from a military state, where the armed forces dominate strategic decision-making.

In early modern political theory,[1] the "civic" state was simply the institutional antithesis of both divine and feudal authority, and thus virtually synonymous with the emerging modern state. In contemporary Arab thought, however, the notion of *dawla madaniyya* (civic state) has acquired a richer, normative meaning: still civilian and nontheocratic, but now also predicated on constitutional supremacy, equal citizenship, and the rule of law.[2] Not every modern state therefore qualifies as *civic*.

In current debates in the Arab world, a key feature of the civic state is *the rule of law*, where governance is conducted through institutions. Maintaining the rule of law means that political authority is derived from a social contract rather than religious or divine legitimacy; it also means that rulers govern according to clear and established rules rather than arbitrarily, impulsively, or based on personal whims. The rule of law is the cornerstone of *citizenship-based governance*, ensuring that all individuals are equal before the law regardless of their ethnic, religious, or ideological backgrounds.[3]

1 Hobbes's "civil state" and Locke's "civil government" are the classic examples.
2 One primary legal text that encapsulates this normative sense is Article 2 of the 2014 Constitution of the Tunisian Republic, which declares: "Tunisia is a civil state based on citizenship, the will of the people, and the supremacy of law."
3 Ronald Dworkin, *Taking Rights Seriously* (London: Bloomsbury Academic, 1977).

In this article, the civic state refers to a civilian, non-theocratic, and non-military polity in which authority is exercised through accountable institutions under the rule of law. Its legitimacy is grounded in citizenship and equality before the law, ensuring that no religious or military authority dominates the state. While allowing room for religious values in public life, it rejects clerical rule and positions itself between secularism and theocracy. In this sense, only modern states that uphold constitutional supremacy, equal rights, and the protection of fundamental freedoms can be described as "civic".

B. The Civic State in Arab Political Discourse

In the Arab world, the term "civic state" has often been employed strategically to avoid the negative connotations associated with theocratic and sectarian rule and secularism. Given the contentious nature of secularism, often perceived as anti-religious due to historical conflicts between nationalist regimes and Islamist groups, *dawla madaniyya* (civic state) emerged as a more politically palatable concept. This linguistic choice allows political actors to engage in discussions about governance and equal citizenship without invoking terms that might antagonise religious or conservative constituencies.

Unlike secularism, which demands a clear separation between religion and state institutions, the common understanding of the civic state allows greater flexibility in expressing religious identity in public life. This perceived flexibility may explain why it is becoming an attractive proposition for Islamist movements seeking to balance religious values with modern governance. However, the exact contours of this integration remain a matter of dispute among Islamist movements and organisations.

In this regard, Islamic thinker Mohamed Emara argues that all human institutions are inherently civic by nature, including mosques and churches, as they are not established through direct divine revelation. He contends that the debate surrounding the concept of the civic state is not about its civic nature per se, but rather its source of authority (*marja'iyya*).[4] The key question, he suggests, is whether the state should derive its laws from a secular framework that separates religion from governance or from Islamic sharia as the ultimate guiding principle. This distinction is crucial to understanding the varying perspectives on the concept of the civic state in the Arab world. Moreover, beyond its ideological and legal dimensions, the question of the civic state has become deeply intertwined with the power dynamics that shape political authority and discourse in the region.

C. Power Dynamics and the Civic State

The debate over the civic state in the Arab world cannot be disentangled from the power dynamics that have historically shaped political governance in the region. The contestation over the role of religion in the state is not merely an ideological or constitutional issue, it reflects deep-seated struggles between different power centres, including authoritarian regimes, Islamist movements, liberal groups, civil society actors, and Western influences.

[4] Muhammad Emara, *Misr bayn al-dawla al-diniyya wal-madaniyya* [Egypt Between the Religious and Civic State] (Cairo: Wahba Library, 2011), 51.

Authoritarian rulers have historically instrumentalised the binary opposition between secularism and Islamism to consolidate power, either by co-opting religious institutions to bolster their legitimacy or by suppressing Islamist groups under the pretext of preserving a "modern" state.[5] Meanwhile, Islamist movements have often framed their struggle in terms of resistance against foreign-imposed secularism, a narrative shaped by the legacy of European colonialism, which imposed legal and political structures that sought to marginalise Islamic jurisprudence in favour of Western legal codes.[6]

The role of civil society and liberal forces in these debates has been equally complex. While many civil society actors advocate for democratic governance, the liberal camp remains divided between those who support a strict secular model and those who seek a middle ground that embraces and accommodates public expressions of cultural and religious identities.[7] The West, particularly through its interventions, aid policies, and diplomatic engagements, has often reinforced these tensions by alternately supporting authoritarian regimes for stability while simultaneously promoting democracy and civil liberties, creating contradictions in Western policy toward the Arab world.[8] These power struggles have rendered the civic state an inherently contested concept, where its implementation is not solely a matter of theoretical agreement but is rather a battleground for competing visions of governance, legitimacy, and historical identity in the postcolonial Arab world.

Within this landscape of competing power dynamics and historical grievances, Islamist movements have articulated diverse and evolving positions on the civic state, reflecting several points of tension and disagreement.

D. Points of Tension

Islamist engagement with the civic state model reveals several points of tension, particularly regarding the role of sharia in legislation. While some movements, such as Ennahda– a popular Islamist party in Tunisia that has repositioned itself as a Muslim democratic movement[9] – advocate for a flexible interpretation that aligns with democratic principles, others insist on a stricter application that may conflict with ideals of equality and pluralism. This debate remains a core point of contention, shaping how different Islamist actors frame their approach to governance.

Another critical challenge is the question of minority rights. The civic state model is based on equal rights and protections for all citizens, regardless of religious or ethnic background, yet many Islamist movements have struggled to fully address these concerns. In societies with significant religious diversity, the reluctance to embrace a universal model of citizenship has led to widespread criticism and concerns over exclusionary governance.

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5 Azzam Al Kassir, "Formalising Regime Control over Syrian Religious Affairs," *Sada: Carnegie–Middle East* (blog), November 14, 2018, *Carnegie Endowment for International Peace*.
6 Wael B. Hallaq, *Sharī'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009).
7 Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003).
8 Nicola Pratt, *Democracy and Authoritarianism in the Arab World* (Boulder: Lynne Rienner Publishers, 2007).
9 Anne Wolf, *Political Islam in Tunisia: The History of Ennahda* (Oxford: Oxford University Press, 2017).

The principle of separating religion and state adds another layer of complexity. While many Islamist groups reject secularism,[10] engaging with the civic state often requires navigating a middle ground, one that accommodates religious values without imposing them on all citizens. This balancing act can lead to accusations of inconsistency or opportunism, particularly when Islamist groups adjust their rhetoric based on political expediency.

These debates reflect broader struggles over governance and identity in the Arab world, with Islamist movements playing a significant role in shaping the discourse. Some advocate for a civic state that integrates Islamic principles within a democratic framework, while others reject the model in favour of alternative governance visions. As Arab societies continue to grapple with governance challenges, the civic state debate, alongside Islamists' role within it, will remain central to discussions on political transition and stability, which is a reality evidenced by the recent historical experiences of Tunisia, Egypt, and Syria.

Islamists' stances and understandings of the civic state vary, but it is important to resist the temptation to assume that all Islamist groups have developed a well-thought-out or coherent stance on the issue. A closer look at their statements and discourse often reveals a lack of depth and theoretical clarity, with the concept being treated opportunistically rather than as part of a coherent ideological framework. More often than not, Islamists approach the idea pragmatically, indirectly, and sometimes with clear suspicion, shaping their engagement around political necessity rather than a genuine commitment to its principles.

Rather than drawing on established political thought or engaging in a structured debate about the civic state, some groups create their own versions of the concept, adapting it to fit their immediate goals while sidestepping its fundamental implications. Their use of the term is often context-dependent, shifting with political pressures and strategic considerations rather than stemming from a clear ideological foundation. In many cases, references to the civic state serve more as a political signal, to appear flexible and open, rather than a meaningful endorsement of its core ideas. Recognising this pattern helps differentiate rhetorical manoeuvring from actual ideological evolution, allowing for a more critical assessment of how Islamist actors position themselves in relation to governance and statehood.

II. Islamist Perspectives on the Civic State

Islamist positions on the civic state range from conditional endorsement to outright rejection. The following typology categorises the dominant Islamist perspectives:

[10] Ibrahim M. Abu-Rabiʿ, *Intellectual Origins of Islamic Resurgence in the Modern Arab World* (Albany: State University of New York Press, 1996).

A. The Reformist Islamist Perspective: Advocating a Civic State with an Islamic marja'iyya

Some moderate Islamist movements accept the civic state as a legitimate governance model, provided it accommodates Islamic principles. These groups attempt to harmonise Islam with democratic governance, rejecting theocratic rule while still advocating for Islamic values in legislation and public life. Their approach reflects a pragmatic adaptation to the realities of modern governance

The Syrian Muslim Brotherhood, particularly in its 2004 political vision and 2012 charter, presents a clear endorsement of the civic state concept.[11] Their vision for Syria's future is structured around the principles of a civic, democratic state, ensuring equal rights for all citizens, regardless of religion or ethnicity. Unlike Islamist groups that advocate for an Islamic state, the Brotherhood explicitly rejects theocratic governance, instead proposing a pluralistic system that allows for diverse political representation.

While the Brotherhood upholds sharia as a source of guidance, it does not advocate for its exclusive application as a legal system. Instead, their vision suggests a flexible integration of Islamic principles within a modern constitutional framework. This model closely aligns with the approach taken by Tunisia's Ennahda movement, which has similarly embraced the civic state framework while maintaining a commitment to Islamic values in public life. By framing their vision around justice, accountability, and governance in the public interest, the Syrian Brotherhood attempts to navigate the tensions between religious authority and modern state institutions.

In contrast, the Egyptian Muslim Brotherhood has exhibited a more ambivalent stance toward the civic state concept. While its 2011 Freedom and Justice Party (FJP) platform formally endorsed democratic governance and civic institutions, its experience in power during 2012–2013 exposed deep tensions regarding the role of sharia in constitutional and legislative matters. The Brotherhood attempted to strike a balance between civic governance and Islamic legitimacy, yet this balancing act proved politically unstable.

The group's perceived majoritarian approach, particularly in constitutional drafting and legislative decisions, alienated secular and minority groups, fuelling political polarisation and ultimately contributing to its downfall. The Egyptian Brotherhood's experience underscores the pragmatism with which some Islamist movements approach the civic state concept while using it as a political tool rather than adhering to a fixed ideological position.

B. The Rejectionist Islamist Perspective: Advocating an Islamic State

Unlike reformist Islamists who seek to integrate Islamic principles within a civic-state framework, rejectionist Islamist movements argue that sovereignty belongs solely to God rather than human institutions. They believe that any system that grants legislative authority to elected bodies, constitutional courts, or human lawmakers contradicts the fundamental Islamic principle that governance must be exclusively derived from divine revelation.

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11 Syrian Muslim Brotherhood, *The Political Project: The Vision of the Muslim Brotherhood for the Future of Syria*, 22 April 2004.

One of the most prominent groups in this camp is the Islamist organisation Hizb al-Tahrir, which categorically opposes the civic state, advocating instead for the re-establishment of an Islamic Caliphate.[12] Founded in 1953 by the Palestinian jurist and scholar Taqi al-Din al-Nabhani, Hizb al-Tahrir is active today in more than forty countries with strongholds in Central Asia, Indonesia, and parts of Europe.[13] According to its literature, the civic state is a Western-imposed framework designed to dilute Islamic governance and replace it with a system where laws are based on human reasoning rather than divine decree. Unlike Islamist movements that engage with democratic processes, Hizb al-Tahrir rejects electoral politics entirely, asserting that true Islamic rule can only be restored through the establishment of the Caliphate, which they believe can and should be achieved through *da'wa* activities, including non-violent mobilisation and outreach, rather than violent uprisings.

C. The Jihadist Perspective: Rejecting the Civic State and the Modern State Entirely

Salafi-Jihadist groups, such as al-Qaeda and ISIS, take their rejection of the civic state even further by denying the legitimacy of the modern nation-state altogether and seeking to dismantle it through violent means. Unlike other Islamist factions that seek to reform or influence state structures, these groups see all contemporary political systems as inherently illegitimate, believing that governance should be based solely on sharia without national borders, constitutional frameworks, or elected institutions. Consequently, they also reject the foundational principles of the civic state, particularly the notion of equal citizenship, since their vision of political order does not recognise legal equality among subjects regardless of religion, sect, or nationality.

For al-Qaeda, the civic state is a Western imperialist construct, imposed on Muslim societies to replace Islamic governance with secular institutions. Instead of engaging with the existing state system, al-Qaeda advocates for a return to governance based purely on sharia, rejecting national identities in favour of a broader Islamic *ummah* (community).

ISIS went even further, not only rejecting the nation-state model but actively seeking to dismantle it by creating a proto-caliphate. Unlike al-Qaeda, which has often functioned as a decentralised network, ISIS attempted to establish a territorial entity, implementing a strict and violent interpretation of sharia law while systematically working on eradicating modern civic institutions, including courts, bureaucratic apparatuses, and electoral systems.[14] Between 2014 and 2019, the group controlled extensive areas across northern Iraq and eastern Syria, proclaiming the establishment of an Islamic State with its de facto capital in Raqqa. At its peak, this self-declared caliphate governed millions of people, collecting taxes, managing oil fields, and enforcing its ideological and administrative model through coercion.

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12 Dietrich Jung and Kirstine Sinclair, "Religious Governmentality: The Case of Hizb ut-Tahrir," *Temenos* 56, no. 1 (2020): 95–117.

13 Ibid.

14 Federico Lorenzo Ramaioli, *Islamic State as a Legal Order: To Have No Law but Islam, Between Shari'a and Globalization* (United Kingdom: Taylor & Francis, 2022).

For these groups, the civic state is not simply inadequate; it is fundamentally incompatible with their vision of Islamic governance, which they see as a divinely mandated system that supersedes human-made laws. They actively combat any framework based on legislation derived from human sovereignty, reinforcing their uncompromising rejection of modern statehood and underscoring the central role of violence in their ideological project.

Finally, Islamist positions on the civic state are not static; they evolve in response to both internal ideological shifts and external political realities. The degree to which an Islamist movement accepts, modifies, or rejects the civic state depends not only on its doctrinal foundations but also on the historical circumstances and power dynamics it faces at any given moment. This fluidity is particularly evident in the case of Hay'at Tahrir al-Sham (HTS) in Syria, whose discourse and political behaviour reflect the interplay between ideological commitments and pragmatic adaptations to the conflict environment, as will be explained in the following analysis.

III. HTS Governance and the Civic State: Rhetoric vs. Reality

By 2017, Jabhat al-Nusra had evolved into Hay'at Tahrir al-Sham (HTS), a broader coalition of Islamist factions. After serving as al-Qaeda's only official affiliate in Syria between early 2013 and mid-2016, Jabhat al-Nusra's rebranding and subsequent formation of HTS marked a significant departure from al-Qaeda's rigid ideological framework, as HTS positioned itself as a revolutionary authority in northern Syria rather than a mere jihadist movement.[15] HTS's governance model, particularly in Idlib and other liberated areas, demonstrated a concerted effort to balance its Islamist ideological commitments with pragmatic state-building strategies.[16]

Under the leadership of Abu Mohammad al-Jolani (Ahmed Hussein al-Shara), HTS gradually moved toward a more state-like approach, constructing a governance system that, while rooted in Islamic principles, adopted administrative structures characteristic of modern states.[17] One of the most significant developments in this transition was the establishment of the Syrian Salvation Government (SSG), a bureaucratic entity responsible for overseeing civil administration, public services, and regulatory affairs in HTS-controlled territories. The group also implemented judicial institutions based on modified sharia frameworks, allowing for a degree of legal standardisation while maintaining Islamic legitimacy. However, rather than adhering to a strict Salafi-Jihadist interpretation of Islamic law, HTS introduced a more flexible adjudication process, incorporating elements of customary law and local arbitration, which in turn helped mitigate resistance from local populations.[18]

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15 Azzam Al Kassir, "'Intentionality' in Radical Flank Effects: Reflections on Al-Nusra Front's Discourse of Moderation between 2012–2017," *British Journal of Middle Eastern Studies* 52, no. 4 (2024): 954–974.

16 Azzam Al Kassir, *Survival Strategies of Hay'at Tahrir al-Sham: The Trilogy of Administration, Militarism, and Discourse* (Doha: Harmoon Center for Contemporary Studies, 2023).

17 Jérôme Drevon and Patrick Haenni, "The Consolidation of a (PostJihadi) Technocratic Statelet in Idlib," *Project on Middle East Political Science* (POMEPS), November 2020.

18 Aaron Y. Zelin, "Hanging on in Idlib: Hayat Tahrir alSham's Expanding Tribal Engagement," *Policy Watch* No. 3499, The Washington Institute for Near East Policy, 11 June 2021.

Alongside these administrative and judicial mechanisms, HTS developed military and security structures resembling those of a de facto state, organising policing forces to maintain order and engaging in diplomatic negotiations with external actors, such as Turkey.[19] This approach, which contrasts with the more chaotic governance of ISIS, reflects HTS's pragmatic recalibration, which allowed it to govern and consolidate authority while preserving its Islamist identity.

An analysis of HTS's governance strategies in Idlib and other territories under its control offers a revealing case study of how an Islamist faction navigates governance in practice. While HTS positioned itself as a structured governing entity, adopting a discourse that separates civil and technocratic governance from religious and military functions, its actual approach reveals significant contradictions. On paper, HTS had no fundamental issue with the concept of a functional bureaucracy, independent institutions, or technocratic management, particularly in municipal governance, public services, and judicial affairs. However, in practice, HTS's governance remained highly centralised, with the real power concentrated in its military and security apparatus rather than in independent civil institutions. This centralisation of authority contradicts the very essence of a civic state, which relies on decentralisation, institutional autonomy, and the rule of law.

A key factor in this dynamic is HTS's use of the Syrian Salvation Government (SSG) as its administrative arm. While the SSG operated a bureaucratic structure, overseeing local councils, judicial bodies, and public services, decision-making power remained tightly controlled by HTS's leadership. The General Security Agency, HTS's intelligence and law enforcement body, played a crucial role in ensuring that no policy or administrative decision contradicted the group's ideological or security interests. Although HTS leaders, including Abu Mohammad al-Jolani, frequently contrasted their governance with the instability and fragmentation in Turkish-backed opposition areas,[20] this framing served more as a justification for HTS's centralisation of power than an indication of genuine civic governance. The group's rhetoric presented its model as structured, effective, and stable, but in reality, HTS merely replaced one form of authoritarian control with another.

A. HTS and the Rhetoric of the Civic State

HTS's leadership had been particularly strategic in its use of civic-state language to consolidate power. In this context, such language refers primarily to the emphasis on civilian governance and the separation of military and religious authority from administrative affairs. Al-Jolani and other senior figures repeatedly argued that their model allows civil institutions to function independently from HTS's religious and security leadership. Leaders like Abu Maria al-Qahtani (d. 2024) also framed HTS as the only viable governing force in northern Syria, portraying rival opposition leaders as ineffective and incapable of providing stability.

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19 Christopher Solomon, "HTS: Evolution of a Jihadi Group," *Wilson Center*, 13 July 2022.

20 Amjaad Media Agency, *A Meeting with the Leaders of the Displaced Community about the Dangers of Rapprochement with the Regime, with Leader "Abu Muhammad alJawlani"*, 11 January 2023.

Yet, despite this rhetoric, HTS's governance remained anything but independent. The judiciary, while operating under a modified sharia framework, was not autonomous, as judicial decisions were subject to HTS's political priorities. Similarly, administrative councils, ostensibly responsible for local governance, were closely monitored by HTS's security structures, making them little more than administrative extensions of its rule. This overlap between civil, military, and religious institutions is what differentiates HTS from a civic state, where governance is based on institutional independence.

A major challenge to HTS's claim to legitimate governance under a civic-state framework is its highly centralised power structure. Although the SSG and affiliated councils provided a bureaucratic framework, the real decision-making power was concentrated in HTS's leadership, particularly within its religious and security networks. Unlike a civic state, which distributes authority across institutions and promotes checks and balances, HTS maintained a top-down governance model, where dissent was systematically controlled, and political pluralism was absent.[21]

This centralisation extends beyond political control into economic and financial affairs. HTS oversaw taxation, trade, and customs regulations, ensuring that financial resources remain within its ruling apparatus. In contrast to a civic state, where governance, including economic management, is subject to the rule of law, institutional oversight, and public accountability, HTS's economic operations were opaque and deeply intertwined with its military and security structures. This fusion of power reinforces its authoritarian order and highlights its divergence from the civic model, which presumes a unified legal and institutional framework to which all sectors of governance are held accountable.

While HTS successfully created the perception of stability, its governance remained fundamentally authoritarian rather than civic. This is because civic governance, by definition, requires accountable institutions, the rule of law, and a separation between military, religious, and civil authority. The contrast between HTS-controlled territories and the fragmented governance of opposition-held areas may make HTS appear as a more effective governing force, but this effectiveness was not built on institutional independence or democratic legitimacy. Instead, it was the result of a tightly controlled power structure that centralises authority under HTS's leadership.

The core question here is: Can HTS transition toward a more civic model of governance, or is its rhetoric simply a tool to justify its rule? While HTS's experience in Idlib demonstrated its pragmatic adaptability, incorporating administrative functions and state-like structures, it did not show a genuine commitment to power-sharing, decentralisation, or institutional autonomy. The persistence of authoritarian centralisation, security oversight over civil institutions, and ideological dominance over governance suggests that HTS may not be evolving toward a civic state but rather consolidating its own version of centralised Islamist rule with a bureaucratic facade.

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[21] Orwa Ajjoub, "HTS is not al-Qaeda, but it is still an authoritarian regime to be reckoned with," *Middle East Institute*, 24 June 2021.

In essence, HTS appears willing to actively engage in reforming governance and state-building, but it does so on its own terms, ensuring that power remains within a closed circle of authority.[22] This makes its governance incompatible with the principles of a civic state, where institutions operate independently of ruling factions, legal systems are subject to constitutional oversight, and power is distributed rather than monopolised. Whether HTS can break away from this pattern and embrace a more pluralistic, civic-oriented governance model seems unlikely, as its earlier survival as a ruling entity depended on maintaining control rather than ceding authority to an independent civil administration.

B. HTS and the Prospects for a Civic State in Post-Assad Syria

The fall of the Assad regime has thrust Hay'at Tahrir al-Sham and its leader, Ahmed al-Sharaa, into the centre of Syria's political future, raising the critical question of whether a genuine civic state can emerge from the ashes of dictatorship. Publicly, al-Sharaa has embraced the language of civic governance, promising to protect minorities, foster national unity and equal citizenship, and build a state based on institutions and the rule of law.[23] However, this rhetoric stands in contrast to HTS's well-documented history of authoritarian rule in its Idlib proto-state.[24] The prospects for a civic state in Syria are therefore contingent on the immense challenge of reconciling the group's pragmatic words with its deeply entrenched, power-centric actions.

The willingness of HTS to embrace a truly civic model is questionable. As mentioned before, its engagement with concepts like institutional governance has historically been opportunistic, serving as a tool to build legitimacy and consolidate power rather than reflecting a core ideological commitment. The SSG in Idlib was a prime example of this strategy: a technocratic, civilian administration that functioned as a facade for a highly centralised structure where all strategic decisions remained in the hands of HTS's religious and military leadership. This pattern of monopolising power has been central to the group's survival and appears to be the template for its national-level governance.

Several profound challenges obstruct the path to a civic state in Syria. The first and most significant is HTS's own authoritarian nature. The top-down governance model it employed in Idlib, which suppressed political pluralism and dissent, is incompatible with the civic principles of institutional autonomy and the rule of law. Attempting to scale this model to a diverse, multi-sectarian nation is a recipe for conflict. Secondly, al-Sharaa faces the difficult task of maintaining internal cohesion. Any genuine move toward moderation and power-sharing risks alienating hardline factions and individuals within HTS, potentially provoking dissent that could force a retreat from civic promises to preserve unity and cohesion.

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22 Although the organisation was officially dissolved in early 2025, real power remained in the hands of a small circle of elite leaders and their close associates. See, for example: "Behind Al-Sharaa… Who Is Abdul Rahman Salameh?" *Enab Baladi*, 6 February 2025; and: Gulnar Al-Ali, "Maher Al-Sharaa Appointed Secretary-General of the Syrian Presidency… Justifications and Concerns," *Al-Araby Al-Jadeed*, 7 April 2025.

23 See for example: "During His Meeting with a Shiʿite Delegation, alSharaʿ Affirms the Principle of Citizenship to Ensure Equal Treatment for All," *Al Mayadeen Media*, 28 March 2025.

24 Ajjoub, "HTS is not al-Qaeda". See also: Amin Batal, "Hay'at Tahrir al-Sham Continues Its Monopoly, Seizing the Construction and Tenders Sector," *Syria TV*, 11 February 2022.

Furthermore, the new transitional government that was formed on 29 March has so far failed the most basic test of statehood, that is the establishment of a monopoly on legitimate force. The current leadership's inability to prevent its own allied factions from carrying out sectarian revenge killings against Alawite civilians and members of the Druze community has shattered the trust of minority communities across Syria and undermined any claim to be a protector of all citizens.

Despite these grim prospects, a narrow path towards a more civic-oriented future is not impossible, though it depends on several critical conditions. The primary hope lies in HTS's proven pragmatism. The group's evolution from an al-Qaeda affiliate to a Syrian-focused, state-building project was driven by a calculated desire for legitimacy and long-term survival. This same pragmatism could, in theory, compel its leadership to conclude that a new authoritarianism is unsustainable and that genuine concessions are necessary for stability. Such a scenario would only occur under sustained pressure, both from a resilient and organised Syrian civic activism and from an international community that conditions diplomatic engagement on verifiable progress. Ultimately, the definitive test will be the current transitional leadership's willingness to meaningfully share power and implement the rule of law. This entails moving beyond symbolic minority appointments in the cabinet and other offices to empowering independent institutions, enabling genuine political pluralism and, crucially, placing the military and security apparatus under the rule of law while conducting serious investigations and trials into the atrocities committed against the Alawite and Druze communities. Without such a fundamental transformation, the promise of a civic state will remain little more than a political façade for a new, more sophisticated form of authoritarian rule.

CONCLUSION

The political trajectory of the contemporary Arab world is defined by a profound and unresolved contest over the nature of the modern state. Positioned between the legacies of authoritarian secularism and the aspirations for theocratic rule, the concept of the "civic state" (*dawla madaniyya*) has emerged as a central, yet deeply ambiguous, battleground. Islamist movements are pivotal actors in this struggle, their positions spanning a spectrum from reformist attempts to reconcile Islamic principles with democratic norms to the violent rejection of any model not based exclusively on divine sovereignty.

The recent transition in Syria offers a stark, real-world illustration of this theoretical dilemma. The evolution of Hay'at Tahrir al-Sham from a transnational jihadist franchise to a pragmatic, state-building entity demonstrates a remarkable capacity for political adaptation driven by the pursuit of power and legitimacy. Previously, HTS's leadership has publicly embraced the lexicon of the civic state, establishing a technocratic administration and engaging in regional diplomacy. However, this civic facade sems to mask a persistent authoritarian core, which is characterised by the centralisation of power, a neo-patrimonial economic model, and the suppression of political pluralism.

More recently, HTS's conduct in the immediate post-Assad period indicate a possible continuation of its pattern of instrumentalising the discourse and institutions of statehood to entrench its own dominance.

The Syrian case highlights a critical challenge for the region, namely the risk of illiberal actors instrumentalising the language of civic governance and the civic state to consolidate a new form of authoritarianism. The ultimate test for any post-revolutionary order is not merely its capacity to provide stability in the short run, but its willingness to genuinely share power, subordinate security to the rule of law, and foster an inclusive social contract. Without this fundamental transformation, the promise of a civic state remains a mirage, and the cycle of repression and conflict that has defined the region for decades is likely to endure.

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Social Protest Movements and Civil Society in the Arab World: Attitudes Towards the Civil State

Dr. Shaimaa Magued *

ABSTRACT

The Arab Spring revolutions sought to transform governing systems through demands for political rights, public freedoms, social justice, and human dignity. However, they failed to establish the foundations of a civil state, largely due to structural and geopolitical constraints rooted in the historical formation of the modern state in the Arab region from the early nineteenth to the mid-twentieth century. Although Arab constitutions formally guarantee political rights and public liberties for all citizens, ruling regimes have systematically imposed extensive restrictions that hollow out these constitutional commitments. Through the use of martial law and exceptional legislation, political authorities have endowed themselves with broad discretionary powers to curtail freedoms and violate the dignity of individuals suspected of opposing the regime, invoking national security and state sovereignty as legitimising justifications.

The literature on the nation-state in the Arab world highlights a set of distinctive institutional, economic, and political characteristics that structure the relationship between governing institutions, ruling regimes, and citizens. These characteristics have been shaped by colonial legacies and the continued political and economic interventions of major powers. Such conditions have constrained the development of democratic governance led by elected elites committed to the protection of rights and freedoms.

This paper examines the positions adopted by civil society and social protest movements during the Arab Spring. It extends this analysis to investigate the reasons behind the non-realisation of the demands articulated by these actors for the establishment of a civil state.

Keywords: *social movements, civil state, Arab states, authoritarian regimes, political economy*

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INTRODUCTION

When the Arab Spring erupted in December 2010, there were virtually no concrete institutional expressions of the civil state in the Arab world. Although Arab constitutions uniformly affirm the state's obligation to guarantee citizens the exercise of political rights and public freedoms—particularly the rights to vote and to participate in the public sphere independently of state authority—political reality reveals a pronounced gap between constitutional provisions and actual practice. The notion of the civil state has long been absent from the political practices of Arab states since their formation in the early twentieth century, a condition largely attributable to structural and geopolitical factors associated with the emergence of Arab statehood.

A civil state is governed by a political elite that is independent of military or religious authority and attains power through free, fair, and pluralistic elections. Such an elite is expected to articulate popular demands and respond to societal needs through state institutions. In the Arab world, however, states have not functioned as civil states for a range of interrelated reasons. A substantial body of academic literature has examined the particularities of the nation-state in the Arab region by tracing its intellectual, institutional, and elite formation through a political economy lens. This literature conceptualises the state as both an institutional and epistemic framework for governance, analysing its evolution from independence to the present.[1] Much of this scholarship is informed by neo-Marxist approaches, which emphasise the international division of labour that divides the world into a core of advanced Western states and a periphery comprising the developing countries of the Global South. From this perspective, core states maintain the political, economic, and intellectual subordination of peripheral states in order to preserve relations of dependency.

Structural causes are therefore rooted in the emergence of the nation-state in the Arab world as a historically imposed outcome of European colonialism and the post-independence period, shaped by dependency on Western models of modernisation and development.[2] On the eve of independence, ruling Arab elites typically emerged from military institutions or derived their legitimacy from traditional or religious authority. As a result, these elites were neither civil in character nor representative of society; instead, they relied on coercion and subjugation, often with the support of former colonial powers, the United States, and regional allies such as Israel and the Gulf monarchies.

In addition to these structural roots, a geopolitical explanation emphasises the role of Western powers in consolidating the economic and political dependency of Arab states. This dependency has been sustained through material and military support for ruling elites in exchange for the adoption of accommodative policies that do not challenge Western hegemony in the region.

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1 Raymond Hinnebusch, "Toward a Historical Sociology of State Formation in the Middle East," *Middle East Critique* 19, no. 3 (2010): 201–216.

2 Ali Dessouki, "The New Arab Political Order: Implications for the 1980s," in *Rich and Poor States in the Middle East: Egypt and the New Arab Order*, ed. Mark Kerr and Shafeeq Ghabra Yassin (Cairo: The American University in Cairo Press, 1982), 319–347; Hinnebusch, "Toward a Historical Sociology of State Formation in the Middle East."

Another school of thought examines the distinctiveness of the nation-state in the Arab region by drawing on historical institutionalism. From this perspective, state institutions have been continuously reconfigured in response to shifting international, regional, and domestic conditions that have shaped elite priorities, ideologies, and worldviews.[3]

This school of thought contends that Arab states never experienced a genuine civil state because the state, as the principal framework for governance, was imposed as a historical inevitability. In the Arab world, the state established the rules governing institutions and defined their relationship with citizens by adapting itself to particular temporal and spatial contexts, rather than emerging organically from indigenous economic, social, and historical transformations or reflecting local cultures and societal needs.

Leading contributors from both schools of thought have pointed to the failure of the nation-state in the Arab world and, consequently, the absence of a substantive civil state in political practice. They argue that the nation-state in the Arab region emerged through alliances and agreements between colonial powers and ruling regimes — a process that entrenched authoritarian modes of governance and produced a conflation between the concepts of the state and the political regime within the region.[4] As a result, the civil dimension of the state fails to correspond to the realities of Arab political systems, in which elites are divided between military actors who consolidated their authority through claims of revolutionary legitimacy, and elites embedded in traditional socio-cultural structures grounded in religious legitimacy.

An examination of Egypt, Syria, Iraq, Libya, and Tunisia reveals that the ruling elites that assumed power after independence were predominantly military in nature. These elites constructed their legitimacy around narratives of anti-colonial struggle and consolidated their authority through reliance on military power, while invoking the imperatives of economic development and the fulfilment of popular demands related to social justice, administrative efficiency, and industrialisation. After coming to power, they introduced numerous constitutional amendments that ensured the predominance of executive authority over the legislative and judicial branches, while seeking to subordinate both the military and state resources to elite interests. The absence of constitutional and practical separation of powers thus obstructed the emergence of a civil state characterised by an elected government—neither military nor religious in nature—and subject to popular accountability.

On this basis, it becomes evident that external intervention by former colonial powers, the United States, and their regional allies has further impeded the consolidation of a civil state. These actors have supported ruling elites through material and military assistance to secure regime continuity, even under repressive and authoritarian conditions, provided that such regimes refrained from adopting policies that challenged external hegemony in the region.[5]

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3 Ali Dessouki, "Managing Ambivalence: Egypt's Changing Regional Environment," in *Egypt at the Crossroads: Domestic Stability and Regional Role*, ed. Phebe Marr (Honolulu: University Press of the Pacific, 1999), 193–201; Dessouki, "The New Arab Political Order."

4 Raymond Hinnebusch, "The Middle East in the World Hierarchy: Imperialism and Resistance," *Journal of International Relations and Development* 14 (2011): 213–246.

5 Hinnebusch, "The Middle East in the World Hierarchy."

This dynamic points to an implicit understanding, or tacit agreement, between Arab ruling elites and external powers—an arrangement that has effectively shaped processes of state and regime formation in the Arab world and has obstructed democratic transformation and the emergence of a civil state grounded in political pluralism and committed to justice and equality for all citizens.

Accordingly, external intervention is a critical factor in the study of the civil state in the Arab world and in the analysis of positions adopted by civil society and social protest movements during the Arab Spring. Although these movements aspired to democratic transition, they were unable to achieve their objectives largely due to political, economic, and military interventions by external actors. Consequently, the positions of civil society and protest movements remain largely conceptual and theoretical, representing visions of a normative legal and epistemic framework for a state with institutions capable of representing citizens without discrimination. Such a framework envisages elected executive and legislative authorities that respect the independence of the judiciary and are subject to popular oversight. Any political transformation of the ruling elite through free and fair general elections would effectively disrupt the tacit agreements that underpin the legitimacy of these regimes and would curtail the influence and hegemony of former colonial powers and the United States in the region.

This study investigates the reasons for the absence of a civil state by examining the distinctive characteristics of the nation-state in the Arab world—particularly its structural and geopolitical composition and the implications of this composition for the susceptibility of ruling regimes to external influence. It further analyses how these dynamics contributed to the failure of the Arab Spring uprisings and undermined the efforts of social protest movements and civil society to institutionalise the values of the civil state in the region, with a particular focus on the countries that experienced the Arab Spring revolutions.

I. The Emergence of the Nation-State in the Arab World and Its Implications for the Civil State

Centuries before the rise of the modern nation-state, civil society in the Arab world was a source of economic and social support to citizens. This history notwithstanding, the ruling elites who assumed power after independence obstructed the development of an autonomous civil society capable of delivering essential services and fostering citizen participation in the public sphere. The same dynamic applied to social protest movements, whose capacity to mobilise and raise public awareness regarding rights and freedoms was systematically constrained. Their emergence was contingent on specific historical moments shaped by structural opportunities permitted by authoritarian regimes, and occurred in the absence of any legal framework to protect them from repression and persecution.[6]

6 Ibid.

To understand the limited effectiveness of civil society and social protest movements, it is necessary to examine the factors that produced the fragility of the nation-state and entrenched authoritarian governance. These factors, in turn, impeded the emergence of a civil state in the Arab region.

The Middle East was historically an open regional space, characterised by interwoven ethnic, religious, and cultural communities living under locally administered governance structures that enjoyed a degree of autonomy from distant centres. Over time, however, the region transformed into independent political and economic entities, delineated by borders that hindered cultural, social, and economic integration. This fragmentation had profound consequences for the structural weakness of these emerging states and the composition of their ruling elites. It fostered competition and border disputes, often driven by nationalist sentiments and complex networks of interests involving Western powers, thereby undermining the prospects for establishing a cohesive and viable civil state.

The nation-state in the Arab world emerged as a product of elite struggles over spheres of influence, particularly in the Gulf and the Levant, during the decline of the Ottoman Empire and the intensification of colonial intervention in the region. In many cases, including Algeria, Morocco, and Tunisia, political, economic, and cultural occupation was transformed after independence into structural and epistemic dependency on Western powers. External actors played a decisive role in enforcing the nation-state through processes of division and fragmentation, fostering nationalist sentiments, and supporting elites who advanced these agendas, rather than allowing the state to develop as an intellectual and political project reflective of the specific needs and characteristics of its constituent communities.

The imposition of the nation-state as an epistemic and authoritative framework for governance—without regard for the integration of diverse ethnic groups or the articulation of their needs—became a primary mechanism for sustaining the dependency of regional states on Western powers. This was achieved by linking the longevity of ruling elites to the protection of Western interests.[7]

To sustain this arrangement, reliance on coercive power became essential to prevent political pluralism and the freedoms associated with participation in the public sphere, which could have disrupted this dependency and threatened elite interests.

Across the Arab world, states vary markedly in size, population, material resources, and ethnic and cultural composition. These disparities fostered rivalry and conflict, inhibiting the development of political or economic convergence that could have facilitated regional cooperation and integration.[8]

Consequently, vertical alliances between political elites in the Arab region and Western powers became a cornerstone for securing and sustaining elite rule. Following independence, many Arab states engaged in political conflicts with neighbouring states, including Algeria and Morocco, Iraq and Kuwait, Sudan and Egypt, Libya and Tunisia, and Syria and Lebanon. These conflicts were further compounded by regional disputes involving other actors, such as the United Arab Emirates (UAE) and Iran, Turkey and Syria, Turkey and Iraq, and Iraq and Iran.

7 Ibid.
8 Hinnebusch, "Toward a Historical Sociology of State Formation."

With respect to dependency on Western powers, the emergence of many Gulf states and the formation of their governing systems were closely linked to the economic and political privileges secured by Britain, particularly through oil exploration concessions granted to British companies.[9] A comparable pattern can be observed in Algeria, Tunisia, and Morocco, where long-term concessionary agreements with Western firms facilitated the extraction of minerals and other natural resources. These arrangements were accompanied by labour-migration contracts that sent workers to France under exploitative conditions.

Under the rule of Gamal Abdel Nasser, Egypt pursued policies that openly opposed Western intervention, most notably the nationalisation of the Suez Canal, support for national liberation movements, and military confrontation with Israel. These policies were shaped by the broader geopolitical context of Cold War bipolarity, a framework that soon came to an end.

This shift facilitated the consolidation of dependency across the Arab region through the imposition of neoliberal economic reform programmes, presented as mechanisms for achieving development and addressing economic crises arising from weak or entirely absent industrialisation. The persistent reliance of Arab states on imports to meet basic needs contributed to chronic balance-of-payments deficits and a continuing inability to satisfy essential domestic requirements.

An examination of ruling Arab elites reveals that they have been primarily political and economic actors whose legitimacy has long depended on the approval and support of external powers, particularly Western colonial and post-colonial actors. These elites emerged within coercive political structures designed to accommodate Western—especially American—hegemony in the region, a legacy rooted in the Sykes–Picot Agreement of 1916 between France, Britain, and Russia. That agreement divided the Middle East into spheres of Western influence and laid the foundations for the establishment of a Zionist entity in Palestine.

Even after independence and the formal withdrawal of European colonial powers, this hegemony persisted through policies pursued by former colonial actors in partnership with the emerging national elites in Arab states. These policies extended across economic and commercial spheres and, at times, political affairs. Outwardly framed as mutually beneficial cooperation, they served in reality to justify intervention in and control over the internal affairs of Arab countries. In return, ruling elites received political protection and assurances of continuity in power.

The formation, size, and traditional economic and political systems of the Gulf states exemplify a clientelist model that facilitates Western hegemony. This model began with long-term, exclusive concessionary rights to exploit raw materials, particularly oil, and extended to the establishment of military bases in exchange for guarantees of protection against external intervention or challenges to ruling regimes. Because these states do not usually rely on their own militaries to secure their territorial integrity or independence, they remain dependent on external protection—provided today by the United States and previously by Britain—due to concerns that national militaries might stage coups against ruling families, given the traditional, tribal character of their governance structures.[10]

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9 Ibid.

10 Raymond Hinnebusch, "Authoritarian Persistence, Democratization Theory and the Middle East: An Overview and Critique," *Democratization* 13, no. 3 (2006): 373–395.

Despite their limited reliance on national armies, these states maintain political and societal control through coercion and the consolidation of economic power, either via the allocation of privileges in the oil sector or through business networks rooted in familial ties loyal to the ruling order. By maintaining a tight grip on state institutions and society, these elites effectively preclude any possibility of political change or meaningful challenge from opposition forces independent of the state.

Authoritarianism, as the predominant model of governance in the Arab world, has been the principal mechanism sustaining structural and epistemic dependency on the West. The character of Arab authoritarian systems is closely linked to the composition of their ruling elites. In states that experienced twentieth-century revolutions which toppled regimes perceived as supportive of colonial powers, new elites emerged based on different socio-economic coalitions. These elites relied on the mobilisation and instrumentalisation of civil society as a mechanism both to control society and to prevent the emergence of genuine political opposition.

In Egypt, Iraq, Libya, and Tunisia, for instance, the overthrow of monarchical regimes by socio-political forces originating in the military produced revolutionary governments that derived their legitimacy from achievements in relation to national independence and the pursuit of social justice. These regimes asserted control over labour unions and political parties while imposing military authority across all state institutions.[11] This model entrenched a form of political legitimacy grounded in military power in the absence of electoral processes, aimed at subjugating society and restricting political participation. The state assumed the functional role of civil society or subordinated charitable organisations rooted in individual or religious initiatives, while mobilising citizens through a single mass party that secured popular support by distributing economic and social privileges.

With the abolition of political parties, the suppression of labour unions, and the consolidation of control over the media, the ruling elite became the sole authority within state institutions, subordinating society in exchange for economic and social benefits in education, health, and housing. Consequently, the military-based legitimacy of these elites effectively precluded the emergence of an autonomous civil society and obstructed the formation of independent political movements capable of representing the demands of the populace.

In Morocco, by contrast, the monarchy remained firmly in power, and no revolution was mounted against it, largely because the king aligned himself with popular resistance movements. The regime established its legitimacy and popular support on the basis of religion and descent from the Prophet.[12] The title "Commander of the Faithful," held by the king, embodied this form of religious legitimacy, which, like military-based legitimacy, obstructed the emergence of a civil state founded on an elected ruling elite independent of military or religious authority.

11 Hinnebusch, "Authoritarian Persistence, Democratization Theory and the Middle East."

12 Raymond Hinnebusch, "Change and Continuity after the Arab Uprising: The Consequences of State Formation in Arab North African States," *British Journal of Middle Eastern Studies* 42, no. 1 (2014): 12–30.

Morocco's ruling class has been closely allied with traditional social groups composed of notables and landowners, who later emerged as the dominant economic actors in the private sector following the implementation of neoliberal policies. This arrangement contrasts with theories of economic development and democratic transition, which posit that democratisation arises through a socially and economically independent class whose resources and economic activity are autonomous from the ruling elite, enabling it to accumulate wealth independently and challenge state authority. The economic and social alliance between the monarchy and the economic elite has therefore constituted a significant obstacle to genuine political reform capable of fostering a civil state.

II. How Authoritarian Regimes Undermine Civil Society and Social Protest Movements

Political and economic constraints have limited the capacity of civil society and social protest movements to flourish, hindering their ability to support citizens and provide services that encourage participation in the public sphere independent of the state. Although many Arab states have adopted neoliberal models—implementing policies that reduce the role of the state in the economy and prioritise the private sector—these economic reforms were not accompanied by political changes that might have facilitated independent initiatives free from state control. Consequently, numerous charitable, educational, and social institutions linked to civil society continue to operate under strict state surveillance, both materially and legally, constraining their ability to positively influence citizens, deliver social support, or strengthen political participation.[13]

In states such as Egypt, civil society functions under close coordination with the state and direct oversight by the Ministry of Social Solidarity. This became particularly evident following the military council's rise to power in 2011 after the Egyptian revolution, when it launched a sweeping security campaign against civil society organisations. Many political research centres and charitable institutions were closed, foreign staff expelled, and local employees imprisoned on charges of receiving foreign funding purportedly intended to destabilise national security and regional stability. In Lebanon, civil society has been profoundly affected by sectarian divisions, which have shaped the provision of social and economic services across different regions of the country, thereby undermining its overall effectiveness.

This created a vicious cycle in which the absence of democracy, the persistence of authoritarian regimes, and the weakness of civil societies reinforced one another: weak civil societies are unable to mount effective challenges to authoritarianism. Authoritarian rule has facilitated the dominance of regime-aligned business elites and the military, in the absence of popular oversight mechanisms capable of curbing administrative corruption. This has undermined national economies, which remain largely under state control, without genuine incentives for investment or the development of a fair and competitive economic environment.

[13] Mervat Rishmawi and Tim Morris, *Overview of Civil Society in the Arab World*, Praxis Paper 20 (Oxford: INTRAC, 2007).

Compounding these challenges are high levels of poverty, illiteracy, and inequality, partly resulting from the lack of support for independent, individual, and community-based initiatives that could more effectively serve citizens.

The weakness of civil society leaves it ill-equipped to function as a credible counterweight to entrenched authoritarian–military power structures. Civil society organisations in the region are frequently dominated by professional associations that moderate their activities and rhetoric to secure permission to operate. This authoritarian pattern reinforces state-centric, rent-based economies, impeding the development of a robust, free-market system grounded in industrialisation and exacerbating poverty, illiteracy, and inequality—particularly in the context of neoliberal reforms and the absence of institutional and popular oversight necessary for democratisation.

Authoritarianism in the Arab world is characterised by the predominance of military structures over the civil character of the state. Unlike in democratic systems, where military professionalism is subordinated to civilian governance and oversight—ensuring a politically neutral army under civilian control—the military in many Arab states is frequently instrumentalised to serve ruling elites and suppress challenges to political authority. This pattern is evident in Egypt, Libya, and Syria. In Egypt, the ruling elite deployed military force to overthrow the country's first democratically elected government in 2013; in Libya, key military actors challenged the UN-recognised, popularly mandated authority of the House of Representatives; and in Syria, the ousted regime used the army to violently suppress popular uprisings, ultimately plunging the country into a protracted and devastating civil conflict.

The close relationship between ruling authorities and the military has been entrenched since Arab states that had experienced coups against incumbent elites achieved independence, including Egypt in 1952; Iraq in 1958, 1963, and 1968; Syria in 1963 and 1970; Yemen in 1962; and Libya in 1969.[14] While some scholars have theorised that the military could contribute to modernisation by fostering a new middle class to lead social, economic, and political development, historical experience demonstrates that the military has primarily functioned as a coercive force, seeking to acquire and exercise power for its own interests. This dynamic has been particularly evident in Egypt since the 1979 Camp David Accords, after which the military assumed an increasingly dominant role in development projects, acting as both producer and investor with monopolistic privileges, including tax exemptions and access to cheap labour. These practices distorted market competitiveness and encouraged business investors to relocate capital abroad.[15]

Egypt, Iraq, and Syria have operated as praetorian states, in which the military frequently intervenes in governance and dominates the executive branch. Political leaders often emerge from the military, which exerts a hegemonic influence over political institutions. This produces a clear conflation between a "ruling army," which seeks to shape political decision-making behind the scenes, and an "army of the ruler," which governs directly for extended periods.

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14 Bård Kårtveit and Maria Gabrielsen Jumbert, *Civil-Military Relations in the Middle East: A Literature Review* (Bergen: Chr. Michelsen Institute, 2014).

15 Yomna Samy, "The Growth of the Military Economy in Egypt Since 2014: The Impact on Investment Dynamics and Investor Rights," *Rowaq Arabi* 30, no. 1 (2025): 74–88.

Thus, in Arab countries with authoritarian regimes, the military often acts in accordance with its own institutional interests rather than the broader national interest. This occurs because ruling elites rely on military professionalism to protect themselves from coups, thereby reinforcing the army's institutional identity and political ambitions.[16]

An exception can be observed in the Gulf states, where relatively small military forces are partly composed of foreign mercenaries. By contrast, Jordan and Morocco maintain conscription-based armies that retain a degree of institutional independence, with senior officers enjoying moderate privileges in exchange for loyalty to the regime.

At times, the military may permit multi-party elections, as occurred in Algeria and Egypt, while simultaneously suppressing actors perceived as serious threats to the regime and its privileged position, such as Islamist parties. The authority and autonomy granted to the military by ruling elites is further reinforced by its role in countering extremist Islamic movements.

In Algeria, a specialised unit was established in 1993 during the civil war to combat Islamist groups, employing both army and police forces. In Egypt, the army forms part of a broader security apparatus, acting as a barrier against the Muslim Brotherhood and other perceived threats, particularly following the removal of Mohamed Morsi from the presidency in July 2013. In Syria, the army consolidated its role as the primary defender of the regime against internal challenges, from the suppression of the Muslim Brotherhood uprising in 1982 to the popular uprisings that began in 2011.

The army's role in countering internal enemies is also embedded within nationalist projects that confer privileges on certain groups and identities at the expense of others, thereby undermining the possibility of a civil state. In Egypt, for example, the army, as a defender of Egyptian nationalism, has marginalised the Coptic community both within the military and in broader state–society relations. This marginalisation is evident in the near absence of Copts among senior military officers, instances of military violence against Coptic civilians, and the army's failure to protect Copts from attacks following 2013.

III. The Position of Social Protest Movements and Civil Society on the Civil State during the Arab Spring

The term "civil state" gained prominence during the Arab Spring, following the overthrow of dictators in Egypt and Tunisia in 2011. Non-governmental actors, particularly youth, played a central role, actively participating in a range of activities, events, and discussions within civil society forums.[17]

16 Kårtveit and Jumbert, *Civil-Military Relations in the Middle East*.
17 Shaimaa Magued, "Marginalizing Revolutionaries in Egypt's Civil State Debate," *Peace Review* 30, no. 4 (2018): 518–26.

Representatives of Arab youth attended regional events and meetings in Tunisia and Egypt to exchange experiences and learn from their peers. Youth in countries such as Syria and Libya were inspired by the political transformations in Tunisia and Egypt. The primary slogans of the Arab Spring— "bread, freedom, dignity" and "the people demand the fall of the regime"—mobilised protests and demonstrations across the region.

Tunisia's 2014 Constitution formally defined the country as a civil state. Similarly, Egypt's 2012 and 2014 constitutions enshrined the notion of the civil state in distinct ways. While the 2012 Constitution emphasised the civilian nature of the ruling elite—understood as regularly elected civilians—and limited the army's authority to safeguarding that civilian character, the 2014 Constitution implied a conception of the civil state in which Islamist parties are prevented from assuming power, alongside a politically and economically empowered military. In Lebanon, President Michel Aoun advocated for the formal declaration of a civil state. In Iraq, the mass protests of 2015 were organised under the slogan "bread, freedom, civil state." Even in Saudi Arabia, voices emerged calling for the establishment of a civil state.[18]

Since 2011, non-governmental actors have assumed an increasingly prominent role in Arab social and political life, playing a crucial part in movements that contributed to the overthrow of authoritarian governments in Tunisia, Egypt, Libya, and Yemen. In Tunisia, the revolution against Zine El Abidine Ben Ali was initially driven by young protesters but gained momentum as anti-regime forces were bolstered by the Tunisian General Labour Union, lawyers' syndicates, political parties (both legal and clandestine), and the Islamic Ennahda movement.

In Egypt, the protest movement was spearheaded by youth mobilised online, particularly through the April 6 Movement and supporters of the "We Are All Khaled Said" Facebook page. These young activists were joined by other non-governmental actors, including labour activists, youth wings of political parties representing both secular and Islamist ideologies, and independent youth movements.

In the years following the uprisings, there was a marked expansion of civil society organisations, particularly in Tunisia, where 5,000 new organisations were established within four years of the revolution, and in Libya, which witnessed the emergence of 3,000 new organisations following the fall of Gaddafi.[19]

The term "civil state" became closely associated with the Arab Spring because the uprisings articulated demands for political and social rights and public freedoms across many Arab countries. These demands emerged in response to widespread political repression, economic weakness, unequal resource distribution, and administrative corruption under the ruling regimes.

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18 Limor Lavie, "De-Theocratizing the State? The Debate over the Civil State Model in Saudi Arabia," *Journal of Arabian Studies* 12, no. 1 (2022): 64–83.

19 Ibrahim Natil, "Civil State in the Post–Arab Spring Countries: Tunisia, Egypt and Libya," in *The Arab Spring, Civil Society, and Innovative Activism*, ed. Cenap Çakmak (New York: Palgrave Macmillan, 2017), 217–231.

Since the early 1990s, many Arab states have undergone a shift towards neoliberal economic policies, including those that had previously relied on state-centred systems to provide public services, such as Syria and Libya. These reforms involved reducing the role of the state, opening the economy to the private sector, and borrowing from international financial institutions.[20]

These changes had significant adverse consequences for public freedoms and citizens' political rights. Although the policies were primarily economic, reshaping the functioning of the economy and the organisation of public services, the neoliberal shift simultaneously increased the repressive capacity of Arab regimes by imposing social and economic hardships that hindered citizens from meeting their basic needs.

The implementation of neoliberal policies in Arab countries prompted numerous strikes and protests demanding higher wages and improved living standards. These demonstrations were frequently met with repression, while the state continued to channel economic privileges through the processes of privatisation and the expansion of the private sector, favouring businessmen and economic actors closely aligned with the ruling regimes. Such distribution of resources was carried out with little regard for production efficiency or equitable allocation among the population.

As the state retreated from providing education, health, housing, and other social support policies that had historically underpinned the legitimacy of regimes—particularly revolutionary regimes in Egypt, Libya, and Iraq—the diminished role of the state eroded legitimacy and produced widespread social and economic hardships for citizens, including rising unemployment and declining purchasing power and living standards.

The dismissal of numerous public sector workers and the privatisation of state institutions at prices far below their real value exacerbated unemployment. The liberalisation of national currency exchange rates triggered inflation and further diminished purchasing power, particularly as wages failed to keep pace. These economic pressures pushed middle-class citizens toward poverty and forced lower classes into extreme deprivation, impeding their ability to meet basic living needs. Many affected citizens subsequently joined protests demanding economic rights, especially equitable distribution of resources.

These revolutions and mass protests played a crucial role in amplifying public anger against ruling regimes, which were widely perceived as corrupt and unable to meet the basic demands that underpinned their legitimacy. This widespread discontent ultimately sparked the Arab Spring, which began in Tunisia in December 2010, following the self-immolation of a street vendor in response to police harassment, an act that triggered mass demonstrations demanding the fall of the regime.[21]

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20 Raymond Hinnebusch, "Introduction: Understanding the Consequences of the Arab Uprisings – Starting Points and Divergent Trajectories," *Democratization* 22, no. 2 (2015): 205–217.

21 Rishmawi and Morris, *Overview of Civil Society in the Arab World*.

The Tunisian uprising was soon followed by protests and uprisings across Egypt, Syria, Bahrain, Libya, and Sudan, where demonstrators called for fair economic distribution, political freedoms, human dignity, an end to police abuses, curtailment of unchecked executive authority, and a halt to repression, torture, and enforced disappearances of regime opponents.

Following Ben Ali's removal in Tunisia, civil society organisations, including trade unions and political parties, actively advocated for the establishment of a civil state. The Tunisian General Labour Union (UGTT), the largest civil society organisation in the country, has historically played a central role in Tunisia's political and social life, particularly during the transitional period after the 2011 revolution.[22]

Civil society organisations, including the UGTT, spearheaded the National Dialogue Quartet, which played a pivotal role in the adoption of Tunisia's first post-revolution constitution in January 2014. The National Dialogue Quartet—comprising the UGTT, the Tunisian Confederation of Industry, Trade and Handicrafts, the Bar Association, and the Tunisian Human Rights League—engaged in complex and often tense negotiations with various political factions to achieve a consensual constitution.

The UGTT also led the national dialogue aimed at replacing the Islamist-led government with a transitional administration to prepare the country for new elections. The UGTT succeeded in this complex role by balancing the interests of Tunisia's diverse social and political groups. All Tunisian political parties and civil society organisations demonstrated considerable maturity in their efforts to rebuild a civil state for all citizens under a consensual constitution. However, this progress proved short-lived, particularly as business interests aligned with the executive authority, which subsequently employed military pressure to dissolve the parliament.[23]

In Libya, the February 17 anti-Gaddafi movement brought together commercial actors, tribal groups, and Islamist factions, forming a multi-ideological coalition, alongside foreign interventions supporting the anti-regime rebels.[24]

Prior to the 2011 Libyan uprising, the absence of political awareness and the lack of organised relations between the ruler and the ruled posed a significant obstacle to the establishment of a civil state—formal political activity had largely been absent in the country for over four decades. This political disengagement profoundly influenced the trajectory of the revolution following Muammar Gaddafi's rule.

Gaddafi introduced the *Jamahiriya* (commonly translated as "state of the masses") as an alternative to communism and capitalism, with revolutionary committees exercising control over all aspects of social, political, and economic life, while preventing citizens from forming political parties or civil society organisations. The tribal, conservative, and religious character of Libyan society has posed additional challenges to the establishment of a civil state.

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22 Natil, "Civil State in the Post–Arab Spring Countries."

23 Ghassen Ben Khalifa, "Ten Years into the Tunisian Revolution: The Specificities and Limitations of Exceptionalism," in *The Arab Uprisings: A Decade of Struggle* (Amsterdam: Transnational Institute and RLS North Africa, 2021), 47–65.

24 Natil, "Civil State in the Post–Arab Spring Countries."

Libya has also been affected by deep divisions between Islamist and nationalist groups competing over power and the identity of the state. The ongoing conflict between the "Operation Dignity" alliance and the "Operation Libya Dawn" coalition has undermined national unity, security, and reconstruction efforts.

Operation Dignity comprises forces drawn from eastern tribes, former Gaddafi regime officers, and militias from Zintan in the west, under the leadership of retired General Khalifa Haftar, with the stated aim of restoring security in conflict-affected cities. The alliance is supported by the internationally recognised House of Representatives and the Tobruk-based government led by Abdullah al-Thinni. In turn, Operation Libya Dawn, comprises militias from Misrata and allied Islamist groups based in Tripoli, as well as Amazigh factions. These groups rejected the authority of the House of Representatives and established parallel parliamentary and governmental structures.[25]

The conflict between Operation Libya Dawn and Operation Dignity is not purely ideological; it is also influenced by the continued involvement of former Gaddafi regime officers in the political process. Following the fall of Gaddafi's regime, Libya witnessed the proliferation of numerous armed militias. Since 2012, these militias have become increasingly politicised, forming alliances through links with political parties. Such affiliations are frequently grounded in family, regional, tribal, religious, or ideological ties.[26]

Armed groups were incorporated into two broader coalitions—the Libya Shield Force and the Supreme Security Committee—both of which were established as transitional security forces under the authority of the Ministry of Defence and the Ministry of Interior. Despite this formal integration, militias of varying types—religious, local, personal, and criminal—have retained a high degree of autonomy and continued to pursue their own ideological and political agendas.

These militias played a central role in sustaining Libya's ongoing conflict between the Islamist-dominated General National Congress in Tripoli and the House of Representatives in Tobruk, with each side relying on different regional and international backers.

In Yemen, although the Saleh regime collapsed, the anti-regime protests brought together youth movements, political parties, and non-governmental actors from both northern and southern regions, including groups seeking independence from the Sanaa-based government. However, limited political experience, continued repression, and the absence of mechanisms for addressing sectarian and tribal grievances further destabilised the country. This fragility created conditions conducive to external intervention, most notably by Saudi Arabia and the UAE against the Houthis.[27]

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25 Ibid.

26 Raymond Hinnebusch, "Historical Sociology and the Arab Uprising," *Mediterranean Politics* 19, no. 1 (2014): 137–140.

27 John Hill, "[Review of *The Libyan Revolution and Its Aftermath*, edited by Peter Cole and Brian McQuinn]," *The Maghreb Review* 40, no. 4 (2015): 509–511.

Similarly, in Syria, the conflict that emerged after the violent crackdown on protests against Bashar al-Assad's regime escalated into a wide-ranging, multi-layered rebellion. Anti-regime non-governmental actors included both Islamist and non-Islamist groups, with significant divisions within the Islamist camp between those opposing the violent extremism of ISIS and other militias like Jabhat al-Nusra and Ahrar al-Sham.[28] In 2013, several Islamist militias formed the Islamic Front, aiming to expel ISIS from areas under their control. The regime also opposed the Free Syrian Army (FSA), which was formed in 2011 by army defectors seeking to overthrow Assad and consisted of various armed groups, some secular and some Islamist.

The internal situation was further complicated by external interventions from Saudi Arabia, the UAE, Turkey, Iran, and Russia, plunging Syria into a protracted civil war until late 2024 when the leader of Jabhat al-Nusra reached Damascus and Assad fled to Russia.[29]

The onset of the Arab uprisings also triggered protests and calls for reform in Saudi Arabia. Scholars associated with the Sahwa movement demanded greater political freedoms and a reconsideration of the application of Islamic law, grounding their arguments in religious discourse. These demands implicitly called for the establishment of a civil state, serving as a critique of the existing political system. Salman al-Awdah, one of the most influential figures of the Sahwa movement, argued that a "religious state" is not Islamic and that a "civil state," understood as the establishment of a fair civil social contract between authorities and institutions, is compatible with Sunni political thought. [30]

In 2011, a public debate emerged in Saudi Arabia over the concept of the civil state, revealing divergent interpretations of the term "religious state" and a noticeable reluctance among journalists to explicitly employ the term "civil state." [31]

Some journalists argued that Saudi Arabia should be treated as a civil state and challenged the principle, enshrined in the Basic Law of Governance, that the Qur'an and the Sunnah constitute the kingdom's constitution. They called for transforming the Basic Law into a formal written constitution. This position reflected an attempt to reconsider the religious nature of the Saudi state and to question the supremacy of the Qur'an and the Sunnah over any man-made constitutional framework. Their argument rested on the claim that a "religious state" is one governed by clerics, a condition they maintained does not apply to Saudi Arabia.

Conversely, some religious scholars contended that, in an ideal religious state, Islam should regulate all aspects of life—political, civil, and personal—and therefore rejected the notion of a "civil state with an Islamic authority," arguing that it reduces sharia to a mere legislative source. They viewed the concept of the "civil state" as a product of Western influence, asserting that Western political thought perceives the application of sharia as an impediment to progress.

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28 Kårtveit and Jumbert, *Civil-Military Relations in the Middle East*.
29 Magued, "Marginalizing Revolutionaries in Egypt's Civil State Debate."
30 Salman al-Awdah, *Questions of the Revolution* (Casablanca: Qatar Al-Nada Foundation for Culture, Media and Publishing, 2012).
31 Lavie, "De-Theocratizing the State?"

In Egypt, economic transformations were accompanied by political changes that opened the public sphere to protests, civil society participation, and engagement in political parties. This opening enabled politically active groups to articulate social and political demands and to organise large-scale anti-regime protests. These developments ultimately paved the way for the January 2011 Revolution, which called for the resignation of the president, whose regime had failed to respond to popular demands for genuine political reform, the protection of rights and freedoms, social justice, and human dignity for all citizens.[32]

This opening facilitated the emergence of civil society organisations that provided social and legal assistance while raising public awareness of the importance of participation in advocacy movements for expanded rights and freedoms. For example, the El Nadeem Center supported citizens' political rights and defended detainees against pre-trial detention and systematic torture.[33] The Egyptian Initiative for Personal Rights, along with other rights-based organisations, similarly promoted individual rights and freedoms within Egyptian society. Political research and advocacy organisations, such as the Ibn Khaldun Center, which criticised the repressive nature of the Egyptian regime and its succession plans aimed at transferring power from Hosni Mubarak to his son, played a significant role in mobilising diverse social and political forces against the ruling system. [34]

During this period, several social protest movements emerged, including the April 6 Movement, which originated from textile workers' protests demanding better working conditions and higher wages, uniting young Egyptians in calls for constitutional amendments and genuine political reforms to establish democracy. Despite the government's use of excessive force to suppress these demonstrations, the persistence of their leaders and continued strikes in the early 2000s encouraged further sit-ins and inspired other popular solidarity movements.[35]

Additionally, the Youth for Change movement brought together broad segments of society from diverse professional, educational, social, cultural, and ideological backgrounds, all advocating for expanded rights and freedoms. The movement adopted a strong oppositional stance towards the state. During the presidential elections of 2005, which followed apparent constitutional amendments permitting multi-candidate elections, these movements campaigned to prevent the president from running for a second term.[36]

The 2005 parliamentary elections also saw the Muslim Brotherhood secure 15% of the seats, establishing itself as the largest opposition force in the People's Assembly. The Brotherhood assumed a dual role, both opposing the regime politically and advocating for the provision of public services to poor communities.

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32 Shaimaa Magued, "Mobilization Structures and Political Change in an Authoritarian Context: The National Association for Change as a Case Study (2010–2011)," *The Journal of North African Studies* 25, no. 1 (2018): 34–52.

33 El Nadeem Center against Violence and Torture.

34 Ibn Khaldoun Center for Democratic Studies. Human Rights Watch, *Egypt: Events of 2005* (New York: Human Rights Watch, 2006).

35 Ali Hamiyeh, "Authoritarianism, Economic Liberalization, and the Roots of the 2011 Uprisings," in *The Arab Uprisings: A Decade of Struggle*, ed. Transnational Institute and RLS North Africa (Amsterdam: Transnational Institute and RLS North Africa, 2021).

36 Magued, "Mobilization Structures and Political Change in an Authoritarian Context."

Although multiple political parties existed at the time, their capacity for mass mobilisation was largely ineffective due to the repressive policies of the Mubarak regime, which had severely curtailed genuine political participation since the 1980s. During the 2005 presidential elections, the state arrested several candidates who ran against Mubarak and obstructed many citizens from reaching polling stations by deploying regime-backed thugs who used violence against voters.

However, in 2010, these parties, together with the Muslim Brotherhood, were able to unite around the Egyptian Association for Change, launched by Mohamed El Baradei. The association sought genuine political and constitutional reforms aimed at introducing competitive and transparent multi-candidate presidential elections.[37] The April 6 Movement, Youth for Change, the Muslim Brotherhood, and representatives from various political parties rallied around El Baradei, whose international standing provided some protection from regime repression and positioned him as a potential presidential candidate. This coalition became the nucleus of the political force that participated in the January 2011 Revolution, calling for freedom, social justice, and human dignity.

These forces held differing positions regarding the concept of the civil state. The secular bloc, represented by liberal political parties and secular intellectuals, argued that a civil state should be secular, with no individual of religious or military background permitted to rule. In their view, a civil state is democratic, where rulers are elected through free and fair elections and derive legitimacy from the people and the constitution rather than from religion or military authority. This elite called for the abolition of Article 2 of the constitution and maintained that a civil state must be grounded in public rights and freedoms, including freedom of worship and freedom of expression, which should not be subordinated to religious law.[38]

Meanwhile, the religious parties that emerged after the revolution held divergent views on the civil state. The Muslim Brotherhood supported the concept of a civil state, arguing that rulers should not come from political, military, or religious backgrounds. They maintained that the application of Islamic sharia does not contradict the civil state, as sharia is compatible with public rights and freedoms and provides a framework for regulating them according to religious principles.[39] While public freedoms should be promoted and exercised in accordance with religious norms, they remain guaranteed for all citizens, irrespective of their ethnic or religious background.

In contrast, the Salafi parties largely rejected the civil state, equating it with a secular state. They argued that it is based on non-Islamic, Western principles and therefore incompatible with Islamic sharia. Salafi parties relied on the principle of *hakimiyya* (God's sovereignty), which, in their view, entails that one must not rebel against a ruler who implements Islamic law, even if some of those rulings conflict with the rights and freedoms associated with a civil state.[40]

37 Ibid.
38 Magued, "Marginalizing Revolutionaries."
39 Ibid.
40 Lavie, "De-Theocratizing the State?"

Despite the varied circumstances and developments across the countries affected by the Arab Spring uprisings, external intervention was a major factor preventing these revolutions from achieving their aim of establishing civil states.[41]

In Egypt, Saudi Arabia and the UAE supported opposition to the Muslim Brotherhood, particularly through their media platforms, contributing to the removal of President Morsi. They also provided substantial economic assistance to the military and the post-2013 ruling system, while pressuring other Gulf Cooperation Council (GCC) states to follow suit and criminalise the Muslim Brotherhood. Similarly, in Libya, Saudi Arabia and the UAE intervened by supporting Khalifa Haftar's forces against the UN-recognised majority in parliament, supplying them with weapons and equipment. In Syria, Saudi Arabia and the UAE backed opposition forces, particularly Islamist factions such as Jabhat al-Nusra, providing arms to counter Assad's regime and Hezbollah's support for it. In Bahrain and Oman, the GCC deployed police and military forces to suppress protests in public squares against the ruling authorities.

Following the overthrow of the Muslim Brotherhood's rule, the Egyptian Constitution ratified in 2014 declared the state to be civil, yet it introduced exceptions that undermined this civil character with respect to the military background of the head of state. While many articles emphasised that the president should not have a religious background and prohibited religious parties from political participation or holding power, the constitution also included numerous provisions granting the military significant legal and economic privileges, thereby compromising a key aspect of the civil state.

Under the 2014 Constitution, civilians may be tried before military courts, the military budget is exempt from any form of oversight, and the army is entitled to participate in investments and the national economy, enjoying economic advantages over other economic actors within the state.[42]

External interventions by Gulf Cooperation Council (GCC) states, as well as by Turkey, Iran, and Israel, have continued to undermine Libya, Syria, and Yemen's capacity to reach political agreements. These interventions have prevented political forces from participating effectively and have obstructed the development of a broadly acceptable framework for the nature of the state and its system of governance.

Conclusion

The fragility of the nation-state and the elite-driven nature of political formation played a decisive role in constraining the emergence of a civil state in the Arab world, even after the Arab Spring revolutions, whose core demands embodied the very foundations of the civil state.

41 Shaimaa Magued, "Authoritarianism and Virtual Regionalism: The Gulf Cooperation Council during Arab Uprisings," *Democracy and Security* 15, no. 2 (2018): 150–171.
42 Magued, "Marginalizing Revolutionaries."

The presence of authoritarian ruling elites, who derive their legitimacy from either their struggle for independence or from religious authority and provide public services or rent-based benefits in exchange for citizens' acquiescence to limited political participation and curtailed public freedoms, has strengthened authoritarian rule both institutionally and socially. This has, in turn, undermined popular efforts to demand democracy, the rule of law, and fair distribution of resources. Ruling elites have relied on the military and leveraged their accumulated wealth to consolidate power, while collaborating with elites in neighbouring states to suppress popular uprisings, extinguishing any real prospects for establishing a civil state.

These elites, whose rise was shaped by security and economic ties with Western powers, had little incentive to implement genuine political or economic reforms that might foster industrial development, protect private businesses, create a fair and competitive market, or enable authentic political participation. Such participation would require pluralistic political parties with real supporters, competing through policy programmes to gain power and represent the people under the rule of law.

A shift towards a truly democratic system based on civil state principles requires compelling reasons for the ruling elite to relinquish power and submit to popular accountability. The Arab Spring and subsequent events—counterrevolutions, civil wars, and foreign interventions—reflect the ruling elites' refusal to cede power to elected groups, despite widespread popular demands. In Egypt and Tunisia, for example, mass mobilisation succeeded in removing Mubarak and Ben Ali, yet loyalist elites persistently sought to reassert their dominance and safeguard their political and economic privileges.

Similarly, in Syria, popular calls for Assad's departure devolved into a protracted civil war due to the regime's intransigence, its refusal to implement political reforms or transfer power peacefully to the opposition, and the involvement of external actors and non-state armed groups within complex pro- and anti-regime alliances. In Libya, demands for genuine political reform and regime change were met with obstinacy and violence, provoking conflict between loyalists and opponents that ultimately led to NATO intervention aimed at toppling the regime and halting the fighting.

In Bahrain, Saudi Arabia, and Oman, popular uprisings prompted direct Saudi and Emirati military intervention, alongside coordinated Gulf Cooperation Council measures to suppress protest movements and political Islamist forces across the Gulf, Egypt, Yemen, Syria, and Sudan. These actions were intended to reinforce existing regimes politically and materially, while obstructing any meaningful change or reform that could pave the way for a civil state.

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The Civic State in Syria: Early Origins of Restrictions on Civil Society (1918–1958)

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ABSTRACT

This study examines the relationship between the emerging Syrian state and organised civil society during the period 1918–1958, treating it as a foundational interaction that shaped both the boundaries of the public sphere and the nature of civic and political participation in modern Syria. The article is based on the hypothesis that restrictions on civic activity were not the product of exceptional circumstances or temporary departures from constitutional norms, but rather the outcome of a cumulative process that began during the state's formative phase. This process was subsequently entrenched through constitutional and legislative texts, as well as administrative and political practices, which collectively and persistently redefined the public sphere in increasingly restrictive ways.

The study employs a historical and analytical approach to trace the evolution of the legal framework governing associations, political parties and public gatherings, and to analyse the decisions and practices that accompanied successive political regimes, from Arab rule and the French Mandate to independence, the period of military coups during the 1940s and 50s, and the Syrian-Egyptian union. It demonstrates that regime changes did not produce a fundamental transformation in the state's management of its relationship with civil society; instead, the same restrictive logic was consistently reproduced through evolving legal and institutional instruments.

Three principal mechanisms that constituted the structural basis for restricting organised civic activity are addressed: first, the relative ease with which political parties and organisations could be dissolved; secondly, the systematic depletion of human resources engaged in civic action, particularly among civil servants and students; and thirdly, the codification of repression through legislation that conferred extensive powers on the Executive with respect to licensing, supervision, dissolution and sanctioning. Together, these mechanisms demonstrate that the Syrian state did not conceive of civil society as a partner within the public sphere, but rather as an object to be controlled, suppressed or co-opted in the service of state objectives.

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The study concludes that the fragility of Syrian civil society, as well as the persistent debate over the civic nature of the state and the limits of public participation, are logical consequences of a long legacy of constitutional, legal and practical restriction and repression. It further argues that any credible path towards state reconstruction or constitutional and legal reform necessitates a critical re-examination of the historical foundations shaping the state-civil society relationship, alongside the formulation of a new social contract grounded in inclusive societal, political and legal dialogue, free from exclusion or discrimination.

Keywords: *Civil society, constitution, Syria, political parties, unions.*

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Introduction: The State and Civil Society in Syria during the Foundational Phase

Following the collapse of Ottoman rule in 1918, the modern Syrian state has been marked by a complex constitutional, political and societal struggle over the nature of the state, its identity, and its religious, cultural and legal foundations. This struggle revolved around a fundamental question concerning the construction of a modern state: whether the nascent polity would retain the Ottoman institutional legacy, or whether it would seek to reconfigure its legal and political structures in accordance with conceptions of political modernity advanced by a new generation of educated elites, many of whom returned from European universities imbued with ideas of the constitutional state, parliamentary representation, and institutional governance.

The early constitutional debate over the civil or religious nature of the state was provisionally settled by the 1920 Constitution, which stipulated that "the government of the Arab Kingdom of Syria is a civil, representative monarchy, with Damascus as its capital, and the religion of its King is Islam." The articulation of this complex conception of the civic state, and its relationship to religion and constitutional design, across successive Syrian constitutions from 1920 to the Constitution of 2012 has been examined in previous scholarship.[1] This study, however, approaches the civil nature of the Syrian state from a different perspective, focusing on the relationship between the state and organised civil society. This relationship is central to understanding the formation and exercise of power, the limits of public participation, and the mechanisms through which control and regulation have been institutionalised in the modern Syrian state.

A civic state is not defined solely by constitutional texts or normative principles; it is also realised in practice through the manner in which the state structures and governs the civil sphere, including whether it permits or restricts the formation of associations, political parties, trade unions and other organisations, as well as the degree of autonomy and operational capacity afforded to them. Accordingly, an examination of the relationship between the nascent Syrian state and organised civil society is of particular significance, as it uncovers the historical origins of the legal provisions and administrative practices that constrained this sphere at an early stage, many of which continue to persist or to be enforced in the present day.

This study focuses on the foundational phase of the Syrian state, spanning from 1918 –the year marking Syria's independence from the Ottoman Empire and the inception of modern state institutions– until 1958, the year of the Syrian-Egyptian union and the declaration of the United Arab Republic. The process of state formation effectively commenced with the withdrawal of Turkish forces from Damascus on 30 September 1918, followed by the arrival of Prince Faisal bin Hussein on 3 October, when he proclaimed the establishment of a "fully independent Arab constitutional government, absolutely free from any compromise, encompassing the entirety of Syria."

[1] See on this matter: Ibrahim Daraji and Reem Turkmani, "The Question of Religion in the Syrian Constitutions: Historical and Comparative Review," The Legitimacy and Civicness in the Arab World Project (London: London School of Economics and Political Science, 2019), 8–9.

After the complete departure of the Turkish army on 12 October 1918, Prince Faisal began organising the affairs of the nascent state. In June 1919, the "Syrian National Congress" was convened, widely recognised as the first representative parliamentary body in the history of modern Syria.

On 7 March 1920, the Syrian National Congress declared Syria's independence within its natural borders "on a civic and representative basis, while preserving the rights of minorities," resolving to elect Faisal bin Hussein as King of Syria that same day. The congress drafted a constitution that year; however, after Syria lost the Battle of Maysalun to the French and was placed under French Mandate, the constitution was a dead letter. An elected constituent assembly prepared a new draft constitution in 1928, which was subsequently promulgated in 1930 after having been suspended by the French High Commissioner.

Following the withdrawal of French forces from Syria in 1946, the country's first post-independence constitution was drafted by an elected constituent assembly and promulgated in 1950. This constitutional process, however, was repeatedly interrupted by a series of military coups. In 1953, a new constitution was enacted under the rule of Adib al-Shishakli, only for the 1950 Constitution to be reinstated following his overthrow. The 1950 Constitution remained in force until the declaration of the United Arab Republic and the adoption of the 1958 Unity Constitution, which marks the conclusion of the period examined in this study.

This study does not treat this constitutional trajectory as a purely historical narrative, but rather as the framework within which the relationship between the nascent Syrian state and organised civil society was established. During this foundational phase, the first legal instruments that regulated –or restricted– civil society were put in place, whether through legislation governing associations and political parties or through the practical measures implemented by successive political regimes. This period is therefore crucial for understanding the structural foundations that underlie the limitations on civil society activity in Syria.

The significance of this study lies is that it moves beyond approaches that analyse contemporary Syrian civil society in isolation from its historical foundations.[2] Examining both legal texts and state practices demonstrates that much of what is regarded today as irregular or exceptional is, in fact, the product of a cumulative process that began with the establishment of the state. The study also identifies a recurring pattern in the treatment of constitutional and legal texts in Syria, characterised by the perpetuation of existing structures, the replication of established mechanisms, and the introduction of only minor formal modifications, which are often devoid of substantive effect in practice. This highlights the importance of critically analysing these texts from the outset.

[2] See, for example; Rana Khalaf, Oula Ramadan, and Friederike Stolleis, *Activism in Difficult Times: Civil Society Groups in Syria, 2011–2014* (Berlin: Friedrich-Ebert-Stiftung, 2014); Paul Aarts and Francesco Cavatorta, eds., *Civil Society in Syria and Iran: Activism in Authoritarian Contexts* (Boulder, CO: Lynne Rienner Publishers, 2013).

This study adopts a historical and analytical approach, tracing the development of constitutional and legal legislation, administrative decisions, and practical measures relating to organised civic activity during the period under investigation, and analysing them within their political and historical contexts. The authors have examined primary sources –including constitutions, laws, official decrees and statements– alongside secondary literature, with the aim of providing a comparative analytical reading that highlights patterns of continuity and disruption in the relationship between the Syrian state and civil society.

I. The Origins of Restrictions on Organised Civic Activity in Syria

Following the collapse of Ottoman rule, the newly established Syrian state inherited a comprehensive legal and administrative system, which remained in effect for several years after independence. This continuity was formally reinforced by the ministerial decree of 16 March 1920, which confirmed the retention of all officials in their positions and upheld the existing laws until new legislation could be enacted.[3]

This approach was further reinforced in the Syrian government's statement to the Syrian National Congress on 27 March 1920, affirming its intention to continue applying Ottoman civil laws and regulations until they could be gradually amended to reflect "the conditions, morals and values of the country, conform to contemporary civil standards, and safeguard the rights of individuals and groups."[4]

Among this Ottoman legal heritage was a framework governing collective civic activity, including the formation of associations and political parties, as well as public meetings and gatherings. By the standards of the time, this system was relatively liberal, particularly in comparison with legislation subsequently adopted by the Syrian state. These laws emerged following the Young Turk Revolution and the restoration of the Ottoman Constitution in 1908, a period during which the early years of Unionist rule witnessed an expansion of public freedoms.[5]

The Law on Meetings was issued on 16 June 1909, followed by the Law on Associations and Parties on 15 August 1909, and the Law on Public Gatherings in 1912. These laws did not require prior authorisation to establish an association or party, only an obligation to notify the authorities after its formation. They imposed specific regulations, including inspections of association offices, while also granting associations the right to own property. Some scholars have considered these laws advanced, even in comparison with contemporary French legislation. France justified its control of Syria by frequently noting its purported superiority to Ottoman rule; yet as one assessment of the Ottoman legal legacy noted, "its liberalism is difficult to match; in this regard, it goes beyond the property rights granted to officially recognised associations in France."[6]

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3 *Muqarrarat Hukumat Suriyya.* Al Juz' Al Awwal (1918–1921) [Decisions of the Government of Syria. Part One (1918–1921)] (Beirut: Sader Printing Press, 1933), 98. .

4 *Al-Asima* (Official Gazette), no. 113, year 2 (Damascus, 29 March 1919), 3.

5 Hashem Othman, *Al Ahzab Al Siyasiyya Fi Suriyya: Al Sirriyya Wal Alaniyya* [Political Parties in Syria: Secrecy and Legality] (Beirut: Al Rayyes Publications, 2001), 15.

6 Edmond Rabbath, *Tatawwur Suriyya Al Siyasi Fi Thill Al Intidab* [Syria's Political Development under the Mandate], trans. Suleiman Riachi (Beirut: Arab Center for Research and Policy Studies, 2020), 274.

Ottoman law classified political parties under the category of associations and stipulated that "forming an association does not initially require a licence, but in all cases, the government must be notified after its establishment."[7]

Under this legal framework, Syria experienced significant civic and political activity during the early years of state formation. Numerous associations and parties emerged, including the Arab Renaissance Society (*al-Nahda*), the Ottoman Arab Fraternity, the Young Arab Society (*Fatat*), the Damascus Reform Society, the Unionist Party, the Moderate Free Party, and the Ottoman Party for Administrative Decentralisation.[8]

The Ottoman legal legacy also protected the right to public assembly, distinguishing between regular meetings and street gatherings. The 1909 Law on Meetings permitted public assemblies without a licence, provided that the authorities were notified, no weapons were carried, existing laws were respected, and public order was maintained. This framework afforded a reasonable scope for conducting public activities. Moreover, notifications had to be submitted at least forty-eight hours prior to the meeting and specify its purpose and objectives. The law further detailed the penalties for violations of its provisions.[9]

Meanwhile, the 1912 Law on Public Gatherings permitted assemblies in public spaces provided they were unarmed, while granting authorities the power to prevent them if they threatened public order. Military force could only be employed to disperse assemblies after standard warnings had been issued.[10] The law was praised for its moderation, striking a balance between maintaining public order and allowing legitimate popular demonstrations.[11]

Within this legal and political context, organised civic activity was permitted by the Syrian state initially. Positive indicators included the revival of several associations and parties following Ottoman rule, such as the Young Arab Society, which resumed activity and established branches across Syria and the Levant. New political formations also emerged, including the Arab Independence Party in 1919, supervised by the Central Committee of the Young Arab Society and supported by Emir Faisal. The Arab Independence Party advocated Syrian independence and unity while opposing British and French influence.[12] Associations enjoyed public support from Emir Faisal, who, in a speech at the Arab Club in Aleppo in June 1919, expressed enthusiasm for citizens forming scientific associations, stating that he would be pleased to see his name listed among them.[13] The Syrian National Party likewise emerged in late January 1920, attracting members from the elite.[14]

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7 Article 2 of the Ottoman Associations Law of 1909.
8 A more comprehensive list of association names from this period can be found on the *Modern History of Syria* website.
9 Ottoman Meetings Law No. 72, issued on 28 Jumada al-Awwal 1327 (Islamic calendar).
10 Ottoman Assemblies Law, issued on 26 Rabi' al-Awwal 1330 (Islamic calendar).
11 Rabbath, *Syria's Political Development*, 260.
12 Nizar Kayyali, *Dirasah Fi Tarikh Suriyah Al Siyasi Al Muasir* (1920–1950) [A Study in the Political History of Modern Syria (1920–1950)] (Damascus: Dar Tlass Publications, 1997), 74.
13 "Speech of Emir Faisal at the Arab Club Ceremony in the City of Aleppo," *Al-Asima* (Official Gazette), no. 35, year 1 (Damascus, 16 June 1919), 4.
14 Othman, *Political Parties in Syria*, 23.

However, this relatively permissive legal environment never fully solidified. Indications of the state's attempts to control and restrict civil space emerged as early as 1919, including official warnings against demonstrations and public meetings held without government permission, as well as restrictions on correspondence and telegraphic communications, justified in the name of security and the public interest.

This illustrates a structural contradiction that characterised the founding period: on one hand, there was the formal continuation of a legal heritage that permitted certain margins of freedom; on the other, there was a practical tendency to narrow those margins through administrative orders and exceptional measures. For instance, in October 1919, the military governor of Syria, Ali Rida al-Rikabi, issued a decree in his capacity as Emir Faisal's deputy, advising the population to "avoid demonstrations and public gatherings without official government permission, as the government is the one representing and defending the rights of the people."[15] Similarly, in July 1920, the Directorate of Telegraph and Post announced that, in accordance with communicated orders, it had implemented the "Law on the Monitoring of Letters and Telegrams," requesting that citizens "leave envelopes open and keep letters concise, not exceeding one page."[16]

This structural tension indicates that the restriction of civic activity in Syria was not the result of a sudden rupture with the preceding legal heritage. Rather, it emerged through a gradual process that began by hollowing out the substantive content of existing laws, paving the way for a new legislative framework designed to place civil society under direct state supervision and control. In this sense, the period may be regarded as a foundational moment in normalising the notion of state intervention in civil life –a concept that would later evolve into more explicit and stringent mechanisms, as will be demonstrated in the following sections.

II. Mechanisms for Restricting Civic Activity

The restriction of organised civic activity in Syria cannot be explained as the result of isolated decisions or temporary responses to political unrest. Rather, it emerged from an integrated system of mechanisms that were developed and gradually implemented since the founding of the state. These mechanisms were notable for their adaptability to changes in political regimes –from monarchy to mandate, independence, and military rule– while consistently maintaining a central objective: to place civil space under state surveillance, or to suppress it entirely when deemed necessary.

Three principal mechanisms restricted organised civic activity in Syria which can be seen in an examination of laws, decrees, official notices, and practical measures issued between 1918 and 1958. These mechanisms did not operate in isolation; rather, they formed an integrated network designed to hollow out the pluralistic content of the public sphere and to transform civic organisation from a collective right into a privileged contingent upon the discretion of the authorities.

15 *Al-Asima* (Official Gazette), no. 79, year 1 (Damascus, 27 November 1919), 2.
16 *Al-Asima* (Official Gazette), no. 142, year 2 (Damascus, 29 July 1920).

These mechanisms can be summarised as follows:

A. Facilitating the general dissolution of political parties and organisations, and repeatedly enforcing such dissolutions;

B. Depleting civil society of human resources by restricting political participation for large segments of the population;

C. Institutionalising repression through legislation that grants the Executive broad powers to control, prevent, and punish civic activity.

Each of these mechanisms will be examined as structural components of the relationship between the Syrian state and civil society, rather than as merely administrative or security measures.

A. Facilitating the General Dissolution of Political Parties and Organisations

In this context, "dissolution" refers to the comprehensive termination of all political parties and organisations within the state, rather than the removal of a single organisation for a specific legal violation. This approach reflects a deliberate political decision to abolish organised political life entirely and to suspend organisational pluralism as a recognised means of managing the public sphere.[17]

The danger of this approach lies in the fact that it does not seek to correct or regulate party activity; rather, its objective is to hollow out civil space by dismantling its basic organisational structures, particularly in a context where parties and associations operated under a single legal framework that made no distinction between them in terms of nature or function. In this way, general dissolution became an effective and expedient tool for undermining civil society in all its forms simultaneously.

The historical trajectory of this practice demonstrates that the Syrian state frequently relied on general dissolution, employing it repeatedly to reset the political field whenever civil or party forces emerged that were misaligned with the ruling authority. Over the course of just forty years (1918–1958), the decision to dissolve political and organisational life was enacted four times, in different political contexts but guided by a consistent logic driven by elimination rather than regulation.

[17] Syria witnessed the practice of individual dissolution at an early stage. In August 1920, the Ministry of the Interior ordered the closure of the *Arab Club* and the seizure of its records in accordance with the Associations Law. Legal proceedings were initiated against its founders because, although the club had originally been established for scientific and literary purposes, it later engaged in political activities contrary to its founding principles. The Ministry accordingly instructed the Police Directorate to enforce the order. See: *Al-Asima* (Official Gazette), no. 143, year 2 (Damascus, 2 August 1920).

1. First General Dissolution: Decree 413, 1925

Syria experienced its first general dissolution order under the French Mandate with Decree No. 413, issued on 10 October 1925 and titled "Abolition and Dissolution of Political Associations." The decree, issued by the then Head of State Sobhi Barakat al-Khalidi, annulled all political organisations across the country, with the exception of charitable associations, while allowing for the possibility of re-establishment through special authorisation. The decree tasked the Ministers of Interior and Justice with its enforcement and stipulated that it would take effect upon publication. It further noted that it was "witnessed and approved by order of the High Commissioner" and justified as necessary "for administrative reasons based on the Interior Minister's recommendation."[18]

In practice, the decree was a response to the People's Party's stance toward the French Mandate. Following the appointment of General Sarrail as the new French High Commissioner in January 1925, French authorities met with several Syrian nationalist figures in Beirut, urging them to return to Syria and establish a political party to represent the demands of the Syrian people. This led to the founding of the People's Party, officially established on 5 June 1925. The party adopted a confrontational position toward the French and played a key role in the Great Syrian Revolt. In an attempt to curb its influence, the French supported the creation of a rival "Unity Party." When this effort failed, Decree 413 was issued to dissolve all political parties.[19]

Although justified as an administrative necessity, the decree clearly emerged at the height of nationalist opposition to the Mandate. It illustrates how the legal framework was employed to eliminate organised political life rather than to engage with or negotiate it, delivering the first structural blow to Syria's emerging parties.

2. Second General Dissolution: 29 May 1949

Following Syria's first military coup on 29 May 1949, the Cabinet announced the "Dissolution of Political Parties in the Country," the second general dissolution held in Syria. The decree was justified by the government spokesperson as a measure against "elements that turned parliamentary rule under the previous regime into a tool of disruption, destruction, and exploitation, creating obstacles to the reformist and progressive agenda of the coup regime in all political, economic, and social fields. … Therefore, the government decided to dissolve the parties, which had previously caused the country serious harm."

The spokesperson accused parties and their supporters of deception, bribery, false promises, and the promotion of destructive ideologies. The announcement coincided with a statement by coup leader Husni al-Zaeim regarding the post-dissolution phase, in which he declared: "The nation will soon be consulted to establish a free constitutional rule, and once the constitution is ratified, political parties may be formed and operate freely under the constitution and the law, enjoying full liberty within this framework.[20]"

18 The decree was published in *Al-Asima* (Official Gazette), no. 284, year 7 (Damascus, November 1925).
19 Othman, *Political Parties in Syria*, 26.
20 *Alif Ba*, no. 8024. Damascus, 31 May 1949, 4.

The decision to dissolve political parties reflected the policies and thinking of coup leader Husni al-Zaeim, who did not want parties hindering his rule. He made no effort to establish a new party or to link his regime to any existing political organisation. Instead, his government actively suppressed existing parties: imposing house arrest on key members, arresting leaders of the Arab Baath Party, and mistreating the leader of the Socialist Cooperative Party, who had been detained on the night of the coup for criticising al-Zaeim and army corruption in Parliament. Al-Zaeim also handed over Antoun Saadeh, leader of the Syrian Social Nationalist Party, to the Lebanese authorities for execution, banned the Communist Party, and arrested hundreds of its supporters.[21] Finally, the regime officially dissolved all parties, seized their offices, and sealed them with red wax.

This decree reflects an authoritarian understanding of political life, which does not recognize parties as necessary intermediaries between society and the state. Instead, it views them as obstacles to be temporarily removed until the "system is reformed." However, this measure was not a step toward political organization; rather, it served as a prelude to dismantling the existing party structure without creating an institutional political alternative.

3. Third General Dissolution: Decree 197, 1952

The fourth coup in Syria followed the pattern established by the first. On 6 April 1952, President and Prime Minister Fawzi Selu issued Decree No. 197, which dissolved "all existing parties and political organisations, and their branches, whether officially recognised or affiliated with parties or organisations outside the country." [22]

Notably, the decree included an immediate enforcement mechanism. In each governorate, a committee was established, chaired by the governor and composed of the senior representative of the Ministry of Finance, a representative of the Ministry of National Defence, and a police official. This committee was charged with closing party offices and branches, sealing them, and inventorying their assets in accordance with an official record.

The decree also regulated the handling of party assets. Movable and immovable property belonging to parties and organisations was to be liquidated in accordance with their internal regulations. If no such provision existed, the local civil court was to supervise the liquidation through an appointed trustee, in accordance with applicable law. For unregistered parties or organisations, movable assets were to be sold by the regional enforcement office under procedural law, with the net proceeds donated to charitable associations in the governorate pursuant to a decision issued by the governorate.[23]

The decree also outlined its justifications. It cited multiple factors related to the emergence of parties in Syria, stating that "since gaining independence, the country has not had a proper party system. Instead, multiple groupings formed around personal, class, or regional considerations, and some drew their principles from foreign ideologies and organisations, following their guidance in ways contrary to the country's interests and higher values."

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21 Kayyali, *The Contemporary Political History of Syria*, 149.

22 Legislative Decree No. 197 of 6 April 1952, *Official Gazette of the Syrian Arab Republic*, no. 20 (10 April 1952), 1772–1773.

23 Articles 2 and 3 of Legislative Decree No. 197 of 6 April 1952, *Official Gazette of the Syrian Arab Republic*, no. 20 (10 April 1952), 1772–1773.

The decree further highlighted legal ambiguity and disorder in party activity, noting that "the absence in Syrian legislation of a law that clearly defined limits and explicit objectives to regulate political parties facilitated the spread of paralysis and chaos in party activity." Party activity was instead governed by certain general principles applicable to associations under the Civil Code, the Ottoman Associations Law, and decisions of the French High Commissioner that remained in force.

In addition, the decree criticised the behaviour, policies, and internal rules of existing parties. It stated that "parties multiplied without regard for the country's needs or the will of the people…. They became so similar that they caused confusion in citizens' thinking, division within their ranks, and instability in their beliefs. Some pursued goals contrary to national and patriotic principles, disconnected from the country's traditions and interests. Moreover, the restrictions imposed on members limited their personal freedom and prevented them from fulfilling public duties and civic responsibilities."[24]

It became clear that Adib al-Shishakli, the country's de facto ruler, was motivated by a desire to eliminate all political forces opposing his military rule. This objective foreshadowed his subsequent plan to establish a single party composed of his supporters, thereby monopolising power and governance.

There was a deliberate effort to eradicate existing political parties and prevent their re-establishment. This intent was evident in the enforcement mechanisms of the decree, which included the closure, confiscation, liquidation, sale, and distribution of party assets. These measures contradicted the decree's initial wording, which stated that such actions were "pending the enactment of new legislation regulating parties and political organisations." Typically, in such cases, legal procedure involves first enacting a law on political parties and then allowing existing parties a transitional period to align with the new framework. Decree 197, however, bypassed this process by dissolving parties and distributing their assets immediately. Consequently, the implementation of the decree revealed an exclusionary, rather than regulatory, intent.

4. Fourth General Dissolution: Law No. 2 of 1958

This trajectory culminated with the establishment of the Syrian-Egyptian union (the United Arab Republic), announced on 22 February 1958. Law No. 2 of 1958 was issued, dissolving all political parties and organisations in the Syrian region. This represents a clear escalation in the suppression and restriction of organised civic activity in the country. Whereas Adib al-Shishakli had dissolved all political parties under Decree 197 "pending the enactment of new legislation regulating parties and political organisations," this law went further by dissolving all existing parties and prohibiting members, as well as affiliates of dissolved political organisations, from engaging in any form of political activity. It also forbade providing any assistance to these individuals in conducting political activity, imposing penalties of up to three years' imprisonment or substantial fines.[25]

[24] *Official Gazette of the Syrian Arab Republic*, no. 20 (10 April 1952), 1773.
[25] Articles 1, 2, and 6 of Law No. 2 of 1958, *Official Gazette of the Syrian Arab Republic*, Supplement No. 1 (13 March 1958), 2.

To further ensure the elimination of the resources of political parties and to prevent their resurgence, the law stipulated that "the funds of dissolved political parties and organisations shall be transferred to the National Union." This Union, established under the Constitution of the Unity State, comprised citizens tasked with achieving national objectives and promoting efforts to build the nation on a solid foundation.[26] A special delegate was appointed to receive the funds of dissolved parties and organisations and to liquidate them as necessary. Furthermore, anyone in possession of funds belonging to a dissolved party or organisation was required to declare them to the delegate and surrender them.[27]

This outcome was a natural and anticipated consequence for all parties and political forces in Syria, given that Egyptian President Gamal Abdel Nasser had conditioned his approval of the integrationist union with Syria on two requirements. The first was the dissolution of military blocs within the Syrian army, their detachment from partisan politics, and the placement of the army's leadership under his authority. The second was the dissolution of political parties. As a result of this decree, Syria remained party-free throughout the union period (1958–1961), and the only organisation permitted to engage in a form of political activity was the National Union.

This decision reflects the authoritarian character of the Union's integrationist model, which required the elimination of party pluralism as a prerequisite for restructuring the political sphere along a single-party framework. Consequently, independent civil organisations were entirely absent during the union period.

B. Draining of Human Resources for Civic Engagement

In addition to the general policy of dissolving political parties and organisations, the Syrian state, over decades and under successive political regimes, pursued a parallel strategy that was equally consequential for the public sphere: the systematic draining of human resources from civic engagement. This strategy primarily targeted two groups that have historically constituted the natural base for organised civic or political activity: public employees and students.

This policy relied on imposing a broad, and at times absolute, ban on the involvement of these two groups in public affairs under the rubric of a "ban on political activity." It encompassed restrictions on the expression of opinions, attendance at conferences or meetings, participation in demonstrations and strikes, and membership in associations or political parties. At its core, this constitutes a direct suppression of the right to public participation –a fundamental human right– whether exercised indirectly through freely elected representatives or directly through engagement in the formation and membership of organisations and parties concerned with public affairs.

While establishing rules for political activity in workplaces or educational institutions may be understandable to ensure professional or academic neutrality, what is neither understandable nor justifiable is the transformation of such rules into a general and comprehensive ban extending beyond working or studying hours and affecting both public and private life. This approach characterised the Syrian experience in this domain from its earliest stages.

[26] Article 72 of the Provisional Constitution of the United Arab Republic of 1958.
[27] Article 5 of Law No. 2 of 1958.

1. Banning Civil Servants from Political Activity

This policy began in the early years of state formation, when, in 1920, the Prime Minister issued a decree prohibiting "all civil servants from engaging in politics," warning that violators would be removed from their positions and that such breaches would be recorded in their employment files. This decree represented the first official measure linking job security to political compliance.[28]

Under the French Mandate, Prime Minister Muhammad Taj al-Din al-Hasani continued in this vein, issuing Decision No. 2449 on 20 September 1930.[29] The decision imposed an absolute ban on employees and workers in public offices and institutions from participating "in speech or writing" in conferences, demonstrations, meetings, or publications with political content, whether under their real names or pseudonyms, and from making political statements in newspapers. Justified as a means to maintain an administration that was "firm, fair, and free from bias," the decision imposed strict disciplinary penalties and tasked government ministers with its enforcement.

After independence, this approach was entrenched and reinforced. On 21 January 1948, the Prime Minister issued Circular No. 3749, circulated to all official departments, warning employees against joining or expressing sympathy for any political party or politically active organisation. The government declared that the harshest disciplinary penalties would be imposed on violators, including dismissal, removal, or expulsion.[30]

This trend peaked during the fourth military coup led by Adib Shishakli, with the issuance of Decree No. 47 on 9 January 1952. The decree amended the oath taken by civil servants to include an explicit commitment not to join any political party, not to engage in political activity, and not to be influenced by party politics throughout their service. Civil servants already in office were required to take this oath within a specified period and were given fifteen days to sever any previous ties with political parties or organisations, under the threat of legal penalties.[31]

2. Banning Students from Public Engagement

The state did not confine its restrictions to civil servants; it also targeted students, who were regarded as the most active source of political and civic engagement, as reflected in Legislative Decree No. 100 of 31 January 1952, titled "Prohibiting Students from Joining Political Parties and Organisations."[32]

The scope of the law extended beyond students to include teachers and educational administrators, as well as party leaders and officials. Parents were held responsible for their children's actions, required to provide written pledges to monitor their behaviour, and faced criminal penalties for repeated violations. Penalties were also imposed on anyone inciting students to strike or demonstrate, with harsher punishments if the instigator was a member of the administrative body of a party or association, including the potential revocation of party licences or the closure of branches.

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28 *Al-Asima* (Official Gazette), no. 143, year 2 (Damascus, 2 August 1920).
29 *Official Bulletin of Administrative Acts of the State of Syria*, no. 18 (1930).
30 Othman, *Political Parties in Syria*, 34.
31 Decree No. 47. of 9 January 1952.
32 Legislative Decree No. 100 of 31 January 1952, *Official Gazette of the Syrian Republic*, no. 6 (31 January 1952), 512–513.

Any student enrolled in a university, institute, or public or private school was prohibited from joining any political party or group, engaging in political activity, or participating in an unlicensed strike or demonstration. Students who violated these provisions were subject to permanent expulsion by the administration of their institute or school. If a student incited a strike or demonstration, the penalty included permanent expulsion in addition to imprisonment for a period of one to six months and a fine of 100 to 500 Syrian pounds, or one of these two penalties. If such acts were accompanied by any form of violence, the penalties of imprisonment and fines were doubled. Students who were members of political parties or groups at the time the decree was issued were required to withdraw from them within two weeks of its publication, under threat of the sanctions stipulated in the law.[33]

Any administrator, teacher, or instructor in a university, institute, or public or private school who neglected their duty to suppress school strikes was subject to dismissal from office. If the individual was not a public employee, they were barred from practising the profession for a period of one month to one year. Teachers or administrators who incited students to strike or demonstrate were additionally subject to imprisonment for one month to one year and a fine of 100 to 500 Syrian pounds, or one of these two penalties.[34]

The decree prohibited leaders and officials of political parties or groups from registering students as members or allowing them to enter party premises. Any official responsible for such registration or access was subject to imprisonment for three months to one year and a fine of 100 to 1,000 Syrian pounds for each student registered or admitted. Party and group officials responsible for membership registration were also required to expel student members within two weeks, failing which they would be liable to the prescribed penalties.[35]

If a student (a child or adolescent) committed any act prohibited under this legislative decree, the father, guardian, or legal custodian was required to submit a written pledge to monitor the student's behaviour. In the event of repeated violations, the parent or guardian was deemed negligent and subject to imprisonment for up to three months and a fine of up to 500 Syrian pounds, or one of these two penalties.[36]

Any person who incited students in a university, institute, or public or private school to strike or participate in an unlicensed demonstration was subject to a penalty of imprisonment for one month to one year and a fine of 100 to 500 Syrian pounds, or one of these two penalties. The penalty was doubled if the instigator was a member of the administrative bodies of political parties or associations. In addition, the court could order the revocation of the licence of the party or group, or the closure of one or more of its branches. [37]

33 Articles 1-6 (1) of Legislative Decree No. 100 of 31 January 1952.
34 Article 2 of Legislative Decree No. 100 of 31 January 1952.
35 Articles 3-6 (2) of Legislative Decree No. 100 of 31 January 1952.
36 Article 5 of Legislative Decree No. 100 of 31 January 1952.
37 Article 4 of Legislative Decree No. 100 of 31 January 1952.

3. Selective Prohibition and the Instrumentalisation of Public Activity

This legislative framework reveals that the objective was not merely to separate politics from education or public administration, but to strip society of independent political activity. This is evident in the sharp contradiction between restrictive legal texts and their practical application, as the ban was lifted or even reversed whenever it served the interests of the ruling regime.

During the French Mandate, for example, the authorities encouraged public employees to join the pro-mandate Al-Wehda Party, whose membership consisted largely of civil servants,[38] despite the formal restrictions on political activity. In the same period, the government of Taj al-Din al-Hasani expelled eighteen students from the Preparatory School in Aleppo for refusing to receive Sheikh Taj during his visit, and the school's principal was dismissed for refusing to expel them without a disciplinary hearing.[39]

Following Husni al-Zaeim's coup in 1949, students were publicly praised for their role in supporting the army's movement. In a statement issued on 31 March 1949, al-Zaeim declared: "The leader Husni al-Zaeim, Commander-in-Chief of the Army and Armed Forces, extends his profound thanks to the noble Syrian people for the sentiments of support they expressed for the Syrian army's liberation movement, and offers special appreciation to the students, who expressed their generous sentiments, whether by telegram, through their delegations, or through their remarkable demonstrations. [40]"

During the rule of Adib Shishakli, a single party, the Arab Liberation Movement, was established in 1952. The majority of its members were civil servants and students. Despite the existence of laws prohibiting public employees from engaging in politics or joining political parties, a large public celebration was organised by the party in the presence of Head of State Shishakli, senior state officials, and judges. During this event, attendees –most of whom were civil servants and members of the judiciary– were called upon to stand, raise their right hands, and swear an oath of loyalty to the Arab Liberation Movement and its leader.[41] Similarly, during the Syrian-Egyptian Union (1958–1961), one provision of the 1960 Labour Law stipulated that members of unions, federations, and union committees were not permitted to stand for union elections unless they were members of the National Union.

Accordingly, the ban was not directed at political activity as such, but rather at any civic or political activity independent of state authority. In contrast, state-ideologised and state-directed activity remained permitted, if not actively encouraged. The result was the draining of society's organisational capacity and the transformation of political participation from a general right into a privilege conditional upon loyalty to the ruling power.

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38 Othman, *Political Parties in Syria*, 26.

39 Abd al-Rahman al-Kayyali, *Al Marahil Fi Al Intidab Al Faransi Wa Fi Nidalina Al Watani:* Al Juz' Al Awwal [Stages under the French Mandate and in Our National Struggle: Part One] (Aleppo: Al-Dad Priniting Press, 1958), 285.

40 Bashir Al-Awf, *Al Inqilab Al Suri: Asraruhu Wa Dawaafiuhi Wa Maramihi, Wa Kayfa Tammat Hawadithuhu* [The Syrian Coup: Its Secrets, Motives, Objectives, and How It Unfolded] (Damascus: Al-Nouri Bookshop, 1949), 64.

41 Ahmad Walid Mansour, *Qisasat Ghayr Qabilah Lil Ta'n Bayn Al Qudat Wa Al Siyasiyyin Al Suriyyin* (1918–1961) [Non-Appealable Punishments before Syrian Judges and Politicians (1918-1961)] (Damascus: Dar Safahat Lil Nashr, 2018).

C. The Legal Codification of Repression and Restriction

The legal codification of repression and restriction refers to the use of legislation to confer formal legitimacy on practices that constrained key actors within civil society, thereby transforming the law from an instrument for the protection of rights and freedoms into a mechanism of coercion and punishment. Legal texts thus became a juridical cover for authoritarian practices targeting the public sphere and its organisations.

From an early stage in its history, the Syrian state adopted this approach as a central pillar of controlling civil society. Rather than relying solely on uncodified administrative or security measures, it sought to establish a legislative framework that normalised restrictions and granted the executive broad legal powers of intervention, prohibition, dissolution, and punishment in the name of the law.

1. Legislative Decree No. 50 of 1946: The Zenith of Executive Power Expansion

Only a few weeks after the withdrawal of French forces from Syria, the Syrian government issued Legislative Decree No. 50 on 17 October 1946, establishing the special organisational statute of the Ministry of the Interior. This decree constituted an early and particularly dangerous model of using law to codify repression, as it granted the Minister of the Interior near-absolute authority over the main components of the civil sphere.

Under this decree, the Minister of the Interior became the sole authority empowered to grant licences to political parties, associations, organisations, and clubs, as well as to authorise public meetings. The decree also granted the Minister the power to monitor these entities, supervise their activities, and dissolve or prohibit them whenever he deemed that they:

- violated or called for the violation of the basic principles of the Constitution;
- undermined the republican system of government;
- were connected to a foreign state or organisation;
- accepted foreign aid or donations without government approval; or
- violated general security.

These powers extended beyond administrative regulation. The decree also authorised the Minister of the Interior to impose house arrest for up to one year on the founders and members of these entities, as well as on anyone who engaged in any of the acts listed. In this way, the decree concentrated both regulatory and punitive authority in the hands of a single executive body, without any effective judicial safeguards.[42]

[42] Legislative Decree No. 50 of 17 October 1946, concerning the organisational structure of the Ministry of the Interior. *Official Gazette of the Syrian Republic*, no. 43 (17 October 1946), 1357.

2. The Response of Civil Society: An Early Constitutional Confrontation

What is particularly notable at this stage is that Syrian civil society did not remain silent in the face of this dangerous legislative expansion. Instead, it engaged in a direct confrontation: demonstrations spread across the country to protest Decree No. 50, compelling the government to refer the decree to the Constitutional Committee to assess its conformity with the existing constitution.

The decision of the Constitutional Committee, issued on 18 November 1946, was favourable to civil society and decisive in highlighting the dangers posed by the decree. The committee held that granting the Minister of the Interior the authority to licence political parties, associations, and public meetings, as well as to monitor and supervise them, effectively conferred absolute and arbitrary powers of prohibition. It further found that empowering the Minister to dissolve these entities at his personal discretion, without review or appeal, constituted a fundamental violation of the principle of the rule of law.[43]

The decision of the Constitutional Committee, issued on 18 November 1946, thus favoured civil society and curtailed the repressive powers the government sought to exercise through the decree. The committee noted that the Minister of the Interior had been granted the authority to licence political parties, associations, organisations, and clubs, to authorise the holding of meetings, and to exercise oversight and supervision over their activities. This effectively conferred upon him absolute powers of prohibition, exercisable at his arbitrary discretion, without any possibility of challenging his decisions or the potentially serious consequences that could ensue. Moreover, the Committee observed that the decree granted the Minister the authority to impose house arrest on Syrian citizens, despite the absence of any legal provision empowering him to do so.

The committee further emphasised that authorising the Minister of the Interior to impose house arrest on Syrian citizens had no legal basis in existing legislation and constituted a serious breach of constitutional guarantees. It concluded that Decree No. 50 did not seek to safeguard freedoms, as required by the constitution, but rather to undermine them through arbitrary executive power. The committee asked: "How can freedoms be protected and guaranteed when the Minister of the Interior alone, at his personal discretion, can dissolve associations, disband political parties, close printing presses, revoke newspaper licences, and exile citizens from their homes?"

Accordingly, the Constitutional Committee ruled that Decree No. 50 was in violation of the constitutional provisions concerning freedom of thought, the prohibition on the displacement of Syrian citizens, freedom of the press and printing, and the freedoms of association and assembly.[44]

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43 Report of the Constitutional Committee on Decree No. 50 concerning the organisational structure of the Ministry of the Interior, *Official Gazette of the Syrian Republic* (1946), 51–59.

44 Ibid.

3. Formal Retraction: Not a Real Break

The government responded pro forma to the Constitutional Committee's observations by repealing the most controversial provisions of the decree and issuing Legislative Decree No. 76 on 30 June 1947, which established a new organisational statute for the Ministry of the Interior. However, this retraction did not fundamentally break with the logic of codifying repression; it merely curtailed some direct powers while retaining core executive control over the civil sphere.

This episode represented one of the rare moments in the immediate post-independence period in which Syrian civil society succeeded in imposing a constitutional interpretation that constrained executive authority. This environment proved short-lived.

4. Military Coups and the Re-Codification of Repression

With the succession of military coups beginning in 1949, the political context changed dramatically, and constitutional confrontations of the type seen in 1946 were no longer feasible. Successive authorities enacted new legislation that re-codified the repression and restriction of civic activity, this time without effective institutional resistance.

In 1953, Adib Shishakli, leader of the third and fourth coups, issued the Law on Associations and Parties under Legislative Decree No. 47. This law placed both parties and associations under the supervision of the Ministry of the Interior, granting it broad powers to inspect and monitor their activities and financial resources. Judicial police were authorised to enter party and association headquarters at any time under the pretext of maintaining security. These powers were also extended to governors and district officials within their jurisdictions, expanding executive intervention to multiple local levels.

During the period of the Syrian-Egyptian union (1958–1961), Law No. 93 regulating non-governmental associations was enacted, reflecting a centralised conception of the state as the authority entitled to guide society and control its organisations. This law, together with its executive regulations, provided extensive tools for governmental and security authorities to intervene in the formation, internal management, and daily operations of associations.[45]

Under this law, associations were compelled to submit an application to the Ministry of Labour and Social Affairs, which conducted security checks. Associations were also required to submit minutes of their meetings, financial statements, and periodic reports to the Ministry, which could dispatch representatives or "other entities" to attend meetings in order to supervise and regulate their activities.

This law remains in force today, significantly weakening the environment for civil society work in Syria and entrenching a legal model that subjects civil organisations to both prior approval and ongoing state oversight.

[45] *No Room to Breathe: State Repression of Human Rights Activism in Syria* (New York: Human Rights Watch, October 16, 2007).

IV. Toward a Structural Analysis of the State-Civil Society Relationship in Syria

An examination of the historical and legal trajectory of restrictions on organised civic activity in Syria between 1918 and 1958 indicates that these developments were not merely a series of interruptions or exceptions linked to changes in political regimes. Rather, they constitute an early manifestation of a stable institutional pattern in the management of the state–society relationship. Despite the succession of monarchy, mandate rule, independent governments, military coups, and the Syrian-Egyptian union, the core of this relationship remained governed by a single logic: the control, neutralisation, or elimination of the civil sphere.

The study demonstrates that the emerging Syrian state did not regard civil society as a structural component of a civic state or as a legitimate intermediary between society and authority. Instead, civil society was treated as a domain to be controlled and managed, a potential threat to be contained, or a tool to be mobilised when convenient. This approach was evident from the founding period, when a legal legacy formally permitted limited civil organisation, yet this allowance was simultaneously hollowed out through administrative orders and exceptional measures, later evolving into a more explicit legislative framework for restricting the public sphere.

Within this context, the three mechanisms of restriction examined in this study –general dissolution of organisations, depletion of human resources, and the legal codification of repression– should not be understood merely as discrete or sequential measures, but as components of an integrated system performing complementary functions. General dissolution targeted the organisational structure of civil society, effectively eliminating its institutional existence. The depletion of human resources, particularly through the neutralisation of employees and students, prevented the reproduction of civil society even during periods when it was formally permitted. Meanwhile, the legal codification of repression conferred legitimacy and durability on this process, transforming political restrictions into enduring legal norms.

This integration demonstrates that, in the Syrian experience, law was rarely a neutral instrument or merely a victim of executive overreach; rather, it became one of the most effective tools of repression. Legislation was employed to redefine freedoms, expand administrative powers at the expense of constitutional guarantees, and transform legal texts into instruments of prohibition and punishment, rather than frameworks for protecting the right to organise and participate in public life. This reveals a foundational paradox: the modern Syrian state derived part of its legal legitimacy from undermining the very conditions necessary for a civic state.

The deeper consequence of this trajectory lies not only in the weakening of parties and associations during the period under study, but also in the creation of a long-term structural legacy characterised by mutual distrust between the state and society, the fragility of the civil sphere, and its susceptibility to suspension or elimination with each political shift. This legacy helps explain why, in later periods, Syrian civil society remained weak in influence, limited in autonomy, and easily co-opted or dismantled, and why debates over the civil character of the state and the boundaries of the public sphere persisted unresolved –reflecting a historical continuation of a foundational struggle that has never been fundamentally addressed since the establishment of the state.

CONCLUSION

This study demonstrates that the restriction of organised civic activity in Syria was not the product of exceptional circumstances or transient political decisions, but rather the outcome of a cumulative process that began during the state's founding phase and was reinforced through constitutional and legislative texts, as well as through practical measures that continuously reshaped the public sphere in restrictive ways. From the earliest years following the collapse of Ottoman rule, civil organisation was treated not as a pillar of a civic state, but as a domain subject to control, suspension, or elimination, depending on the prevailing balance of power.

As demonstrated in this study, this trajectory was unaffected by shifts in political regimes; it persisted through the monarchy, the mandate period, independent governments, military coups, and the Syrian-Egyptian union. This continuity reveals a foundational flaw in the state-society relationship, in which interactions were not based on principles of partnership or representation, but rather on administrative and legislative domination, directly shaping the structure of civil society and constraining its autonomy and capacity for effective action.

The study also highlights the central role of law in this trajectory –not as a framework for protecting rights and freedoms, but as a mechanism for maintaining control over the civil sphere. Restrictive practices were legitimised through legislation granting the executive broad powers of licensing, supervision, dissolution, and punishment, thereby transforming law itself into a pillar for weakening the public sphere rather than serving as its guarantor.

In this context, the ongoing divisions and debates in contemporary Syria regarding the civil nature of the state and society, as well as the persistent weakness and limited effectiveness of Syrian civil society across its various sectors, can be understood as the logical outcome of a long-standing legacy of restriction and repression, enacted constitutionally, legally, and practically. This reality does not represent a rupture from the past; rather, it constitutes a historical continuation of a foundational trajectory that was never fundamentally addressed but was instead repeatedly deferred and reproduced over successive decades.

Accordingly, any serious discussion concerning the future of the Syrian state, or the reconstruction of its constitutional and legal framework, cannot be confined to amending existing texts or reproducing them in new forms, nor can it be conducted behind closed doors or through agreements brokered by regional or international patron states. Rather, it requires the formulation of a new social contract, established through broad societal, political, legal, and constitutional dialogue that includes all components of Syrian society without exclusion, marginalisation, or discrimination. Without reopening civil space and reestablishing the state–society relationship on the basis of genuine participation and legal guarantees, attempts at reform will remain vulnerable to reproducing the same restrictions, regardless of changes in context or official labels.

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The Civil State in Lebanon: An Inevitable Outcome of Sectarian Pluralism

Dr. Wissam Lahham *

ABSTRACT

The prevailing public discourse in Lebanon is dominated by the notion that "sectarianism" constitutes the root cause of the country's political crises and that the only solution lies in abolishing sectarianism and transitioning to a civil state.

Through a constitutional lens, this paper examines and challenges this prevailing assertion by demonstrating that the legal structure of the Lebanese state is fundamentally civil. It highlights how political practice has distorted this reality by constraining the state's civil character and limiting the legal mechanisms that safeguard individual rights and uphold the principle of citizenship.

The paper does not aim to analyse the political positions of the sectarian parties that dominate Lebanese society and the state. It recognises that a constitutional approach alone cannot provide a complete picture of reality. Nonetheless, it emphasises the legal dimension of the relationship between the state and religious sects, seeking to free legal reasoning from the discourse of political power, which often manipulates the law to attribute blame to sectarianism and evade accountability.

Keywords: *personal status, civil state, recognition of sects, legislative supremacy of the state, constitutional freedoms.*

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Theoretical Introduction to the Civil State

Any theoretical framework aimed at defining the civil state must begin by identifying the source of its political legitimacy followed by an assessment of the consequences of that legitimacy for structuring the relationship between state institutions and religious institutions.

A. The Civil State and the Source of its Legitimacy

The defining characteristic of the civil state rests on the premise that political power is created, that is, it arises from a rational will that establishes authority in order to achieve specific objectives. Accordingly, political authority exercised by individuals or institutions does not derive from a natural condition that demands unconditional acceptance or obedience. Rather, it constitutes an artificial arrangement shaped by particular historical circumstances and remains subject to continuous development in response to societal needs. The civil state is therefore a voluntary and purposive form of organisation, rather than a natural or inherent one.

To complete the conceptual foundations of the civil state, an additional essential condition must be satisfied: the will that generates political authority must be not only positive but also human in origin. It cannot be grounded in religious or metaphysical doctrines; rather, it must arise from the consensus of individuals, reflecting their collective intention to regulate human affairs according to principles derived from reason, observation, and experience, with the aim of securing social stability. The civil state thus constitutes an institutional construct arising from the autonomous and rational will of human beings.

In light of the foregoing, the positive character of political power –encompassing both its voluntary and human dimensions– necessarily gives rise to the question of sovereignty, namely the identification of the entity entitled to establish a political order endowed with the legitimacy required to pursue its objectives. In the civil state, sovereignty resides in individuals who, through mutual agreement, constitute political authority as an expression of their collective will to safeguard their liberties within institutional frameworks governed by the rule of law. Accordingly, sovereignty in the civil state rests upon the following principles:

- Individuals are presumed, in theory, to predate any social or political order.
- Political authority is established by individuals through their own volition for the purpose of preserving rights and freedoms, placing inherent limits on state power from the moment of its creation.
- The individuals who consent to constitute political authority are, in theory, abstracted from particular affiliations, prejudices, and class-based interests, and are guided instead by the aim of formulating rational norms intended to secure, to the greatest extent possible, justice within society.
- The constituent will of individuals is, in itself, sufficient to reform political authority and to hold its officeholders accountable, ensuring that governance remains responsive to the evolving needs of society.

In sum, a civil state may be defined as one in which sovereignty is of positive origin, deriving its authority from the collective will of individuals, and whose legitimacy is grounded in the fulfilment of the purposes for which individuals establish it.

B. Manifestations of the Civil State

Undeniably, the most salient manifestation of sovereignty in a civil state lies in the state's genuine and comprehensive legislative authority. The state itself determines the extent of its legislative competence, that is, it possesses the jurisdiction to define the scope of its own powers (*la compétence de sa compétence*). Consequently, a civil state does not recognise any external source of legislation capable of constraining its authority. Put differently, under no circumstances can a civil state acknowledge an official religion that would obligate public authorities to enforce a particular set of beliefs or metaphysical principles across the domains governed by positive law.

Furthermore, the civil state not only refrains from adopting metaphysical doctrines, it cannot recognise or impose an official ideology as an unquestionable truth upon the population. The civil character of the state precludes the adoption of ideological tenets as official principles binding all individuals, even when these principles are non-metaphysical and of positive origin.

Accordingly, the civil state treats the religious convictions and philosophical orientations of its citizens as matters confined to the private sphere. Individuals are therefore free to adhere to any religion or belief that aligns with their personal convictions. This freedom encompasses the right to change one's religion or beliefs, as well as the right to abstain from any religious affiliation or to refrain from expressing such affiliation, both within the public domain and in interactions with the state.

However, these considerations do not imply that a civil state is categorically precluded from permitting the application of religious laws to its citizens. The historical context in which the modern state emerged may, in some cases, necessitate the incorporation of certain religious rules to address specific social needs, provided that this does not compromise the state's legislative sovereignty. Religious texts acquire legal effect only through state approval and remain valid solely to the extent permitted by it. Accordingly, religious legislation is subordinate to positive law, from which it derives its legitimacy, and cannot exercise independent authority outside the legal framework of the state.

Therefore, the civil nature of the state is clearly reflected in the following principles:

- The state does not recognise any religion or ideological doctrine as an official truth to which positive law must conform.
- The state's acceptance of religious legislation within its legal system must not, under any circumstances, compromise the principle of the state's supremacy in its relations with the groups to which such legislation applies.

- The existence of religious legislation applicable to specific groups constitutes a state-sanctioned exception granted out of necessity; nevertheless, the direct legal relationship between the citizen and the state must remain the primary standard for regulating public life.
- In accordance with the principle of equality, individuals retain full freedom to determine their relationship with the state on an individual basis. This right must be expressly guaranteed by the constitution, ensuring that the autonomy of the individual's will remains a foundational principle.

These characteristics illustrate that the civil state may adopt varying approaches to religious affairs, ranging from strict separation –as exemplified by the French secular state (*État laïc*)– to more flexible arrangements that recognise the enduring role of religion in certain societies. In such contexts, state intervention may be warranted to create public spaces in which religious matters can be addressed through dialogue, thereby fostering social cohesion among citizens.

Accordingly, it is necessary to distinguish between two levels or models of the civil state:

- Other forms of the civil state allow for the recognition of religious communities, but on the basis of equality, such that no religion enjoys a privileged status in relation to the state. In such a system, the legislature may enact laws regulating religious institutions and granting them official authority over their adherents. It may also permit the allocation of public funds to support religious bodies –measures that would be inconceivable, for instance, in France, where secularism is founded on the principle of strict separation between religion and state institutions. For purposes of clarity, we shall hereinafter refer to this model as the "secular state."
- In a secular state, neutrality is absolute and comprehensive. Individuals may not invoke their religious beliefs to claim exemptions from regulations that apply generally to all citizens, particularly within the public sphere. The secular state may even impose restrictions on the expression of religious affiliation within official state institutions and public schools,[1] requiring individuals to refrain from any conduct –verbal or otherwise– that would compromise the principle of neutrality. By contrast, a civil state is not bound to adopt such measures. It may permit the existence of special legislation applicable to religious or cultural groups, provided that such legislation operates within the framework of individual primacy and fully respects individual freedom.

It is incorrect to assume the existence of a single model of state neutrality or of the principle of separation between the state and religious or cultural groups. Each society, shaped by its historical experience, develops its own approach, influenced by specific circumstances as well as the evolution of constitutional and legislative frameworks and judicial interpretations. Despite this diversity, the fundamental objective of secularism –or, more broadly,

[1] For example, the French Law of 15 March 2004, which prohibits schoolchildren from displaying or wearing symbols that visibly indicate a religious belief: "In state schools, colleges and high schools it is prohibited to wear symbols or clothing through which pupils conspicuously show a religious affiliation." Article L. 141-5-1 of the Education Code promulgated by the Law of 15 March 2024 *(Loi n° 2004-228 du 15 mars 2004 relative au port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics, Journal Officiel de la République Française).*

of the civil character of the state– remains the establishment of the rule of law, grounded in full respect for human rights and democratic principles. Accordingly, the relationship between the state and religious groups may be understood as existing along a spectrum defined by two models:

- The maximalist model is characterised by complete state neutrality, in which religious matters are strictly confined to the private sphere of individuals. Under this model, political authority treats all matters pertaining to religion as entirely beyond its competence. This deliberate detachment from religious affairs entails a structural and functional separation between state institutions and all religious affiliations.
- The minimalist model maintains that the state possesses no religious identity, eschewing the pursuit of religious objectives, and therefore it cannot justify its actions on the basis of specific religious reasoning. Owing to its neutrality, the state may intervene in religious matters to promote public interest, provided that strict equality among all religious groups is upheld. This perspective recognises religion as sufficiently significant that the state cannot entirely disregard it. Accordingly, the state may provide financial support to religious groups to ensure freedom of worship, or in areas such as education, insofar as such support is based on objective criteria and serves the public interest. The same principle may govern the state's relationship with religious groups, whereby public authorities may regulate this relationship by granting religious communities official recognition, thereby transforming them into public institutions vested with specific powers defined by law.

France is widely regarded as the model that most clearly embodies the secular state, exerting a significant influence on Lebanon's intellectual and political elites. Consequently, the Lebanese state has consistently been confronted with two opposing options: a "sectarian state" or a secular one. This framing positions the abolition of sectarianism in all its forms as the purportedly sole solution to Lebanon's political and social challenges.

Drawing on French intellectual tradition, Edmond Rabbath articulated this perspective in the Lebanese context when he asserted that "secularism does not merely mean that the state refrains from adopting an official religion, nor that it simply adopts a neutral stance toward the religions present within its territory. Rather, it means [...] that the state does not classify its citizens according to their religions, nor discriminate among them on the basis of sectarian affiliation, nor allocate their political rights–including those related to elections, public employment, parliamentary representation, ministerial appointments, and the presidency– on a sectarian basis."[2]

Rabbath's position reflects the dominant viewpoint among Lebanese elites during the French Mandate and the early years of independence. According to this perspective, the "fusion of the Lebanese people" constituted the only viable solution to the country's political challenges, framing sectarian diversity as an obstacle to stability and the formation of the Lebanese nation.

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[2] Edmond Rabbath, *Al-Wasit Fi Al-Qanun Al-Dusturi Al-Lubnani* [Guide to Lebanese Constitutional Law] (Beirut: Elem Al-Malayin Publsihing House, 1970), 224.

In a 2004 ruling,[3] the French Constitutional Council defined the principle of secularism, as established in Article 1 of the Constitution of the Fifth Republic (1958), as prohibiting any individual from invoking their religious beliefs to evade the application of general rules governing relations between public authorities and individuals. In an earlier decision in 1999,[4] the council held that the European Charter for Regional or Minority Languages conflicted with the constitutionally enshrined principle of the unity of the French people, as it permitted the use of languages other than French in public life. The council further ruled that the fundamental principles of the Constitution of the French Republic prohibit the recognition of collective rights for groups defined by cultural, linguistic, or religious characteristics.

However, even the French model of secularism is not as absolute as Rabbath and others might suggest, as it incorporates exceptions shaped by particular historical circumstances. The French Constitutional Council has affirmed in several rulings[5] that the Law of 9 December 1905, on the separation of church and state, does not apply to the French provinces[6] that were part of the German Empire at the time of its enactment and were returned to France in 1919 following World War I. In these regions, religious instruction continues to be provided in public schools, and recognised clergy[7] receive financial allowances from the state. Moreover, the Catholic bishops of Metz and Strasbourg are appointed by presidential decree following approval by the Holy See.

This illustrates that the core principles that must be enshrined in all constitutional systems –regardless of a country's historical context– are those relating to state neutrality and freedom of belief. The regulation of the relationship between the state and religious sects –including matters of recognition and funding– remains a legislative prerogative, evolving in accordance with the specific circumstances of each society.

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3 "(…) that, under these conditions, the provisions of Article 1 of the constitution, which states that 'France is a secular Republic,' are upheld, prohibiting anyone from invoking their religious beliefs to exempt themselves from the common rules governing the relations between public authorities and individuals" (French Constitutional Council, Decision No. 2004-505 DC, 19 November 2004).

4 French Constitutional Council, Decision No. 99-412 DC, 15 June 1999.

5 "The principle of *laïcité*, which is among the rights and freedoms guaranteed by the constitution, notably requires respect for all beliefs, equality of all citizens before the law without distinction of religion, and that the Republic guarantee the free exercise of worship. It implies that the state does not pay the salaries of any religious denomination. However, it appears from both the preparatory works for the draft Constitution of 27 October 1946, regarding its Article 1, and those of the draft Constitution of 4 October 1958, which retained the same provision, that by proclaiming France as a '…*laïque* Republic,' the constitution did not intend to override specific legislative or regulatory provisions applicable in certain parts of the territory of the Republic at the time of its entry into force, relating to the organisation of certain religions, including, in particular, the remuneration of ministers of religion" (Decision No. 2017-633 QPC, 2 June 2017).

6 Alsace and Moselle

7 Catholics, Lutherans, Calvinists and Jews.

I. The Historical and Legal Foundations of the Civil State in Lebanon

The relationship between the state and religious sects has long been a matter of contention in Lebanon. Opinions are divided between those who view the Lebanese state as inherently sectarian, with its primary function being to safeguard the "rights" of religious sects, and those who consider that the adoption of comprehensive secularism constitutes the appropriate solution to the crises affecting the political system, with the aim of establishing a civil state grounded in the values of freedom and equality among all citizens.

This division is most evident with respect to the issue of sectarian personal status laws and the ongoing debate over the possibility of adopting civil personal status legislation. For example, on 18 February 2019, the media office of Dar al-Fatwa issued a statement asserting that civil marriage "violates the provisions of the Lebanese Constitution concerning the obligation to respect the personal status laws applicable in religious courts for Lebanese citizens, as stated in Article 9. Therefore, it cannot be approved by Parliament without consulting Dar al-Fatwa and other religious authorities in Lebanon." This position is not confined to religious authorities; it has also been echoed by members of Parliament and political figures who contend that the adoption of civil personal status legislation would require a constitutional amendment. Such stances imply that the state is inherently sectarian and that its legislative authority is constrained by personal status laws, which remain entirely subject to the authority of religious sects.

There is no doubt that this contradiction– whether deliberate or inadvertent– results in the debate being subsumed within complex political discussions that divert it from its proper legal foundations. It is therefore essential to examine the nature of the relationship between the state and religious sects in Lebanon to demonstrate that the state's recognition of sects' autonomy in managing their personal status affairs does not undermine its civil character. Rather, the manner in which the state grants this recognition provides the framework through which the constitutional principles underpinning the legal structure of the Lebanese state can be understood.

A. Regulation of the Relationship between the State and the Sects during the French Mandate

The establishment of the State of Greater Lebanon on 1 September 1920, under French tutelage, introduced a new model for the relationship between the state and religious sects, distinct from that which had existed under the Ottoman Empire's millet system. With its newly expanded borders, Lebanon became an entity composed of multiple sects, with religious diversity that was demographically balanced– Christians and Muslims were roughly equal in proportion.[8] Consequently, the French authorities were compelled to establish a framework that respected this pluralism while ensuring equality among sects in their legal relations with the Lebanese state.

[8] According to the official census conducted in 1921, Christians constituted 55.12% of the total population, while Muslims accounted for 44.87%. These proportions changed in the 1932 census, the last official census conducted in Lebanon, with Christians representing 50.73% and Muslims 49.26% of the total population. For detailed figures on the major sects in the 1921 and 1932 censuses, see: Meir Zamir, *The Formation of Modern Lebanon* (Ithaca and London: Cornell University Press, 1988).

Article 6 of the French Mandate, approved by the Council of the League of Nations on 24 July 1922,[9] outlined France's responsibilities in this regard, stating: "The Mandatory shall establish in Syria and the Lebanon a judicial system which shall assure to natives as well as to foreigners a complete guarantee of their rights. Respect for the personal status of the various peoples and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in complete accordance with religious law and the dispositions of the founders."

One of the initial measures undertaken by the Mandatory was the extension of official recognition to Muslim sects that had not been recognised under the Ottoman Empire, including the Alawite and Shiite sects. The French governor of the Alawite State issued Decree No. 623 on 19 September 1922, authorising the implementation of religious legislation in accordance with the Alawite sect, while prohibiting Sunni Sharia courts from adjudicating matters within the jurisdiction of Alawite courts.

In Lebanon, the Jaafari sect was similarly recognised by Decree No. 3503, issued by the Governor of Greater Lebanon, Léon Cayla, on 17 January 1926. Article 1 of the decree stated: "Shiite Muslims in Greater Lebanon constitute an independent religious sect, and they are to be tried in matters of personal status according to the provisions of the Jaafari sect." The remaining articles of the decree regulated the jurisdiction of Shiite judges in the governorates and the procedures for appealing their decisions before a special cassation court composed of Shiite judges, headquartered in Beirut.

Accordingly, these Muslim sects received official state recognition for the first time with respect to the application of their religious laws, after centuries during which such laws had been applied informally. Members of these sects had previously chosen to submit to the arbitration of local religious scholars rather than resorting to the Ottoman Sharia courts, which recognised only the Sunni Hanafi school of jurisprudence.

The Lebanese Constitution, promulgated on 23 May 1926, established equality among sects regarding their autonomy in matters of personal status. Article 9 of the Constitution stipulates: "There shall be absolute freedom of conscience. The state, in rendering homage to the God Almighty shall respect all religions and creeds, and guarantee, under its protection the free exercise of all religious rites provided that public order is not disturbed. It shall also guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected."

At the parliamentary session of 20 May 1926, the Representative Council approved this article. During the same session, Chebel Dammous, the reporter of the committee that drafted the principles of the Constitution, addressed a key point regarding the nature of the Lebanese State. The minutes of the meeting record the following exchange:

Al-Khazen: "What does it mean that it shall also guarantee to its population the respect of personal status [...]?"

9 The Mandate Charter officially came into effect on 29 September 1923.

Dammous: "This is meant to support Article 6 of the French Mandate. Since sects have practiced their personal status systems for 600 years, the League of Nations and this Constitution have reflected this freedom."

Munther: "And what does it mean that 'the state, in rendering homage to God Almighty' [...]?"

Dammous: "A state is composed of multiple religions, all of which are minorities; it does not belong to any of them. It is, rather, non-religious and respects all equally."

Equality among sects entails that the state does not adopt an official doctrine and, consequently, neither seeks to promote one religion over others nor grants any religious group legal privileges that would render it superior to the rest.

Thus, the distinction is evident between the spirit of the Lebanese Constitution and that of the Syrian Constitution, issued by the High Commissioner on 14 May 1930, as Article 3 stipulates: "Syria is a representative republic, the religion of its president shall be the religion of Islam, and its capital shall be the city of Damascus."[10]

Lebanon's balanced sectarian composition required not only the recognition of this pluralism but also the guarantee of equality among all sects in their legal relationship with the state.

Edmond Rabbath explains this point, stating: "Regarding the State of Syria, which was established to include in its borders a Muslim (Sunni) majority, the state remained Muslim and practiced Islam [...]; it is noticed at present that the two conditions inherent to the state's religion –practice and spending– are fulfilled in the State of Syria."[11] Thus, Lebanon's Constitution, to this day, unlike those of other Arab countries, has remained devoid of any reference to the official religion of the state, the religion of its head, or a text that considers Islamic Sharia as a source of legislation, meaning that positive laws may not conflict with its provisions.

There is no doubt that Decision No. 60/L.R., issued on 13 March 1936 by the French High Commissioner, Damien de Martel, is one of the most important decisions enacted during the French Mandate. To this day, it continues to constitute the legal framework governing the relationship between the state and religious sects.

The main principles embodied in this decision can be summarised as follows:

- Religious sects designated by the decision as "historical sects" may not legally apply their personal status to their followers except after being recognised by the state through a legislative instrument, namely a law approved by the Chamber of Deputies (Parliament). The decision includes a list of recognised historical sects, which may be amended.[12]

10 *The Constitution of the State of Syria*, Official Bulletin of Administrative Affairs of the High Commissioner, no. 11 (15 June 1930).
11 Rabbath, *Guide to Lebanese Constitutional Law*, 251.
12 For example, pursuant to Decision No. 146 issued on 18 November 1938, this regulation was amended to include the Protestant sect among the officially recognised historic sects. As a result, it was granted the right to apply its personal status laws to individuals affiliated with it.

- Historical sects must submit to the governmental authority the rules governing their teachings, courts, and personal status legislation, specifying how their spiritual leaders are appointed and the applicable hierarchy. These rules shall be approved by law, "provided they do not include a text contrary to public security, morals, the constitutions of countries and confessions, or the provisions of the present decision" (Article 5).
- Article 11 enshrines freedom of belief, stating: "Anyone having attained the age of majority and possessing full mental faculties may leave or embrace any sect that has a recognised personal system[...]" The rights of sects do not preclude the rights of individuals, who enjoy complete freedom in their relationship with those confessions.
- In addition to the historical sects, the decision allows for the establishment of sects under ordinary law, whereby citizens may submit to the governmental authority a request outlining their religious teachings, provided that they are recognised by law.
- The personal status of sects established under ordinary law shall be subject to civil law.
- The decision recognises the existence of Lebanese nationals who do not belong to any sect, provided that their personal status is likewise subject to civil law.

Decision No. 60/L.R. thus enshrined state sovereignty in its relationship with the historical sects, which may exist only by law upon the state's recognition. Although sects are free to determine their personal status, it becomes effective only when ratified by the legislature, which ensures that their personal status does not contradict the constitution.

This decision also reflects a traditional liberal principle, according to which the individual takes precedence over the group to which they belong. Individuals are free to convert from one historical sect to another and have the right to establish a new sect under ordinary law, that is, to adopt a set of religious beliefs and moral principles not upheld by the established historical sects. They also have the right not to belong to any religious sect, without the implication of a lack of religious belief. Adherence to a particular religion is distinct from formal affiliation; an individual may privately embrace the tenets of a given religion while simultaneously choosing not to disclose this belief publicly or to structure their relationship with the state through official sectarian identification. From the perspective of the state, sectarian affiliation is purely administrative and does not pertain to an individual's personal beliefs, moral foundations, or the degree to which their actions align with religious teachings. This principle reflects one of the fundamental pillars of the civil state: its neutrality and its refusal to privilege any belief system over another.

B. Expansion of Religious Authorities' Powers after Independence

Following Lebanon's independence in 1943, political authorities expanded the powers of sectarian institutions, whether by permitting Christian sects to enact their own regulations or by removing the legislative character of the laws applicable to Muslims, thereby allowing them to amend such laws without parliamentary oversight. The legal mechanisms through which the state granted these expanded powers to religious sects are outlined below. This, however, does not imply that the state has relinquished its authority to reclaim or modify these powers.

Decision No. 60/L.R. required the historical Christian sects –its application to Islamic sects having been suspended– to submit the laws derived from their religious texts under which these sects were administered for government review as a condition for obtaining recognition. Article 5 of the decision provides: "The law governing the sects shall be ratified by a legislative decision that renders it enforceable and includes recognition of the sect in accordance with the provisions of Article 1 herein, provided that said law does not include a text contrary to public security, morals, state constitutions, sectarian rules, or the provisions of the present decision." Accordingly, sectarian personal status laws do not acquire legal force solely upon approval by religious authorities; rather, they require legislative ratification, meaning formal approval by Parliament through the enactment of a law.

From the foregoing, it is evident that the legal force of sectarian legislation derives from parliamentary approval, as Parliament formally retains exclusive legislative authority. The Lebanese Constitution established a unified and centralised legislative power and did not confer upon sectarian institutions the authority to legislate in matters of personal status. Unlike federal constitutions, which explicitly divide legislative competence between the federal authority and constituent units, the Lebanese Constitution does not recognise the existence of any entity empowered to legislate on behalf of a religious sect. Indeed, the constitution does not enumerate Lebanon's sects; rather, it leaves their recognition to the legislative authority. As previously noted, recognition of the historical sects was effected through Decision No. 60/L.R., issued by the High Commissioner, who, under the French Mandate, exercised legislative power. Any amendment to that decision may now be achieved only through legislation enacted by Parliament.

The exclusivity of legislative authority, as enshrined in Article 16[13] of the constitution, inevitably leads to consideration of Article 9, which provides that the state shall also "guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected." This juxtaposition raises a fundamental constitutional question: does a contradiction exist between Articles 16 and 9 of the Lebanese Constitution? More specifically, by recognising sectarian personal status systems, did the constitution establish auxiliary legislative authorities alongside Parliament?

Article 9 refers solely to the respect for religious personal status and does not designate any particular authority, nor does it establish sectarian institutions endowed with legislative powers. Legislative authority is vested exclusively in Parliament, as provided in Article 16 of the constitution. When the constitution affirms the state's obligation to respect sectarian personal status, it is, in effect, addressing Parliament and imposing a substantive limitation on the exercise of its legislative authority, ensuring that such authority does not result in the abolition of sectarian personal status systems. Article 9 thus concerns the substance rather than the form of legislation. It neither confers nor creates legislative powers for sectarian authorities; rather, it obliges Parliament to respect the legislative content governing sectarian personal status.

[13] "The legislative power shall be vested in a single body, the Chamber of Deputies."

Nevertheless, this constitutional exclusivity did not prevent Parliament, for reasons unrelated to legal principle, from expanding the scope of sectarian legislation and delegating aspects of its legislative authority to Christian and Jewish religious institutions. This delegation was effected through various mechanisms, which must first be examined with respect to Christian and Jewish sects, and subsequently with respect to Muslim sects.

1. Christian and Jewish Sects

The scope of the powers of these two religions was expanded pursuant to the law entitled "Determining the Powers of Doctrinal References for Christian and Israeli Sects," promulgated on 2 April 1951.

This law significantly expanded the jurisdiction of these sects by seeking to grant them powers as closely equivalent as possible to those exercised by Islamic courts. This intent was explicitly stated in the evaluation report issued by the Administration and Justice Committee, which noted: "This draft law grants the sectarian courts the same powers conferred by Legislative Decree No. 241 of 4 November 1942, as amended by the law of 4 December 1946, upon the Sunni and Jaafari Sharia courts with respect to matters such as marriage and its validity and annulment, filiation, legitimacy of children, adoption, alimony, guardianship of minors, and other issues related to personal status."

The Beirut Bar Association strongly objected to this law, calling for its repeal, the limitation of the powers of the various sectarian courts, and the expansion of the jurisdiction of civil courts. The Bar Association escalated its opposition by declaring an open strike, while Christian and Jewish religious authorities, in a meeting held in Bkerke on 24 January 1952, insisted on maintaining the law as a consecration of historical rights and long-standing traditions.

The Bar Association's strike lasted for nearly three months, while Parliament refused to amend its position. The opposition MP Abdullah Al-Hajj alluded to the political motivations that led President Bechara El-Khoury to endorse the law. During a parliamentary session devoted to discussing the ministerial statement of the new government on 19 February 1952, he stated: "The influence of clergymen on the state is well known. The lawyers' strike is directed against members of the clergy who benefited from corruption, exerted pressure on legal processes, and facilitated the passage of the Law of 2 April –only thirteen days before the elections of 15 April. This law is considered to contravene parliamentary procedures and is viewed as a product of clerical influence." This statement clearly refers to the general parliamentary elections held on 15 April 1951, reflecting the political authorities' objective of securing the support of religious authorities in advance of the electoral process.

The expansion of the powers of the spiritual courts was accompanied by a significant development introduced by the Law of 2 April 1951 concerning the relationship between religious sects and the state. Article 33 of the law provides: "The sects covered by this law must submit to the government their personal status law and the procedural law of their spiritual courts within a period of one year from the date of entry into force of the present law, to be recognised within six months, provided they are consistent with the general law and the fundamental laws of the state and of the sects. The implementation of the present law with respect to religious sects that fail to comply with the provisions of this Article shall be suspended".

In effect, the law delegated to non-Muslim sects the authority to establish their own legislation, thereby granting them a degree of legal autonomy approaching near-complete independence from the state.

However, unlike Decision No. 60/L.R., Article 33 does not explicitly specify the mechanism through which the government is to recognise the rules submitted by religious sects –namely, whether such recognition must take the form of a law enacted by Parliament or a decree or decision issued by the executive authority. In any event, and notwithstanding the broad powers granted by the Law of 1951 to Christian and Jewish sects – particularly the authority to legislate in matters of personal status– the application of these rules remains conditional upon government approval.

Indeed, the sects covered by the 1951 Law submitted their internal regulations to the government; however, these regulations were never formally recognised. In 1965, the Court of Cassation issued a landmark ruling (Civil Court of Cassation, Decision No. 6 dated 2 April 1965) establishing that personal status draft laws submitted within the prescribed timeframe –but not yet formally recognised as positive law– may be treated as internal regulations adhered to by the religious sects. Courts may apply these regulations insofar as they do not conflict with existing positive laws or the principles of public order, and provided that official authorities have not taken measures to revoke them.

The court's recognition that such regulations remain effective only in the absence of action by official authorities constitutes a clear affirmation that the State retains the power to repeal them.

The State Shura Council also addressed the issue, concluding that "the Lebanese legislative authority has authorised the recognised sects to legislate in certain areas of concern." However, it emphasised that sectarian regulations require legislative ratification in order to acquire legal effect. The council further stated that "the contested regulations were not approved by Parliament and are, therefore, still not valid" (Decision No. 426 dated 5 March 2014). It thus becomes evident that the laws currently applied by Christian and Jewish sects have yet to be officially recognised by the state and are, accordingly, either unapproved –as affirmed by the State Shura Council– or remain provisional, pending an official decision of recognition by the state.

2. Islamic Sects

Given the historical relationship between Islamic sects and the state, from the Umayyad period through to the fall of the Ottoman Empire, the Lebanese State was compelled to regulate these sects directly by enacting legislation that granted them independent institutions, courts, and various administrative bodies. This process occurred progressively across all Islamic sects, with the exception of the Ismaili sect, which, to this day, remains without a legal framework governing its internal affairs.

The first Islamic sect to be regulated was the Sunni sect, under Legislative Decree No. 18 of 13 January 1955, which is regarded as the foundational text establishing the administrative framework through which Sunnis manage their affairs. Article 1 of this decree states: "Sunni Muslims are entirely independent in their religious affairs and charitable endowments. They enact their legislation and rules in full respect of the noble Sharia, the laws, and regulations derived therefrom, through competent representatives in the manner outlined in the following articles."

However, the State Council revoked Legislative Decree No. 18 after the government included provisions concerning the organisation of religious edicts (*fatwas*) and endowments without being granted authority to legislate on these matters, thereby exceeding its jurisdiction. Consequently, the provisions and measures adopted in this manner were deemed null and void (Decision No. 522 dated 9 November 1955).

This decision provoked strong opposition from a significant number of Sunni deputies, as it annulled all measures previously enacted under the aforementioned legislative decree, which had been in effect since its issuance.

To address the issue, Parliament, at the request of the new Prime Minister Abdullah al-Yafi, enacted a single-article law on 28 May 1956, which states: "The Supreme Sharia Islamic Council may reconsider all provisions of the abovementioned legislative decree and introduce the amendments it deems necessary to fulfil its intended purpose. Its decisions in this respect, and concerning all matters related to *fatwas*, and organisational decrees pertaining to the religious community and the management of its endowments, shall be self-executing, provided that they do not conflict with the provisions of public order-related laws".

In other words, this law reinstated Legislative Decree No. 18, ratifying all measures previously adopted under it, and granted the authority responsible for administering Sunni affairs the power to amend the decree without referral to Parliament, thereby effectively granting it a legislative mandate.

An identical legal approach was applied to the Shiite sect. Article 31 of the law concerning the organisation of the Shiite sect, issued in 1967, provides: "With the exception of the first, second, third, fourth, and fifth articles of this law and with due regard to the provisions of Article twenty-six of the same, the Sharia and executive bodies shall collectively have the right to reconsider its provisions and amend what they deem necessary. Their decisions in this regard, as well as in all matters related to the religious community and the management of its endowments, shall be self-executing, provided they are approved by the General Assembly and do not conflict with the provisions of laws relating to public order." It should be noted that the legislative mandate granted here is not absolute, as was the case with the Sunnis, since it permits amendments only to certain articles of this law, rather than to all of them.

While Parliament decided to grant Sunni and Shiite religious authorities an explicit legislative mandate, it did not extend this power to the Druze. The laws, both old and new, concerning the organisation of the Druze sect lacked such a mandate. In contrast, Article 31 of the law concerning the organisation of the Alawis (1995) provided for such authorisation, albeit in an ambiguous and indirect manner:

"The Sharia and executive bodies shall collectively have the right to reconsider the provisions related to proper implementation for the purpose of achieving the main intended purpose of this law. Their decisions in this regard, as well as in all matters related to the Alawite community and the management of its endowments, shall be self-executing, provided they are approved by the General Assembly and do not conflict with the provisions of laws relating to public order."

Pursuant to this law, the Supreme Islamic Sharia Council amended Legislative Decree No. 18 on multiple occasions over the years, issuing decisions that were published in the Official Gazette. The Lebanese State was under no obligation to grant sectarian authorities this legislative mandate. Article 9 of the Lebanese Constitution of 1926, which guarantees that "the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected," had already been enacted decades earlier. This indicates that sectarian independence can exist without the conferral of a legislative mandate –a mandate that was only delegated three decades after the constitution recognised sectarian autonomy, and notably followed the abrogation of the legislative character of Legislative Decree No. 18.

II. Enshrining the Civil State's Legislative Supremacy

Understanding the legal nature of the mandate granted to various religious sects is crucial for defining the relationship between the state and these sects, as well as for preserving the state's civil character. The controversy surrounding the case of Sharia Judge Hammam al-Shaar serves as a particularly illustrative example, shedding light on the political and legal debates concerning the state's nature and its civil nature in Lebanon. As such, this issue warrants a comprehensive examination, which will be undertaken by reviewing the positions of the State Shura Council and then the Constitutional Council.

A. The State Shura Council's Affirmation of the State's Legislative Sovereignty

Judge al-Shaar filed a challenge with the State Shura Council, seeking the annulment of Decision No. 55 issued by the Supreme Islamic Sharia Council (Dar al-Fatwa) on 9 September 2023, pursuant to the legislative mandate granted by Parliament. This decision amended certain provisions of Legislative Decree No. 18, extending the term of the Grand Mufti of the Republic to 76 years of age, and the term of the local Mufti to 72 years of age.

The challenge argued that the decision was made in violation of procedural rules governing Dar al-Fatwa, as it was adopted during a session that lacked a quorum. Furthermore, it was not based on a valid and duly adopted proposal from the Legislative Committee, whose opinion is required for all amendments to Legislative Decree No. 18. In addition, the amendment was introduced outside the official agenda and was not communicated to Dar al-Fatwa members prior to the session, contrary to legal requirements. As a result, the challenge contended that the decision extending the term limits of both the Grand Mufti of the Republic and the regional Mufti should be annulled, particularly in the absence of any demonstrated public interest that would justify the amendment, beyond the benefits it conferred upon the individuals directly concerned.

In response, Dar al-Fatwa requested the dismissal of the challenge on grounds of invalidity, asserting that Decision No. 55 was issued under the authority of Law No. 28 of May 1956, which conferred legislative powers upon it. This law authorised Dar al-Fatwa to amend Legislative Decree No. 18 through decisions with autonomous legislative force, without the need for consultation with Parliament. Consequently, such decisions are regarded as legislative enactments and fall outside the jurisdiction of the State Shura Council, whose mandate is limited to administrative matters.

Dar al-Fatwa's responsive brief further emphasised the autonomy of the sects, asserting that it exercises full sovereignty over matters related to Decree No. 18. It contended that the Sunni sect enjoys complete freedom to manage its affairs "independently of the state," as it is a "separate political entity." Furthermore, the 1956 law "granted it legislative sovereignty and did not designate the competent authority to adjudicate any conflict that may arise between the decisions of the Supreme Islamic Sharia Council and the provisions of laws relating to public order."

On 14 March 2024, the Director-General of the Presidency of the Council of Ministers addressed a letter to the lawsuits body at the Ministry of Justice, reiterating the position that the 1956 Law granted the Sunni sect genuine legislative sovereignty. Accordingly, decisions issued by Dar al-Fatwa are classified as legislative acts and, therefore, are not subject to appeal before the administrative judiciary. This interpretation consequently necessitates the dismissal of the challenge against Decision No. 55. Similarly, the State Attorney, in a brief submitted to the State Shura Council on 14 May 2024, affirmed that Dar al-Fatwa's decisions were issued "based on a legislative mandate and authorisation," and, as such, do not possess the status of administrative decisions subject to appeal, but rather hold the force and status of law.

It is important to note that, on 12 December 2023, Sunni Sharia judges issued a statement opposing the legal challenge to the extension of the Grand Mufti of the Republic's age limit. The statement employed rhetoric marked by a high degree of intimidation. The judges asserted that it was impermissible to "undermine the prestige of His Eminence the Mufti" or to challenge the "absolute sovereignty" of the Supreme Islamic Sharia Council. They further warned that judicial acceptance of the challenge would "provoke sectarian discord, threaten civil peace, and destabilise the unity of the Sunni sect," which they described as "foundational to the Lebanese entity." Despite the inflammatory tone of this statement, both Dar al-Fatwa and the Director General of the Presidency of the Council of Ministers cited it in order to denounce the challenge.

Nonetheless, it is evident that all parties advocating the dismissal of the challenge on the grounds that Dar al-Fatwa's decisions are legislative in nature –an argument premised on the purported sovereignty of sects– were legally mistaken. This position is inconsistent with the jurisprudence of the State Shura Council, Lebanon's highest administrative court, which has equated the state's legal relationship with Islamic sects to its relationship with public institutions. The State Shura Council held that "the administrative and financial independence enjoyed by the Fatwa and Endowments Department does not deprive it of its official public administrative character. Rather, it constitutes a public institution –effectively an administration distinct from state interests– endowed with substantial administrative independence, legal personality, its own budget, independent property, and the capacity to litigate before the courts" (Decision No. 399 dated 18 June 1956).

Thus, Dar al-Fatwa and other Islamic sectarian authorities do not constitute constitutional entities or authorities wholly independent of the state. Rather, they function as public institutions endowed with legal personality and administrative autonomy, enabling them to manage their internal affairs. Consequently, the decisions they issue remain subject to the principle of legality and must be amenable to judicial review to ensure compliance with that principle.

This position was explicitly affirmed by the State Shura Council, which clarified that decisions issued by Dar al-Fatwa pursuant to the legislative mandate conferred by the 1956 Law are not immune from judicial oversight. The Council held that such decisions are subject to review "with respect to their issuance within the limits of the legislative mandate and their violation of norms of public order." Accordingly, the contested decision is subject to challenge and judicial review within those defined parameters (Decision No. 182 dated 13 December 2004). This ruling unequivocally undermines claims of legislative sovereignty attributed to Dar al-Fatwa.

The State Shura Council reaffirmed its jurisdiction to review decisions issued by Dar al-Fatwa, notably in the context of the dispute that arose between the former Grand Mufti of the Republic, Muhammad Rashid Qabbani, and Dar al-Fatwa. In its ruling, the State Shura Council described Dar al-Fatwa as an "independent religious body entrusted with the management and administration of a public service." It further held that, in order to fulfil its functions, Dar al-Fatwa enjoys certain prerogatives of public authority, including the power to adopt measures necessary to regulate the religious affairs of the Sunni community, supervise its charitable endowments, and safeguard its religious interests. Consequently, measures issued by Dar al-Fatwa in relation to these matters are "considered administrative acts and are subject to appeal for annulment" (Decision No. 544 dated 15 April 2014).

In this decision, the State Shura Council reiterated its settled jurisprudence that decisions issued by Dar al-Fatwa are subject to judicial oversight only insofar as they are examined for compliance with the limits of the legislative mandate and for violations of norms of public order. This position decisively refutes claims of "legislative sovereignty" or the characterisation of the Sharia Council as being "its own master".

How can the Supreme Islamic Sharia Council (Dar al-Fatwa) be deemed sovereign when the source of its authority lies in a mandate conferred by the Chamber of Deputies, and when the exercise of that mandate remains subject to oversight by the administrative judiciary? The latter is entrusted with ensuring that delegated powers are exercised by the competent authority in accordance with established legal procedures and principles. It therefore follows that any claim of absolute immunity for the decisions of Dar al-Fatwa lacks legal foundation and is incompatible with the structure of a state governed by a unified legal order, at the apex of which stands the constitution.

B. The Constitutional Council's Affirmation of State Sovereignty and Neutrality

Parties asserting the legislative nature of Decision No. 55 have sought to rely on decisions of the Constitutional Council affirming the autonomy of religious sects in order to argue that the administrative judiciary lacks jurisdiction to hear the challenge. A closer examination of these rulings, however, reveals a more nuanced legal position. The Constitutional Council has explicitly held that, while Article 9 of the constitution grants religious sects autonomy, the state maintains sovereign authority to legislate in accordance with constitutional provisions. The Council has further emphasised that the state's legislative authority constitutes a sovereign power derived from the people and exercised through constitutionally designated institutions. Moreover, legislative power is inherent and absolute, and the constitution confines its exercise exclusively to the Chamber of Deputies.[14]

[14] Lebanese Constitutional Council, Decision No. 2 of 8 June 2000.

In line with this reasoning, the Constitutional Council recognised that the Chamber of Deputies possesses comprehensive legislative authority, including the power to enact and amend laws governing the affairs of religious sects, provided that such legislation does not infringe upon their independence in managing their religious affairs.

In the same decision, the Constitutional Council drew a fundamental and highly significant distinction between the administrative affairs of sects and their religious affairs, which differ in nature. It held that administrative affairs constitute a regulatory matter subject to the discretion of the Chamber of Deputies, "which has the original and absolute authority to legislate in all matters relating to the organisation of the autonomy of sects, in application of Articles 9 and 10 of the Constitution, provided that the exercise of religious freedoms and rituals is guaranteed."

In the aforementioned decision, the Constitutional Council observed that the challenge at issue was characterised by "ambiguity regarding the scope of the sect's autonomy,"[15] which resulted in an unjustified limitation on the legislative authority's right to intervene. The matters under review pertained exclusively to the administrative affairs of the Alawite sect –specifically, the composition of the General Assembly, the Sharia Council, the Executive Authority, and the procedures for electing the President and Vice-President. These issues were clearly distinct from religious affairs and, as such, fell squarely within the regulatory jurisdiction of the Chamber of Deputies, in accordance with the exclusive legislative powers conferred upon it by the constitution.

By analogy, Decision No. 55, in extending the mandates of both the Grand Mufti of the Republic and the local Muftis, concerned a purely administrative matter that does not fall within the domain of protected religious affairs. Consequently, the Chamber of Deputies retains the authority to regulate such matters directly or to delegate regulatory powers to sectarian institutions. Any such delegation, however, remains revocable, particularly where it pertains to the administrative affairs of a sect.

Given that the legislative mandate over the administrative affairs of religious sects has historically varied in both scope and extent from one sect to another, it is evident that such mandates were not grounded in any constitutional requirement. Had the constitution conferred such authority, uniform legislative powers would necessarily have been granted to all sects. Instead, the divergences in legal texts across different sects and periods reflect the influence of specific political contexts and contingencies. This is particularly evident in the case of the 1956 law concerning the Sunni sect, which was enacted in response to particular political developments rather than as part of a constitutionally enshrined framework. Accordingly, it cannot serve as a legitimate basis for asserting absolute or comprehensive "legislative sovereignty" for religious communities –an assertion fundamentally at odds with the principles of a modern constitutional state, in which sovereignty resides exclusively with the people.

In its 2000 decision, the Constitutional Council affirmed the state's right, exercised through the Chamber of Deputies, to regulate the historical sects "without this exceeding the threshold of infringing on the independence of the sects in managing their own affairs or leading to their replacement in managing these affairs"

[15] Ibid.

(Decision No. 2/2000 dated 8 June 2000). It follows that the legislative authority possesses an inherent right to regulate areas of personal status that fall outside the domain of religious affairs. This includes the civil personal status of Lebanese citizens who are not affiliated with any particular sect, as recognised in Decision No. 60/L.R., as well as Lebanese who voluntarily choose to submit to civil legislation. To prevent the state from legislating in this area would undermine its sovereignty, which derives from the people.

The source of sovereignty is purely temporal, and the state cannot therefore deny its inherently civil nature. It is not permissible for the state to elevate exceptional sectarian legislation into a principle that precedes it existentially, reducing its role merely to the protection of such legislation.

Furthermore, the Constitutional Council has held that Article 9 of the Constitution, which recognises the autonomy of sects, implies a neutral position of the state with respect to religions (Decision No. 1/1999 dated 23 November 1999). The sectarian pluralism that characterises Lebanese society necessitates state neutrality. This neutrality, however, should not be understood in the French model of *laïcité*, which prescribes the absolute separation of state and religion, but rather as a flexible form of separation that permits state intervention in the affairs of sects to guarantee religious freedoms and ensure their peaceful exercise in the public sphere.

This principle is clearly affirmed in the jurisprudence of the General Assembly of the Court of Cassation, which held that "jurisdiction over disputes between individuals is, in principle, vested in the civil judiciary, and that the authority granted to the religious judiciary under Law No. 2 of April 1952 constitutes a waiver by the state of certain aspects of its jurisdiction. Such a waiver must be interpreted strictly and narrowly" (Decision No. 8/1998 dated 23 January 1998).

This position is further reinforced by Article 95 of the Code of Civil Procedure, which grants the General Assembly of the Court of Cassation authority to adjudicate disputes concerning jurisdiction between civil and religious courts of different sects, as well as between religious courts themselves. Moreover, the Court of Cassation is empowered to examine challenges to final decisions rendered by religious courts where such decisions are alleged to contravene essential provisions relating to public order.

Disputes over jurisdiction between religious courts are resolved by the Court of Cassation, that is, by a civil court applying Lebanese positive law, which reaffirms the principle of equality among all sects. The Court of Cassation also retains the authority to overturn any ruling deemed contrary to the general order of the Lebanese state, demonstrating that the supremacy of the state is fully compatible with the recognition of sects. This sovereignty, rather, reflects historical circumstances that have rendered Lebanese society multi-sectarian in a balanced manner. These circumstances have had significant repercussions on the political system, which has found no alternative to managing this pluralism other than through the framework of a civil state.

CONCLUSION

Based on the foregoing, and drawing on the analysis presented in this study, the nature of the civil state in Lebanon can be affirmed in the following points:

- Sovereignty in Lebanon resides with the Lebanese people, and the state's legislation is positive in origin. The Parliament does not require the approval of religious authorities to exercise its legislative powers.
- The state's neutrality is reflected in its refusal to adopt any official religion. Recognition of religious sects constitutes a legal mechanism aimed at regulating the administrative relationship between citizens and the state, while simultaneously safeguarding individuals' religious freedom. This includes the right to convert, establish a sect representing their view of existence and life, or to remain unaffiliated with any sect or belief.
- The state retains the authority to regulate the administrative affairs of religious sects and to supervise their institutions, in accordance with the principle of the supremacy of civil authority.

In summary, the Lebanese state possesses a civil character in both its nature and legal framework. It upholds the principle of freedom of belief and recognises the personal status laws of religious sects, insofar as these do not conflict with the Constitution or public order. Nevertheless, the principal impediment to the state's advancement of individual freedoms –such as the adoption of an optional civil personal status law or the reform of sectarian personal status laws to promote gender equality– remains political in nature, closely linked to the interests and objectives of the ruling regime in Lebanon.

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The Constitution Between the "Civil" and the State: A Study of the Egyptian Case

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ABSTRACT

The term "civil state" is relatively recent and has no origin in classical political theory. It emerged in political debates primarily as a counter to the idea of a religious state. As such, it is best understood as a product of contested circumstances and a hybrid construct of multiple notions, rather than as an inherently established concept.

This paper aims to illustrate the concept of the "civil" in relation to the state. It argues that this concept should not be examined solely in opposition to the religious or military domains, but also through the delineation of its limits. These limits distinguish it, on the one hand, from forms of social barbarism or societal incivility, and, on the other, from acts of sovereignty and states of exception in which ruling powers constrain, erode, or suspend the civil sphere. The analysis then turns to the constitution and its relationship to religion in Egypt, beginning with the 1923 Constitution. It examines the historical and intellectual contexts that led to the incorporation of Islam or sharia as a constitutional reference and sheds light on both the legal doctrine and the cultural milieu that shaped the first half of the twentieth century. The paper subsequently considers the post-1952 revolutionary period and successive constitutional frameworks, analysing initiatives to codify sharia from the era of President Gamal Abdel Nasser through the presidencies of Anwar Sadat and Hosni Mubarak. In so doing, it traces the ebb and flow of these efforts in relation to the dynamics of the public sphere and its debates. Finally, the paper examines the post–Arab Spring landscape and the perceptions of the civil and the constitution within a context of political instability. It analyses how the Constitutions of 2012 and 2014, as well as the 2019 Amendments, articulated the relationship between religion and the state, and between the military and the civil sphere —particularly amid the decline of public debate on democracy and identity compared with the cultural dynamism that characterised twentieth-century Egypt. The paper concludes that both official and intellectual Islamic discourses have largely incorporated the concept of the civil into their frameworks, whereas other currents have made limited contributions to its development. It further finds that Islamic political movements have remained comparatively weaker, both in constitutional debates and in sustaining efforts to codify sharia, which have extended for over a century.

Keywords: *Concept of the "civil," Egyptian Constitution, codification of sharia, military.*

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Introduction

The concept of the "civil state" has been widely used to describe a desired democratic system of governance with a secular character —one that respects rights and freedoms, is subject to the constitution, features an active civil society, and upholds human rights. Within this framework, religion is relegated to the private sphere, while freedom of belief and religious practice are guaranteed. However, the concept of the civil state does not appear in classical political theory or thought. Rather, it is a notion that was formulated within the Arab world to counter both the idea of an "Islamic state" on the one hand and military regimes on the other. It emerged from political and ideological debates over identity in the 1970s, and its use expanded during the democratic transitions of the 1980s. Over time, it became normalised in Arab political discourse as though it were a formal classificatory term for regimes —though, in fact, it is not. This paper contends that the concept is inherently problematic, insofar as the state cannot be genuinely civil in its structure, organisation, administration, legitimacy, or sovereignty.

Accordingly, this paper begins with a critical examination of the concept of the civil state and the debates surrounding it. It then proceeds to explore the nature of the civil and clarify the fundamental ideas underlying the "state." This approach does not prioritise theory over reality; rather, it lays the groundwork for analysing the trajectory of Egypt's constitutional evolution, highlighting the persistent tension between the civil and political spheres and sovereign authority. It also traces recurring patterns in this complex relationship as reflected in successive constitutional texts.

I. The Civil, the State, and the Space Between: Conceptual Challenges

Researchers note that the concept of the civil is intertwined with a range of other concepts, leading to overlapping meanings. This may be traced to the emphasis on the social dimension in studies of societal aspects of the civil, the legal dimension in discussions of state-related civil matters, or the association of the civil with secularism in analyses of contemporary ideologies and discourses. In such a context, where meanings can become blurred, it is necessary to map the concept of the civil, its dimensions, and its relation to closely related notions that share the same linguistic root —such as city, civil sphere, civic virtues, civil society, and so forth. For instance, in theories of civilisation, debates emerge around the "civilising mission," followed by discussions of the civil as the capacity of individuals and groups to engage in the public sphere in sociology, and the study of civic education and its connection to fostering citizenship awareness in political science. A notable ambiguity arises from the differing historical evolution of the concept across languages, which Arab scholars writing on the topic must take into account.[1]

[1] Mahmoud Mohsen Ahmed Ali, *Mafhum al-Madaniyya fi al-Khitabayn al-Gharbi wal-Islami: Dirasa fi Nusus Mukhtara* [The Concept of the Civil in Western and Islamic Discourses: A Study of Selected Texts], unpublished master's thesis, Faculty of Economics and Political Science, Cairo University, 2015, 63–67;
Hiba Raouf Ezzat, *Al-Muwatana: Dirasa li-Tatawwur al-Mafhum fi al-Fikr al-Librali al-Anglo-Amriki* [Citizenship: A Study of the Concept's Development in Anglo-American Liberal Thought], unpublished PhD diss., Faculty of Economics and Political Science, Cairo University, 2009.

It can be argued that the lack of full consensus on what constitutes the civil and its position in relation to other 'states' or domains —such as the religious or military— has sparked a persistent debate over whether the civil should be understood as a normative value (within a particular framework) or as a legal and institutional one. In constructing the concept from a political theory perspective, we propose a more nuanced classification for testing and interpreting political events and contexts, allowing for insights that may inform future developments.

Perhaps the difficulty in addressing new developments and concepts intersecting with the civil lies in the fact that, for decades, the "nation-state" remained the primary unit of analysis in political science, and consequently in studies of the civil (and citizenship). The nation-state served as the central focus of political thought and theorisation, providing the foundation for conceptions of civil society and citizenship, and their relationship to the state (as shaped by the constitution) at its various levels. Individuals and society were rarely conceptualised or methodologically assessed independently of the state; rather, the state underpinned all studies during that stage, even if it was sometimes not explicitly mentioned. [2]

The 1960s saw the emergence of the concept of civic culture in development and political culture studies,[3] followed by the rise of "civil society" in the context of democratic transition studies, which dominated scholarly attention from the mid-1980s through the 1990s. During that same period, the notion of a general philosophy of society (as opposed to "public order" in constitutional law) emerged, emphasising the connection between governing values and forms of the civil (particularly liberal ones), while political theory increasingly focused on examining civic virtues. [4]

However, this did not signify a shift in political theory from focusing on the state to focusing on society, or from sovereignty to the civil. The concept of civil society continued to be studied primarily in relation to the state and the mechanisms of negotiation between them, as well as within the frameworks of political legitimacy under what was termed democratic transition in the Middle East and Eastern Europe. This represented an expansion of perspectives rather than a methodological change. [5]

In the 1990s, political theory returned its focus to the concept of the state.[6] Yet, the latter half of the decade saw a wave of innovation that challenged old analytical frameworks, which no longer adequately explained reality. Some scholars drew on the concept of the civil to rethink and construct a new theory of political action —one that relies less on modernity, is more receptive to broader social theory, and is more accepting of diversity, both in the types of political groups and the values they reflect, as well as in the methods used to study them. [7]

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2 John Peter Nettl, "The State as a Conceptual Variable," *World Politics* 20, no. 4 (July 1968): 559–592.

3 Gabriel A. Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton, NJ: Princeton University Press, 1963).

4 Richard Dagger, *Civic Virtues: Rights, Citizenship, and Republican Liberalism* (Oxford: Oxford University Press, 1997); Michael Sandel, *Public Philosophy: Essays on Morality and Politics* (Cambridge, MA: Harvard University Press, 2005).

5 John Keane, *Despotism & Democracy: The Origins & Development to the Distinction between Civil Society & the State 1750-1850* (London: Verso Publications, 1988), 35–63; Gabriel A. Almond, "The Return to the State," *The American Political Science Review* 82, no. 3 (September 1988): 853–899; Theda Skocpol, Peter B. Evans, and Dietrich Rueschemeyer, eds., *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985).

6 Almond, "The Return to the State," 853–899; Skocpol, Evans, and Rueschemeyer, *Bringing the State Back In*, 85.

7 Darrow Schechter, *Beyond Hegemony: Towards a New Philosophy of Political Legitimacy* (Manchester: Manchester University Press, 2005), 44–83; Keith Topper, *The Disorder of Political Inquiry* (Cambridge, MA: Harvard University Press, 2005), 67–83, 181–216.

This was followed by an abundance of studies on the expansion of political violence as the antithesis of the civil. These studies examined the role of civil society components in generating violence —for example, research on terrorism— and also analysed the increasing prevalence of urban violence arising from marginalisation and alienation.[8] The concept of the civil, therefore, has been approached in multiple ways. Like all social and political concepts, it is essentially contested, as noted by Gallie in the early 1950s. Such concepts are difficult to define and inherently controversial for several reasons. They embody historical achievements and incorporate values and ideals, such as the social contract and civic citizenship; they further possess a highly complex structure that can be organised in various ways, giving rise to diverse definitions and applications. Their development is inherently unpredictable, projecting an open horizon for the future, and they are closely tied to real-world contexts, with practical applications that may be either aggressive or defensive. Although these concepts are rooted in a shared historical origin, different groups often seek to demonstrate their superior fidelity to a particular origin. [9]

In his analysis of political concepts as open concepts, Weitz pointed out that definitions of concepts cannot be neutral. Rather, in many political concepts, including the civil, the definition serves a persuasive function, expresses real interests, and directs political action in a particular "direction." Concepts are tools for the clash and interaction of visions and interests through political language. The meanings of political concepts are also emotional, carrying negative or positive connotations, and thus cannot be fully controlled or subjected to normativity; their definitions are largely shaped by their practical use. [10]

Thus, it is difficult to separate social and political concepts from ideology, as they are not merely political ideas, but fundamentally conceptual frameworks closely linked to values. Freeden sought to deepen the discussion of the problem of values in political theory by connecting the study of implicit values within concepts with the study of ideology, observing its transformations, and examining the impact of ideological conflict on the evolution and development of concepts. This is because ideological conceptual frameworks are inherently in conflict and clash in reality, thereby dialectically altering the meaning of a concept both in theory and in practice.[11] In the case of constitutional transformations specifically, the work of two authors —among the most prominent in conceptual analysis within political theory, namely Terence Ball and Guy Pocock—represents a central reference for understanding these transformations.[12] We will follow this approach in examining the concept of civil society in light of the role of religion in Egyptian constitutions over the past century, observing the transformations of the civil resulting from evolving political and cultural debates.

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8 Célestin Monga, *Uncivil Societies: A Theory of Sociopolitical Change*, World Bank Policy Research Working Paper No. 4942 (1 May 2009), 32, posted 20 April 2016, World Bank; Nicholas Fyfe, Jon Bannister, and Ade Kearns, "(In)civility and the City," *Urban Studies* 43, no. 5/6 (May 2006): 853–861.

9 Walter Bryce Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society*, no. 56 (1955–56): 169, 171–172, 180.

10 Morris Weitz, *The Opening Mind: A Philosophical Study of Humanistic Concepts* (Chicago: University of Chicago Press, 1977).

11 Michael Freeden, *Ideologies and Political Theory: A Conceptual Approach* (Oxford: Clarendon Press, 1998), 1–7, 17–18, 117–136.

12 Terence Ball and John G. A. Pocock, *Conceptual Change and the Constitutions* (Lawrence, KS: University Press of Kansas, 1988).

Evidently, debates on the civil cannot be separated from the broader civilisational domain. The term appears across languages such as English and French, yet its usage—rooted in Latin— remains closely tied to the idea of citizenship and the system of rights and duties. Whether derived from *civilis* (civil) or *civicus* (civic), its meaning is shaped by context: it may refer to legal frameworks, as in civil law; to political contexts, as in the civil or public sphere and civil rights; or to contentious contexts, such as civil disobedience and even civil war.

A comprehensive understanding of the meanings of "civil" concepts also requires engagement with the concept of civility. The term "civil," whether referring to the civil sphere, to rights and duties, or to forms of civic engagement and responsibility, presupposes an underlying system of regulating values. Thus, civility extends beyond mere norms of polite interpersonal conduct to encompass broader civic values and the institutional and social frameworks that sustain and reinforce them. In this sense, it may also be traced in Arabic to the notion of *umran* (urbanism) in the Khaldunian sense, capturing the organised and value-laden nature of social life.

Britta Baumgarten and her colleagues suggest that the civil, understood in this way, has four analytic dimensions: human rights, political rights, social rights, and basic norms of everyday interaction. She further emphasises that the civil is a normative concept shaped by historical contexts and therefore requires a flexible understanding. From this perspective, non-Western societies can adapt and expand the Western conception of the civil, contributing to a broader discourse.[13]

While this perspective is theoretically significant in tracing the development of the concept in the West, it tends to position other societies as mere recipients that add local variations, rather than fostering an expanded, dialogical Western perspective —grounded in humanism— that engages with and learns from diverse civilisational experiences as part of a shared human history.

Dieter Rucht, who co-authored the earlier work with Baumgarten, argues in his study of the civil and civil society in the twentieth century that activating the value-based dimensions of civic virtues in public behaviour is essential to bridging the gap between the two. These virtues include commitment, self-restraint, tolerance, justice, and respect for others.[14] Similarly, Edward Shils defines the civil as the conduct that supports the common good despite differences in interests and orientations.[15] This perspective is echoed by Teresa Bejan in her analysis of political polarisation in the United States, where she seeks a minimal consensus to manage the civil.[16] Further elaboration on these conceptual dimensions is provided in the following section.

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13 On the development of the concept of civility, its history, and the importance of including it in debates concerning everything that is urban and civic, see: Britta Baumgarten et al., "Civility: Introductory Notes on the History and Systematic Analysis of a Concept," *European Review of History* 18, no. 3 (2001): 289–312.

14 Dieter Rucht, "Civil Society and Civility in Twentieth-Century Theorizing," *European Review of History* 18, no. 3 (2001): 387–407.

15 Edward Shils, "Observations on Some Tribulations of Civility," *Government and Opposition* 15, no. 3/4 (Summer–Autumn 1980): 528–545.

16 Teresa M. Bejan, *Mere Civility: Disagreement and the Limits of Toleration* (New Jersey: Harvard University Press, 2017).

Turning to the concept in Arabic, classical lexicons such as *al-Muajam al-Waseet* define *madina* (city) as a settled and organised urban centre, with its plural forms *mada'in* and *mudun*. The terms *tamaddana* and *tamdin* refer to adopting the way of life of urban populations and embracing the conditions of civilisation, while *madaniyya* denotes the civil and the expansion of *'umran* (urbanism). Historically, the term *al-Madina* came to be predominantly associated with the city of the Prophet.[17]

Scholars differ, however, on the linguistic root of *madaniyya*. Some trace it to *madana*, meaning to reside or settle in a place, while others link it to *dana*, the root of *din*, connoting obedience and submission. The term *madina* has also been used to denote a fortified settlement.[18]

Regardless of its etymology, the early use of the term in the Islamic context was closely associated with the formation of the state and intertwined with the concept of *din*, encompassing meanings such as obedience, authority, governance, and political order.

The Prophet Mohammed referred to Yathrib as *al-Madina* and reportedly avoided using its former name, marking a significant departure from the place's traditional designation. From the moment of the Hijra, the City (*al-Madina*) came to signify more than a geographic location: it embodied a new social and political order grounded in the legitimacy of prophethood and a form of social contract that accommodated tribal structures and religious diversity. This transformation represented a qualitative shift in belief, social organisation, governance, and politics. It also introduced new forms of social relations—most notably brotherhood (*mu'akhah*) —distinguishing it from the prevailing patterns of nomadic and rural settlement of the time.[19]

In the writings of Ibn Khaldun, the concept of *hadara* (often translated as civilisation) refers specifically to the stage of urbanisation and the emergence of cities within the lifecycle of the state. His usage does not correspond to the modern notion of "civilisation" as a comprehensive linguistic and Quranic construct, but rather to the derivative meaning from *hadara*, referring to the way of life characteristic of urban populations and settled civilisation. In his view, this stage represents the peak of political power and authority, from which a phase of luxury emerges, followed ultimately by decline.[20]

Earlier, al-Farabi, in *The Opinions of the Inhabitants of the Virtuous City*, employed the term "city" in a manner analogous to modern notions of the civil. He used it to describe the public sphere in urban settings, the presence —or absence— of civic virtues, and the ethical foundations necessary for Islamic urban life.

17 Kitab al-Muajam al-Waseet [The Concise Dictionary].

18 Mohammed ibn Mukarram ibn Ali Abu al-Fadl Jamal al-Din Ibn Manzur, *Lisan al-Arab* [The Language of the Arabs], vol. 14 (Beirut: Dar Sader, 2003).

19 Nasr Arif, *Al-Hadara – Al-Thaqafa – Al-Madaniyya: Dirasa li-Sirat al-Mustalah wa Dalalat al-Mafhum* [Civilization–Culture–Civility: A Study of the Term's History and the Concept's Significance], 2nd ed. (Amman: The International Institute of Islamic Thought, 1994), 51–55.

20 Abd al-Rahman Ibn Khaldun, *The Muqaddimah*. Edited by Ali Abd al-Wahed Wafi. Cairo: Dar Nahdat Misr, 1981. 578-585.

These values, in his view, are essential for achieving human happiness as the ultimate aim of social organization —both in this world and in the hereafter— and are guided by wisdom derived first from prophecy and then from philosophy.[21]

Across the works of al-Farabi, al-Ghazali, and Ibn Khaldun, among other scholars, there is a consistent emphasis on politics as a "civil science." In their understanding, politics encompassed governance, economic management, and the organisation of human society in both its social and urban dimensions. Ibn Khaldun, in particular, built on the ideas of his predecessors by developing a comprehensive conception of *umran*, integrating historical, philosophical, economic, social, and political dimensions.[22]

In the nineteenth and early twentieth centuries, the concept of the civil was often used interchangeably with "civilisation." From the writings of Rifaa al-Tahtawi to the debates between Ernest Renan and Jamal al-Din al-Afghani, and in the works of Mohammed Abduh, Qasim Amin, and Mohammed Farid Wajdi, the concept emerged as part of a broader intellectual effort to defend Islam against claims of Western superiority and to demonstrate the compatibility of religion and science.[23]

In the twentieth century, the term was also employed in the writings of Abdel Razzaq al-Sanhuri. His private notes, drafted during his doctoral studies in France and later examined by Mohammed Imara, reveal his awareness that constitutional and legal frameworks are inseparable from their civilisational context. For al-Sanhuri, the civil was grounded in the Islamic bond founded upon sharia. He argued that, within the modern state, sharia should be incorporated into the processes of constitutional and legal formulation. At the same time, he maintained that the civil embraces cultural diversity and the contributions of non-Muslims. In this sense, the Islamic civilisational framework he envisioned did not preclude *ijtihad* (independent reasoning): the caliphate system could evolve into a form akin to a league of Eastern nations, capable of adapting to the transformations of the nation-state, while sharia could inform modern constitutional and legal systems.

Al-Sanhuri further held that systems of governance should be grounded in the ruling logic of Islam, namely *shura* (consultation), which led him to favour a parliamentary model within the civil framework.[24] This perspective links the civil to a broader matrix of social, cultural, and ethical values, subsequently institutionalised through constitutional structures. This same line of thought was further elaborated by his son-in-law Tawfiq al-Shawi, particularly in his work *The Jurisprudence of Shura and Consultation (Fiqh al-Shura wal-Istishara)*, where *shura* is articulated as both a sharia obligation and a defining feature of the civil sphere in its ethical and political dimensions.[25]

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21 Abu Nasr Al-Farabi, *Ara' Ahl al-Madina al-Fadila wa Mudaddatuha* [The Opinions of the Inhabitants of the Virtuous City], Beirut: Dar al-Hilal Library, 1995.

22 Abd al-Rahman Ibn Khaldun, *Al-Muqaddimah*, edited by Abd al-Salam al-Shaddadi (Casablanca: Khizanat Ibn Khaldun–Bayt al-Funun wa al-Ulum wa al-Adab, 2005).

23 See: Ali, *The Concept of Civility in Western and Islamic Discourses*, 106–130.

24 For a detailed discussion of al-Sanhuri's views on Islamic civility, see: Mohammed Imarah, *D. Abd al-Razzaq al-Sanhuri: Islamiyyat al-Dawla wa al-Madaniyya wa al-Qanun* [Dr. Abd al-Razzaq al-Sanhuri: The Islamic Nature of the State, Civility, and Law] (Cairo: Dar al-Salam, 2009).

25 Tawfiq al-Shawi, *Fiqh al-Shura wa al-Istishara* [The Jurisprudence of Shura and Consultation] (Mansoura: Dar al-Wafa, 1992).

With the beginning of the new millennium, numerous writings emerged that elaborated on linking the Islamic concept of the civil to contemporary meanings from a *maqasid*-based perspective. This took place amid the momentum of the Arab Spring, which we will address—along with its contexts—in the third section below. Nevertheless, the concept of the civil—whether in its Islamic or Western formulations—continues to face two principal challenges in practice.

A. The First Challenge: Barbarism

Since the time of ancient Greek philosophy, what lay outside the city-state was often regarded as "barbaric," with the term even used to describe enemies, even if they had different forms of the civil. Later on, social contract theorists emphasised the distinction between the state of nature and the civil condition. The state of nature was associated with disorder and barbarism, while the political community emerged through contract and covenant, giving rise to the civil condition. The transition from the state of nature to the civil condition gave rise, in the thought of John Locke, to the notion of civil liberties; in Thomas Hobbes, to the idea of a sovereign authority guaranteeing the social contract—even under absolutist rule; and in Jean-Jacques Rousseau, to the concept of the general will.

For Rousseau in particular, the civil condition (rather than the "civil state") marks the transition of the individual from natural freedom, driven by instinct, to civil freedom grounded in adherence to law and the social contract that establishes political sovereignty. This entails submission to the general will and respect for the limits of private property.[26]

Ibn Khaldun noted that human history cycles through states of "barbarism, urbanisation, group solidarities, and various forms of domination of humans over one another," with the civil emerging as a defining feature of settled society.[27] This observation is significant because the linear, progressive assumptions of modernity often overlook the possibility of regression into barbarism. Traditionally, understandings of "barbarism" have been confined to criminology or war studies, while theorising about civil war or the erosion of the civil within societies has remained marginal. Political and social studies have tended to focus more on how the civil is rebuilt after political conflict than on how it collapses and gives rise to such conflict.[28] Giorgio Agamben highlighted this dynamic in his work *Civil War as a Political Paradigm*.[29] More recent works have sought to examine in depth how the civil erodes within a society and the factors driving internal collapse.[30]

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26 Jean-Jacques Rousseau, *The Social Contract* (New York: Carlton House, n.d.), bk. 1, chaps. 8–9, 14–17.

27 Ibn Khaldun, *The Muqaddimah*, 328.

28 See, for example, Mary Kaldor's attempt to define civicness along the axes of public order and public rights within the framework of citizenship –such as the right to public services (i.e., the policy dimension) – and the dimension of civility in practice, which lies at the heart of fostering participation and engagement as part of the citizen's responsibilities. Kaldor examines how these two aspects of civility –at the level of the political system and at the level of the citizen– relate to policies that undermine civility, such as sectarianism and political corruption.

29 Giorgio Agamben, *The Civil War as a Political Paradigm*, translated into Arabic by Ubaydah Amer (Cairo: Madarat for Research and Publishing, 2015).

30 See for example: Barbara F. Walter, *How Civil Wars Start: and How to Stop Them* (New York: Crown Publications, 2022), 194–226.

The rise of populism in any society can foster cohesion and unity around a shared identity, yet it can also accelerate the erosion of the civil, potentially culminating in civil strife.[31] A notable challenge in periods of political transition is distinguishing between genuinely popular movements and populist strategies: whether in mobilising crowds during political events, in opposition tactics, or in social movements seeking to expand democratic participation for ideological —religious or secular— ends. Degrees of populism are also observable in partisan discourse, where populist appeals are strategically exploited to advance political agendas, either to garner electoral support or to exert pressure in negotiations between political forces, with potential implications for the erosion or reinforcement of the civil.

B. The Second Challenge: Sovereignty and the State of Exception

As noted earlier, discussing the civil state should not be limited to contrasting it with religious or military forms of government. Rather, the discussion must begin by examining the state itself to understand the limits of its role in the civil.

Historical sociology helps us understand the specific nature of the state's initially unlimited authority, both in its origins and its subsequent development. Thomas Hobbes, in *Leviathan*, conceptualised the emergence of the contractual state with absolute power over territory and citizens. This idea is rendered more starkly and violently in the work of Charles Tilly, who described the moment of state formation as rooted in war and organised crime, only later acquiring legitimacy.[32] Carl Schmitt further developed the concept of the state of exception, in which the state has the authority to suspend constitutional norms, impose emergency measures for reasons of national security at its discretion, and even dissolve parliament, with profound implications for the civil sphere.[33]

In turn, Michael Mann discusses the concept of the degree of state autonomy, examining its origins, mechanisms, and implications through a critical analysis of contemporary theories of the state, particularly those he considers reductionist —whether emphasising total sovereignty or the imposition of a state of exception, as proposed by Carl Schmitt.

Mann highlights both the foundational dimensions and operational dynamics of state power, with particular attention to its independence from the civil. His analysis casts the idea of the civil state in a critical light, showing that, according to his view, the state possesses a distinctive autonomous authority derived from its capacity to centralise sovereignty over territory, monopolise the creation of formal rules, and confer legitimacy and status that enable elites to exercise decision-making power. In this sovereign context, Mann distinguishes between coercive power —the ability to enforce measures unilaterally— and structural power—the capacity to implement decisions effectively. Structural power allows the state to penetrate the civil and carry out its decisions efficiently,

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31 See for further detail: Azmi Beshara, *Fi al-Ijaba 'an Su'al: Ma al-Sha'bawiyya* [What is Populism] (Doha: Arab Center for Research and Policy Studies, 2019).

32 Charles Tilly, "War Making and State Making as Organised Crime," in *Bringing the State Back In*, edited by Theda Skocpol, Peter B. Evans, and Dietrich Rueschemeyer (Cambridge: Cambridge University Press, 1985), 169–187.

33 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, translated by George Schwab (Chicago: University of Chicago Press, 1985), 5–15; Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, translated and annotated by G. L. Ulmen (New York: Telos Press Publishing, 2006).

and it has expanded significantly in modern societies, enhancing the logistical control of the state. Historical examples, he argues, reveal differences in despotic authority across societies, with some states exercising near-absolute autocratic power. [34]

Along these lines, it can be argued that the civil encompasses a space of various intersections, including all key players—state authority among them. As noted earlier, the term "civil state," despite its prevalence in political discourse, is not precise. A more accurate understanding recognises that the state acts within the civil, with its primary role being to preserve the civil —its values, networks, and functions— a topic we will address shortly.

The civil can thus be conceptualised as a complex semantic map composed of multiple elements: the general will, public order, the public/civil sphere, the common good and public opinion, civic virtues and civil rights, public property, shared spaces, and, finally, civil knowledge, including the humanities, social sciences, and the law. The state's role is to safeguard all these components without overstepping through sovereign power that would undermine them; in other words, sovereignty should operate within limits that do not encroach upon the civil in any of its dimensions.

Here, the civil can be understood in the context of the constitution as a characteristic of the social contract or the public order expressed in the constitutional text. This underscores the importance of predicating the constitution and the law on the "general will," which requires examining how this "public" is constructed. In the contemporary context, the public primarily conveys notions of the populace or the citizenry—meanings often reflected in the preamble of constitutions, which speak in the name of the people or the nation to articulate the identity under which commitment to the constitution is secured (we will explore this further in the final section).

In order to build a conceptual map of the civil in relation to constitutions and the state, it is necessary to include terms such as the common good, public welfare, the public sphere, and public deliberation. A constitution cannot be truly civil without these elements; otherwise, it risks becoming a declaration of authority by the ruling power —essentially a military-style directive over the political and social space— rather than an expression of consensus or genuine civility.[35] This perspective aligns with the view of constitutional scholars who argued that the post-2011 period in Egypt should have been framed as the construction of a "second republic," rather than merely temporary amendments followed by debates over a new constitution. [36]

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[34] Michael Mann, "The Autonomous Power of the State: Its Origins, Mechanisms and Results," *European Journal of Sociology* 25, no. 2 (1984): 185–213.

[35] See Abu Yaarub al-Marzouqi, "The Public Sphere," in *Kitab Magharib*, no. 1 (Rabat: Magharib Center for Studies, 2018), 13–24, on the importance of addressing the idea of universality and its existential and temporal dimensions before engaging in a debate on the communicative, spatial, and political public sphere as presented by Habermas –that is, a normative, historical reconstruction that begins with an idealised philosophical concept and then traces its actualisation and subsequent decline.

[36] See also: Mahmoud Sharif Basiuni and Mohammed Hilal, *Al-Jumhuriya al-Thaniya fi Misr* [The Second Republic in Egypt] (Cairo: Dar al-Shuruq, 2012).

It is important to emphasise that understanding the position of religion is not merely a question of inserting a specific constitutional article here or there; rather, it permeates all dimensions of the constitution and represents an essential aspect of its fabric. Tareq al-Bishri, in his work on the historical and cultural context of codifying sharia, observes that the political debate over the matter was far more intense than the purely jurisprudential or legal debate. He further argues that grasping the complexity of this issue requires an understanding of political transformations and key turning points in nineteenth-century economic history, beginning with the *Tanzimat* reforms in the Ottoman Empire and parallel developments in Egypt—particularly during the reign of Khedive Ismail, whose openness to the West and entanglement in cycles of debt led to significant institutional changes. These included the decline of sharia-based courts, the establishment of new legal systems, the expansion of foreign privileges, transformations in judicial structures, reforms in education, and reshaped social elites. This also unfolded in a process of modernisation within a tense relationship with the Western model, oscillating between a simulation of Western social and economic systems and resistance in pursuit of independence from foreign domination.

Accordingly, Tareq al-Bishri argues that understanding these complexities must begin with recognising that the codification of sharia is not merely a matter of constitutional texts or legal provisions. Rather, it forms part of a broader civilisational and cultural landscape that transcends political boundaries, aiming towards a more integrated legal and judicial order within that wider sphere.[37]

II. The Egyptian Constitution: Beginnings and Extended Trajectories

Between 1805 and 1882, Egypt experienced a protracted struggle to establish a national constitution that would serve as the foundational framework for governance, define powers, guarantee rights and duties, and limit the authority of the ruler. These endeavours coincided with a wave of intellectual writings that sparked the discourse of the *Nahda*, alongside the dispatch of educational missions and the broader intellectual movement that ensued. The process culminated in the first draft of an Egyptian constitution in 1879; however, it did not receive the approval of Khedive Ismail due to the circumstances surrounding his removal from power, and thus never came into effect as a formal constitutional document.[38]

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[37] See: Tariq al-Bishri, *Al-Siyaq al-Tarikhi wa al-Thaqafi li-Taqnin al-Sharia al-Islamiyya* [The Historical and Cultural Context of Codifying Islamic Sharia] (Cairo: Maktabat al-Shuruq al-Dawliyya, 2011). It should be noted that Tariq al-Bishri focused on documentation and writing following the controversy over constitutional amendments and the intense politicization of the civic domain by Islamic currents. He dedicated his efforts to authorship, whereas the Muslim Brotherhood and Salafists appear to have gained little from his work, as political calculations dominated the constitutional debate—a point that will be revisited later in the discussion of post-revolution constitutions.

[38] Regarding this period, see: Elias al-Ayyubi, *Tarikh Misr fi Ahd al-Khedive Ismail Basha 1863–1879* [History of Egypt under Khedive Ismail Pasha, 1863–1879] (Cairo: Dar al-Kutub al-Misriyya, 1923).

Under his successor, Khedive Tawfiq, the national movement succeeded in 1882 in promulgating the first formal constitutional document, known as the Basic Law, which emerged in the context of the Urabi Revolt. However, it was soon annulled by the British occupation authorities.[39] Popular resistance to colonial rule continued, culminating in the 1919 Revolution. Three years later, on 28 February 1922, Britain declared the end of its protectorate over Egypt, while retaining certain privileges.[40] Egypt was subsequently proclaimed a monarchy, prompting the government to seek the establishment of a constitution consistent with its new political status.

The government called upon existing Egyptian political parties to participate in drafting the constitution. However, the national movement demanded that it be drafted by an elected constituent assembly rather than an appointed body. Despite this, the government formed a committee of thirty members composed of legal officials, leaders of the Liberal Constitutional Party, and prominent public figures, including Sheikh Mohammed Bakhit al-Mutii, Sheikh Mohammed Najib, Sheikh Mohammed Khayrat Radi Bey, Anba Yuannis, and others.

The 1923 Constitution enshrined several key principles: Article 12 guaranteed absolute freedom of belief, while Article 13 affirmed the freedom to practise religious rites "in accordance with established customs in Egypt," provided that this did not contravene public order or morality. In the section on general provisions, Article 149 declared Islam as the religion of the state and Arabic as its official language. Under this constitution, Egypt's first parliament convened on 15 March 1924.[41]

The 1923 Constitution remained in force until the promulgation of a new constitution on 22 October 1930. Along with the freedom of belief, the designation of Islam as the religion of the state, and Arabic as its official language, the 1930 Constitution retained provisions similar to those of the 1923 Constitution. However, the 1930 Constitution was suspended on 30 November 1934, after which the 1923 Constitution was reinstated on 12 December 1935. It remained in effect until it was abolished on 10 December 1952, through the first constitutional declaration issued by the Revolutionary Command Council following the 23 July 1952 Revolution.[42]

It is important here to consider the parallel cultural and intellectual landscape between 1923 and 1952, which was marked by significant debates on key issues related to identity, public order, women's rights, and the status of Copts. This period witnessed early discussions on systems of governance following the abolition of the Islamic Caliphate, including the well-known controversy surrounding Ali Abdel Raziq and his work *Islam and the Foundations of Governance*. It also saw debates on the role of the scientific method as a framework for thought, the evolution of the Arabic language, literary movements, and other related issues.[43]

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[39] Mohammed Abd al-Rahim Mustafa, *Tarikh Misr al-Hadith* [Modern History of Egypt] (Cairo: Al-Matabie al-Amiriyya, 1951), 248–252.

[40] Marwa Samir, "Thawrat 1919 wa Atharuha 'ala al-Hayat al-Dusturiyya fi Misr" [The 1919 Revolution and Its Impact on Constitutional Life in Egypt], *Hadara Center website, Civilisation Center for Studies and Research*, April 2019.

[41] Mohammed Nour Farhat and Umar Farhat, *Al-Tarikh al-Dusturi al-Misri* [The Egyptian Constitutional History] (Beirut: Al-Dar al-Arabiyya lil-Ulum – Publishers, 2011), chap. 3.

[42] Ali al-Din Hilal, *Tatawwur al-Nizam al-Siyasi al-Misri 1803–1999* [The Development of the Egyptian Political System, 1803–1999] (Cairo: Center for Political Research and Studies, Cairo University, 2002), 73–90.

[43] For a detailed discussion of those intellectual and literary debates, see: Anwar al-Jundi, *Al-Maarik al-Adabiyya fi Misr 1914–1939* [Literary Battles in Egypt, 1914–1939] (Cairo: Al-Anglo Library, 1983).

Understanding this period and its discourses is essential for tracing the transformation of the concept of the civil within the cultural sphere, particularly its movement toward secular orientations. While this did not fundamentally alter the practical role of sharia as a reference, it did contribute to the emergence of intellectual, cultural, literary, and even judicial currents that were increasingly distanced from the traditional religious sphere.

At the same time, this did not amount to a systematic shift toward secularism comparable to the Turkish experience. Indeed, the same period witnessed the founding of the Muslim Brotherhood and the active participation of Al-Azhar scholars in these debates. Many of these discussions would reemerge in the 1990s and after 2011, albeit in different contexts shaped by globalisation and a noticeable decline in the depth of public cultural debate, as will be discussed later.

Following the July 1952 Revolution, the 1923 Constitution was suspended. In September 1952, the Muslim Brotherhood took the initiative to draft a constitutional proposal, prior to the formation of the 50-member Committee by the Revolutionary Command Council. The draft, published in *al-Daawa* magazine, declared in its first chapter on sovereignty that "Egypt is an Islamic state with a representative government." In the chapter on the distribution of state functions, Articles 44 and 45 stipulated that legislation should not contradict Islam. Article 97 affirmed that "Islam is the religion of the state and Arabic its official language," while Article 102 provided that all existing legislation inconsistent with the constitution's provisions and spirit should be repealed and replaced with laws aligned with Islamic principles and teachings. The draft opened with a theoretical preamble authored by Taha Badawi, a constitutional jurist and professor of political theory at Alexandria University. He outlined the guiding principles and philosophical foundations of the proposed constitution, grounding them in the Quran, the Prophetic tradition, and the governance practices of the Rightly Guided Caliphs. At the same time, the draft incorporated elements from contemporary constitutional systems, including the presidential model of the United States and the assembly-based systems found in European constitutions such as those of Austria (1920), Turkey (1924), and Switzerland. [44]

This draft, however, was not adopted. After assuming power, the Free Officers abolished the monarchy and dissolved political parties.[45] Subsequently, on 13 January 1953, a new committee of fifty members, drawn from prominent political, cultural, judicial, and military figures, was formed under Prime Minister Ali Maher to draft a new constitution for the country.

Abdel Razzaq al-Sanhuri was among the most prominent members of this committee. He had earlier drafted the Egyptian Civil Code of 1948. Al-Sanhuri emphasised the necessity of adopting modern legal drafting techniques while maintaining that the constitution should not contradict Islamic law. He had written his second doctoral dissertation in France on the concept of the Islamic caliphate and its possible transformation into a league of nations and contributed writings on civility and Islam.

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[44] For the full text of the constitution, see: Ibrahim Zahmul, *Al-Ikhwan al-Muslimun: Awraq Tarikhiyya* [The Muslim Brotherhood: Historical Papers] (France: n.p., n.d.) This complete version of the constitution is rare, and the book exists in limited copies in several university libraries. An earlier version was available on ikhwanwiki.com, which is no longer online.

[45] For a detailed review, see: Ahmed Zakariya Shalaq, *Thawrat Yulyu wa al-Hayat al-Hizbiyya: al-Nizam wa Ihtiwa´ al-Jamahir* [The July Revolution and Party Life: The Regime and the Containment of the Masses] (Cairo: Dar al-Shuruq, 2010).

The committee also included Abdel Qader Awdah, a leading legal scholar associated with the Muslim Brotherhood and author of *Islamic Criminal Law*, as well as Saleh Ashmawi and Hassan al-Ashmawi (also affiliated with the Brotherhood). It further comprised prominent religious figures such as Al-Azhar Sheikh Abdel Rahman Taj, Sheikh Hassan Maamoun, president of the Supreme Sharia Court, and Sheikh Mohammed al-Oudn, alongside notable political and public figures from various parties. Notably, the committee did not include any members of the Revolutionary Command Council[46] —unlike later constitutional processes, such as those following the 2011 revolution, which featured direct representation from the military establishment.

With regard to identity and religion, the 1953 draft constitution stipulated in Article 11 that "freedom of belief is absolute, and the state guarantees the freedom to practise religious rites according to established customs in Egypt, provided that this does not violate public order or morality." Article 195 further affirmed that "Islam is the religion of the state and Arabic its official language."

The work of this committee was ultimately set aside, and a constitutional declaration was swiftly issued in February 1953 by the Commander-in-Chief of the Armed Forces and leader of the revolution at the time, Major General Mohamed Naguib. The declaration opened with "In the name of the people," and stipulated: "With a desire to establish the foundations of governance during the transitional period, to organise the rights and duties of all citizens, and to enable the country to enjoy comprehensive stability that allows productive output and elevates it to the level we all hope for."

To better understand the contextual framework of the constitution and civility, three provisions are particularly relevant. Article 1 stipulates that all powers derive from the nation; Article 4 affirms that freedom of belief is absolute and guarantees the practice of religious rites in accordance with established customs, provided that this does not violate public order or morality; and Article 8 assigns the exercise of supreme sovereign authority to the leader of the revolution through the Revolutionary Command Council. Notably, the proclamation does not reference sharia as a legal source or designate a state religion, likely due to its limited number of articles, while granting the military supreme sovereign authority during this period. [47]

Evidently, the notion of "acts of sovereignty" constituted a precise reference to the doctrine of sovereign acts. At its core, the purpose of the state is the establishment of law, a function it carries out through its recognised legal powers: the legislative, judicial, and executive functions. According to the principle of the rule of law, all authorities are subject to the provisions of the constitution. However, the doctrine of sovereign acts represents a pragmatic doctrine stemming from the judicial policy of the French Conseil d'État, which grants the executive power broad discretionary authority.

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[46] Mohammed Jaber al-Zuhayri, "Thawrat 23 Yulyu 1952 wa Mashru' Dustur 1954 (Dustur Lajnat al-Khamsin)" [The July 23, 1952 Revolution and the 1954 Draft Constitution (The Fifty-Member Committee Constitution)], *Majallat Buhuth al-Sharq al-Awsat* 4, no. 39, serial no. 2 (September 2016): 467–488.

[47] Manshurat Qanuniyah (Digital Archive), *Constitutional Declaration by the Commander-in-Chief of the Armed Forces, Leader of the Revolution, and Head of the Army*, 10 February 1953.

Legal scholars in France, as in other jurisdictions, have sought to circumscribe this doctrine by establishing limits and safeguards governing its application. [48]

A comparison can be drawn with later developments, particularly the 2019 constitutional amendments in Egypt, where the military similarly asserted its position as the supreme authority, adhering to the same underlying doctrine, albeit through different mechanisms shaped by a distinct political context.

A striking point is that when the 50-member Committee finalised its 1954 draft constitution, its efforts were dismissed. Abdel Rahman Badawi notes that although the committee built on the 1923 constitution, completing the draft took almost a year and a half, finishing in August 1954.[49] Delays were largely due to prolonged debates among committee members and the need to adjust to rapidly changing circumstances. With the committee favouring a parliamentary system, and internal and regional events unfolding swiftly, the Revolutionary Command Council issued the 1953 Constitutional Declaration.

The draft disappeared, surviving only in scattered articles and press reports that referenced some of its provisions. It was eventually discovered in a neglected box in a corridor of the Higher Institute for Arab Studies in Cairo — affiliated with the League of Arab States and co-founded by al-Sanhuri— when the writer and historian Salah Issa was searching for books and references in the basement. The draft was finally published in 2001.[50]

The 1953 Constitutional Declaration remained in force until 16 January 1956, when a new constitution was approved by referendum and Gamal Abdel Nasser was elected President of the Republic, having previously served as head of the Revolutionary Command Council.

The 1956 Constitution declared Egypt an independent, sovereign Arab state and a democratic republic, recognising the Egyptian people as part of the Arab nation. Article 2 established that sovereignty rests with the nation and must be exercised as prescribed in the constitution. Article 3 designated Islam as the state religion and Arabic as the official language. Article 30 guaranteed equality before the law regardless of gender, origin, language, religion, or creed, and Article 43 affirmed absolute freedom of belief. [51]

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48 Abd al-Fattah Sayer, *Nazariyat A'mal al-Siyada: Dirasa Muqarana fi al-Qanunayn al-Misri wa al-Faransi* [The Theory of Acts of Sovereignty: A Comparative Study in Egyptian and French Law] (Cairo: Cairo University Press, 1955). Hamdi Ali Umar, *Al-Ittijahat al-Haditha fi al-Qada' fi al-Raqaba 'ala A'mal al-Siyada* [Modern Trends in Judicial Oversight of Acts of Sovereignty] (Cairo: Dar al-Nahda al-Arabiyya, 2016).

49 Abd al-Rahman al-Rafii, *Thawrat 23 Yulyu 1952: Tarikhuna al-Qawmi fi Sab' Sanawat 1952–1959* [The 23 July 1952 Revolution: Our National History in Seven Years, 1952–1959], 2nd ed. (Cairo: Dar al-Maarif, 1989), 87.

50 Salah Issa, *Dustur fi Sunduq al-Qimama: Qissat Dustur 1954* [A Constitution in the Rubbish Bin: The Story of the 1954 Constitution], foreword by Judge Awad al-Mur (Cairo: Cairo Institute for Human Rights Studies, 2001).

51 Manshurat Qanuniyah (Digital Archive), *Al-Waqae Al-Masriyah* (Official Gazette): The Constitution of the Egyptian Republic, 1956.

During the Nasser era, there was little debate over the religious versus civil dimension. Egyptian nationalism and Arab unity dominated political discourse, with official religious institutions experiencing two confrontations with the Muslim Brotherhood in 1954 and 1965. Socialism was the prevailing ideological and political framework, widely regarded as compatible with Islamic principles of social justice. The concept of "civil" was largely absent, with attention instead focused on social justice and national independence, particularly amid the conflict with Israel.

In 1958, following the formation of the United Arab Republic—the political union of Egypt and Syria—the constitution made no reference to Islam. After the dissolution of the union, President Nasser issued the 1962 Constitutional Declaration, which likewise omitted religion. Egypt continued to be known as the United Arab Republic until 1971.

During Gamal Abdel Nasser's rule, Islam was not explicitly enshrined as a constitutional matter. Instead, efforts to codify Islamic law began under his leadership, beginning with Law No. 103 of 1961 concerning the reorganisation of al-Azhar and its affiliated bodies.[52] Article 2 of this law stipulated that its aim was to "provide the Islamic world and the Arab nation with specialists and authorities in matters related to Islamic law, Arabic and religious culture, and the language of the Quran." Under Article 15, the Islamic Research Academy (Majmaa al-Buḥuth al-Islamiyya) was established, with an organisational structure comprising several committees: the Quran and Sunnah Committee, the Jurisprudential Research Committee, the Islamic Heritage Revival Committee, and the Social Studies Committee.[53]

The Islamic Research Academy held its first conference in 1964, during which a resolution was passed to establish a committee tasked with codifying Islamic law. This committee commenced its work in March 1967 and, in 1972, published its inaugural study on the Book of Transactions (*Kitab Al-Buyu*), addressing sharia-related economic and commercial dimensions, in collaboration with religious scholars and legal experts.

In the introduction to the works of the Preparatory Committee for the Codification of Islamic Law, published by the Islamic Research Academy in 1972, Mohammed Abd al-Rahman Bissar notes that these works are the product of a collaborative effort between Al-Azhar scholars and legal experts. He emphasises that the codification is not final but remains open to public discussion and additions, and that it is intended for Muslim societies to implement the provisions of their constitutions stipulating that islamic law serves as a primary source of legislation.[54]

In the recommendations of the eighth conference of the Islamic Research Academy, held in Cairo in October 1977, Al-Azhar and the Academy were specifically called upon to draft an Islamic constitution. Dr Abdel Halim Mahmoud, then Sheikh of Al-Azhar and head of the Academy, formed a supreme committee alongside the members of the Academy's Constitutional Research Committee, composed of a select group of senior figures in Islamic jurisprudence and constitutional law to undertake this task.

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52 Manshurat Qanuniyah (Digital Archive), Law No. 103 of 1961 on the re-organization of Al-Azhar and its bodies.

53 Mohammed Abd al-Rahman Bisar, *Al-Muqaddima, Mashru' Taqnin al-Shari'a al-Islamiyya* [Introduction, Project for the Codification of Islamic Sharia], 4 vols., Report of the Preparatory Committee for the Codification of Islamic Sharia (Cairo: Islamic Research Academy, 1972).

54 Report of the Preparatory Committee for the Codification of Islamic Sharia, 4 vols. (Cairo: Islamic Research Academy, 1972), 5–11.

Al-Azhar subsequently issued a proposed draft of an Islamic constitution in 1978;[55] however, the draft lacked the refined legal formulation mastered by constitutional scholars such as al-Sanhuri, and it did not receive any significant debate. Sheikh Abdel Halim Mahmoud, a strong supporter of the draft who held considerable standing with both the state and the scholarly community, passed away shortly after its completion. Subsequently, a series of domestic events unfolded, including the signing of the peace treaty with Israel, President Sadat's clash with the national forces, and ultimately his assassination during what became known as the "Autumn of Fury" in October 1981.[56]

It appears from the foregoing that the codification of Islamic law after the 1952 Revolution —and the continuation of what al-Sanhuri had begun with the drafting of a civil code consistent with sharia in 1948—[57] actually began under Gamal Abdel Nasser, not under Anwar Sadat as some scholars have suggested. Sadat later leveraged religious legitimacy in his political rhetoric and permitted the Islamic movement to re-enter the political arena.

When the 1971 Constitution declared that "the principles of Islamic sharia are the primary source of legislation" (Article 2),[58] several legal committees initiated a review of the relevant literature to guide the practical implementation of this provision—a process that continued over several years.

In 1978, under the leadership of Dr Sofi Abu Talib, the People's Assembly established a committee to codify sharia. The committee completed its work, submitted it to the Assembly, and published its findings in 1983, at the outset of President Mubarak's rule. Dr Sofi subsequently resigned as Speaker of the Assembly to return to teaching at the Faculty of Law, continuing to educate students on the relationship between sharia and law and the practical avenues for its application in Arab countries, systematically refuting claims of its rigidity or incapacity to address contemporary developments or to safeguard minority rights.[59] As with the proposed 1954 Constitution, which was not made fully available until 1999, the codification report was not published for public debate after 1983, but was instead issued by the People's Assembly in 2012.[60]

The issue of codifying Islamic law remained central, and sharia became the main source of legislation in the 1980 constitutional amendment, which changed the phrasing from "a primary source" to "the primary source" through the addition of the definite article "al" in Arabic).[61]

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55 See the draft text in: Mohammed Sayyed Ahmad al-Masir, *Nahw Dustur Islami: Mashru' Wada' Mawadihi al-Azhar al-Sharif* [Toward an Islamic Constitution: A Project Whose Articles Were Drafted by Al-Azhar al-Sharif] (Cairo: Dar al-Tibaa al-Muhammadiyya, 1995). An electronic version of the draft articles is also available on the IslamWay website.

56 See: Mohamed Hassanein Heikal, *Kharif al-Ghadab* [Autumn of Fury] (Beirut: Al-Matbuaat for Distribution and Publishing, 1986).

57 On al-Sanhuri's codification efforts see : Enid Hill, "Al-Sanhuri and Islamic Law: The Place and Significance of Islamic Law in the Life and Work of ʿAbd al-Razzaq Ahmad al-Sanhuri, Egyptian Jurist and Scholar, 1895–1971," *Arab Law Quarterly* 3, no. 1 (1988): 182.

58 See the text of the 1971 Constitution in: Manshurat Qanuniyah (Digital Archive).

59 Among the most important works of Abu Talib: Sufi Hasan Abu Talib, *Tatbiq al-Shari'a al-Islamiyya fi al-Bilad al-'Arabiyya* [The Application of Islamic Sharia in the Arab Countries] (Cairo: Cairo University Press, 1989).

60 Arab Republic of Egypt, People's Assembly, Press and Publication Department, "Codification of Islamic Sharia in the People's Assembly" (1983), in *Complete Works: Codification of Islamic Sharia in the People's Assembly, Volume One*, ed. Tariq al-Bishri and Ibrahim al-Bayumi Ghanim (Cairo: Maktabat al-Shuruq al-Dawliyya, 2012).

61 Manshurat Qanuniyah (Digital Archive), Amendment to the Constitution of the Arab Republic of Egypt, 1980.

The codification of sharia continued to feature prominently in election slogans, and debates over it persisted in the People's Assembly in 1984 and 1987. However, following Sadat's assassination and President Mubarak's concerns about the potential rise of Islamists—particularly in the wake of the Iranian Revolution and Islamist governance in Sudan—calls within the Assembly pushed for a gradual approach on one hand, and for purifying the existing body of law on the other.

The 1987 Assembly was dissolved due to legal issues, and in the 1990 and 1995 sessions, Islamist representation was limited to a few individual voices. Consequently, progress on implementing sharia slowed in the absence of political will. In the 2000 Assembly, Islamist deputies focused largely on urgent social issues and restrictions on civil liberties, while the ruling National Democratic Party emphasised sharia in its election campaigns, both to undercut Islamist political influence and to attract votes.

The Muslim Brotherhood gained 88 seats in the People's Assembly in the 2005 elections, presenting a potential opportunity to revive the issue of sharia codification. However, political instability and urgent public demands took precedence, while Brotherhood leaders faced military trials, directing their focus toward rights and civil liberties. During this period, political alliances emerged aimed at preventing the hereditary transfer of power, amid confrontations between the authorities and the judiciary, among other events. Five years later, the 2010 elections were rigged, leaving the Islamist current without any seats, which contributed to the outbreak of the January 2011 events.[62]

In the context of this study, it is noteworthy that during the late 1980s and throughout the 1990s, as debates over sharia receded in the People's Assembly, discussions on civility and secularism intensified in the public sphere. Just as cultural and intellectual life under the 1923 Constitution—up to the July 1952 Revolution—was marked by debates over identity and rights, these issues resurfaced during this later period, now engaging a broader public audience. Prominent debates emerged between leading Islamic figures and secular intellectuals, with the latter arguing that secularism offered viable solutions in response to the slogans of "Islam is the solution." Among the most notable were the exchanges between Sheikh Mohammed al-Ghazali and Dr. Farag Foda, as well as the debates involving Sheikh Mohammed al-Ghazali and Dr. Yusuf al-Qaradawi with Dr. Fouad Zakaria. [63]

[62] For a detailed account of the extended debates in the People's Assembly, which draws on session minutes and the positions of the legislative, executive, and judicial authorities, see: Hazim Ali Mahir, *Tatbiq al-Sharia al-Islamiyya wa al-Nusus al-Dusturiyya* [The Application of Islamic Sharia and Constitutional Texts], foreword by Tariq al-Bishri (Cairo: Dar al-Nahda al-Arabiyya, 2018), 230–438.

[63] Mohammed Amarah, *Tatbiq al-Shari'a al-Islamiyya wa al-Nusus al-Dusturiyya* [Egypt between the Civil and Religious State: The Most Famous Debates of the Twentieth Century] (Cairo: Maktabat Wahba, 2011).

III. The Egyptian Constitution and the Post-2022 Transformations

Following Mubarak's resignation, political and revolutionary forces fragmented over the question of the constitution, marking the onset of deep divisions after three decades of fragile alliances and extended dialogue. Secular currents were alarmed by the rapid rise of Islamist movements and their ability to mobilize broad popular support, exerting strong influence over the political landscape—whether through the Muslim Brotherhood or the Salafi current. Additionally, groups previously associated with jihadist Salafism entered the political arena, forming parties and competing in elections.

The secular current—both right and left—viewed this situation with apprehension and sought to leverage the popular momentum to push for constitutional amendments aimed at consolidating civil liberties. Although critiques of Article 2, which declares Islamic law the principal source of legislation, were limited due to its broad popular acceptance, the broader objective was to strengthen the anticipated constitution with provisions safeguarding civil rights, freedoms, and creativity. These measures aimed to ensure social justice in the context of Islamists' tendencies towards free-market policies, while constraining the military's role—a balance that Islamic currents themselves were generally keen to maintain.

Once the constitutional amendments of March 2011 were finalised and ratified, political parties began preparing for the forthcoming parliamentary elections. The leftist current, led by major platforms such as the Tagammu and Nasserist parties, along with Al-Ghad and Al-Karama, mobilised their efforts, while the Popular Forces Front coalesced from smaller socialist parties.

Meanwhile, the liberal camp—divided between the old Wafd Party and emerging parties such as the Justice Party, the Free Egyptians, and the Egyptian Social Democratic Party—struggled to gain the trust of a state that tended to favour street-mobilising forces. As a result, liberals failed to secure sufficient parliamentary seats to exert meaningful political or legislative influence.[64]

Amid this spectrum —from left to right, and including the broader currents of the Muslim Brotherhood and Salafists— parties such as the Strong Egypt Party and the Egyptian Current Party emerged, alongside the Wasat Party, which had split from the Brotherhood in the 1990s.

Under Dr. Essam Sharaf, the first Prime Minister following the January 25 Revolution, the Supreme Council of the Armed Forces and the Cabinet convened the National Accord Conference on 21 May 2011. Its aim was to present a comprehensive national vision for the draft constitution, taking into account Egypt's constitutional heritage, comparative constitutions, the two post-revolutionary constitutional declarations of 13 February and 30 March 2011 —which regulated state powers during the transitional period— and the objectives of the January 25 Revolution.

[64] See: Tarek Osman, *Al-Hala al-Liberaliyya fi Misr* [The Liberal Condition in Egypt] (Cairo: Arab Center for Human Studies, 2012). Hala Mustafa, *Azmat al-Liberaliyya al-'Arabiyya: Namudhaj Misr* [The Crisis of Arab Liberalism: The Case of Egypt] (Cairo: Markaz al-Mahrusa, 2011).

An advisory committee was formed, comprising public figures, independent personalities, and selected party leaders, to provide guidance to the Supreme Council of the Armed Forces.

In his historical account of these efforts, Dr. Ali Al-Selmi notes that the advisory committee was purely consultative, submitting its proposals for consideration by the Constituent Assembly, which was to be formed at a later stage. Selmi asserted that efforts to formulate what were termed "supra-constitutional principles" were aimed at building a national consensus. He further explained that the document he presented and published in 2012, which ultimately failed to secure broad agreement, explicitly affirmed, for instance, that Islamic law would be the principal source of legislation. This occurred despite the criticism he faced and accusations of bypassing the popular will, coming from both liberal and Islamist national figures who had participated in the Supreme Council of the Armed Forces advisory board as well as in the National Accord Conference meetings.[65]

The document, commonly referred to as the "Selmi Document," was officially titled *Declaration of the Fundamental Principles for the New Egyptian State and Criteria for the Formation of the Constituent Assembly to Develop a New Constitution for the Country*. It contained a clear statement: "Islam is the religion of the state, and the Arabic language is the official language of the state. Islamic jurisprudence (sharia) is the principal source of legislation. For non-Muslims, personal status and other religious matters are to be determined according to their own rules." Both the Freedom and Justice Party and the Wafd Party approved it during a National Accord Conference meeting, but the Muslim Brotherhood rejected granting it binding authority. Selmi notes in the introduction to the text he published for historical record that several figures who had initially regarded the document as an opportunity for consensus later turned against it.[66]

Conversely, some key political figures did not oppose the idea of codifying sharia. For example, Hamdeen Sabahi, leader of the Karama Party (a Nasserist party), stated that it was incorrect to claim that political polarisation implied that non-Islamic forces were opposed to codifying sharia.[67] Thus, after the January 25 Revolution, the implementation of sharia itself was not the primary source of contention among political forces; rather, the disputes centred on the shape of the republic, the distribution of powers, the role of the military institution, the envisaged economic programme, civil liberties, and other critical issues.

An examination of the various National Dialogue sessions convened under the auspices of the National Association for Change reveals the absence of four fundamental elements necessary for establishing a consensual, binding, and stable social contract. First, there was a lack of clear party representation; it was repeatedly emphasised that participants did not formally represent their political parties. Second, the participating forces failed to abide by the outcomes of negotiations,

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65 See: Ali Selmi Document, which calls for a modern, democratic civil state and includes documentation of some meetings among national forces after the revolution: Ali Selmi, *The Document… The Question of the Constitution and Democracy* (2012), 1–30.

66 Ibid., 31–38

67 Hamoud Saad Eddin, "National Consensus of Political Forces Forms a Committee to Activate Article Two of the Constitution," Al-Youm Al-Sabea Newspaper, August 3, 2011.

as participation was framed primarily as an expression of goodwill rather than a binding commitment, thereby undermining the foundation of political trust. Third, there was an absence of a documented output that could serve as a definitive national or historical reference; arguably, the only extant draft was that recorded by Dr. Ali Selmi. Fourth, and most importantly, there was an absence of neutral key players capable of mediating and guaranteeing the process. In practice, the Supreme Council of the Armed Forces assumed this role, a function that runs counter to the principle of the "civil" consensus the dialogue ostensibly sought to achieve.[68]

The struggle over the street, parliament, and the constitution appeared deeply intertwined. Yet, alongside political forces, civil society voices —particularly from intellectual circles— sought a pathway to safeguard the civil character of the state in the face of Islamist influence. In this context, groups coalesced and identified Al-Azhar as a potential ally, embodying both moderation and official Islam while enjoying broad popular legitimacy.

Al-Azhar assumed this role and began playing an active part in counterbalancing the more assertive Islamist voices, issuing several key documents. The foremost among these was the *Future of Egypt* document, which stipulated: "Supporting the establishment of a national, constitutional, democratic and modern state founded on a constitution approved by the nation, which maintains the separation of the state's authorities and its governing legal institutions. Such a constitution should guarantee the rights and the duties of all citizens equally [...]." Furthermore, the Al-Azhar document identifies the parliament as the sole legislative body and addresses fundamental freedoms, adherence to international covenants, and other critical points.[69]

The currents identifying as part of the "civil" movement, particularly regarding rights, received this document seriously, engaging in discussions on civil liberties with the adviser to the Grand Sheikh of Al-Azhar, with the hope that Al-Azhar's authority would bolster the protection of civil rights, freedoms, and the democratic trajectory.[70]

Because Al-Azhar's legitimacy was widely recognised and stable, it continued to support the civil character of the political scene from an Islamic perspective, representing moderate religious principles. Consequently, the Grand Sheikh of Al-Azhar issued the *Al-Azhar Document on Fundamental Freedoms*[71] on 8 January 2012, which was announced in the presence of representatives from most political forces and prominent figures. On 31 January 2013, Al-Azhar also issued the *Document on the Rejection of Violence*.[72] Through these documents, Al-Azhar established a clear civil discourse, whose terminology became widely circulated within Al-Azhar itself and among its representatives in national bodies and the 50-member Committee of 2014.

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68 See for further details: Aly El Raggal and Heba Raouf Ezzat, "Can a Revolution Be Negotiated?" in *Arab Spring: Negotiating in the Shadow of Intifadat*, ed. William Zartman (Athens, GA: University of Georgia Press, 2015), 80–115.

69 *The Future of Egypt Document*, Shaykh al-Azhar, Imam al-Ṭayyib, 10 June 2011.

70 Salon Ibn Rushd, "Wathiqat al-Azhar bayn al-Dawla al-Diniyya wa al-Madaniyya" [Al-Azhar Document between the Religious State and the Civil State] (Cairo: Cairo Institute for Human Rights Studies, 19 July 2011).

71 See the text of the document.

72 See the text of the document.

In light of the constitutional developments during this period, following the 25 January 2011 Revolution and the resignation of President Hosni Mubarak on 11 February 2011, authority was transferred to the Supreme Council of the Armed Forces, which assumed responsibility for administering the country's affairs. The Supreme Council of the Armed Forces issued a series of constitutional declarations to govern the transitional period. The first constitutional declaration was issued on 13 February 2011 —just two days after Mubarak's resignation. The declaration affirmed that the military would not retain power and would commit to transferring authority to a civil government elected within six months, or until parliamentary and presidential elections could be conducted.

The declaration also suspended the elected People's Assembly and Shura Council of 2010 and put the 1971 Constitution on hold. It further amended the powers of the Supreme Council of the Armed Forces and curtailed certain powers of both parliament and the presidency, such as removing the president's authority to dissolve parliament and limiting the parliament's power to withdraw confidence from the government.

The second constitutional declaration was issued on 30 March 2011, following the constitutional amendments referendum held on 19 March 2011. This meant that the Supreme Council of the Armed Forces introduced additional amendments after the referendum had concluded and its results had been announced. Political forces, however, chose not to challenge the Supreme Council, and the matter passed without opposition. Subsequently, the Supreme Council made two further amendments to the 30 March declaration: the first, on 25 September 2011, adjusted the ratio of individual and party-list seats in the elections for the People's Assembly and Shura Council; the second, on 19 November 2011, allowed Egyptians abroad to vote under the supervision of ambassadors and consuls rather than judges.

Prior to the 2012 presidential elections, the Supreme Council of the Armed Forces issued another constitutional declaration on Sunday, 17 June 2012, following the second round of voting. This declaration granted immunity from dismissal to members of the Supreme Council until the adoption of the new constitution. It also vested the Council with legislative authority and the power to approve the state budget until a new People's Assembly was elected. Furthermore, it allowed the Council —should the Constituent Assembly (for the Constitution) be unable to function— to form a new assembly and to veto one or more proposed constitutional provisions.

However, this time, after the revolution had gained significant momentum both domestically and internationally, the declaration was met with popular rejection. Mohammed Morsi, Mohammed ElBaradei, and Abdel Moneim Aboul Fotouh denounced it as a measure that shackled the authority of the incoming elected president, and scattered protests erupted in response.

The situation escalated further on 2 November 2012, when Mohamed Morsi issued a supplementary constitutional declaration, which he stated was intended to protect "revolutionary decisions." The declaration introduced several measures: it ordered the reopening of investigations and trials for those accused of killing, injuring, or terrorising protesters during the revolution; it made all presidential decisions final and not subject to challenge by any authority

—including the Supreme Constitutional Court— from the time Morsi assumed office until a new constitution was adopted and a new People's Assembly elected; it dismissed the Attorney General; extended the work of the Constituent Assembly by two months to complete drafting the constitution; and protected both the Shura Council and the Constituent Assembly from being dissolved in the same manner as the People's Assembly.

Morsi's supplementary constitutional declaration triggered widespread unrest and condemnation from opposition and independent forces, ultimately compelling him to retract it. Subsequently, work on the reconstituted Constituent Assembly resumed. Following objections from opposition forces to the second composition, the president added a group of ten public and legal figures —including the author of this paper— for an advisory role. Amid ongoing clashes with the Supreme Constitutional Court, the drafting process was expedited, and 59 amendments proposed by the advisory group were disregarded, prompting its members to withdraw from the process.

The 2012 Constitution was subsequently voted on and ratified. With respect to Article 2 on the principles of sharia, it included an additional provision (Article 3) safeguarding freedom of belief and recognising the right of non-Muslims to rely on their religion in matters of personal status. Article 4 defined the role of Al-Azhar, while Article 219—introduced under pressure from the Salafi current— stated that "The principles of Islamic sharia include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the wider community."

Prior to the ratification of the 2012 Constitution in mid-December, significant unrest had erupted in early December around the Ittihadiya Palace and other locations between supporters of the Muslim Brotherhood and opposition forces. Street violence intensified, resulting in casualties. These events were preceded by earlier confrontations, including those in Abbasia involving Salafi-jihadi groups, which also led to deaths.

Taken together, these episodes illustrate that the political transformations of this period cannot be fully understood without accounting for the recurring street clashes, which reflected a deepening erosion of national consensus and the growing mobilisation of various forces—initially against the Muslim Brotherhood and later against Mohamed Morsi.

In April 2013, this broad opposition crystallised into the Tamarod movement, which organised a signature campaign calling for early presidential elections and helped unify disparate opposition currents. Earlier, the opposition had expanded and intensified, leading to attacks on offices of the Freedom and Justice Party and a major assault on the Muslim Brotherhood's headquarters in Mokattam, Cairo, in March 2013. It became evident that the political landscape was moving towards major confrontations, culminating in the mass protests of 30 June 2013. Subsequently, on 3 July 2013, the Supreme Council of the Armed Forces suspended the constitution with broad support from various forces, bringing that chapter of political life to an end.

A new phase began when Adly Mansour, head of the Supreme Constitutional Court of Egypt, assumed the presidency on an interim basis pending new elections following the removal of Mohamed Morsi from office.

The resulting 2014 Constitution retained Article 2, made freedom of belief "absolute" in Article 3, amended the provisions concerning Al-Azhar, and repealed Article 219. In the mid-2014 presidential elections, Abdel Fattah el-Sisi was elected president. During his tenure, Egypt underwent extensive political and legal transformations aimed at consolidating state authority over its institutions and powers, a process too extensive to detail fully here.

The 2019 constitutional amendments maintained the provisions on sharia and Al-Azhar but introduced two key articles reflecting the continued dominance of state authority over constitutional and legal norms, as noted earlier in this study. Under President el-Sisi, Article 140 was amended to extend the presidential term from four to six years, with the possibility of renewal for two terms, effectively allowing him to remain in office until 2030 (with ongoing discussions regarding further extension). The most significant amendment was to Article 200, which reinforces the army's role in national protection.

Instead of the explicit ban in the previous text limiting the presidency to two terms, the amendment of Article 140 was reworded to allow two consecutive terms. Article 200, concerning the armed forces, was expanded to include – in addition to the duty of protecting the country and preserving its security and territorial integrity – the duty to "maintain the Constitution, democracy, the foundations of a civil state, as well as the people's gains, rights and freedoms."

This amendment framed the military as both guarantor of the Constitution and defender of its civil character. While the wording may satisfy a constitutional scholar, in political-theoretical terms it returns us to the starting point regarding the definition of civility, the limits of sovereignty, and the nature of civil–military relations.

In conclusion, political conflicts have cast long shadows over Egypt's legal and constitutional landscape following the Arab Spring. Rather than serving as a tool to construct a new social contract and foster national consensus on a reimagined form of regime,[73] constitution-making became a domain of domination and contestation.

Conclusion

Both before and after 1952, the state has consistently intervened in balancing the management of politics with the exercise of sovereignty, whether under the monarchy or the republic. Egypt witnessed continuous negotiations between ruling authorities and political forces, alongside modifications to the formulas of political representation: from multiparty pluralism under colonial rule, to a single-party system after independence, and later to a restricted form of pluralism. Constitutional documents were periodically issued, only to be followed by constitutional declarations through which the ruling executive consolidated dominance and imposed its own rules.

[73] Stephen Gardbaum, "Revolutionary Constitutionalism," *International Journal of Constitutional Law* 15, no. 1 (2017): 173–200.

At the same time, under the pressure of external and internal constraints, as well as various social, political, and economic balances, the state was often compelled to build forms of consensus for pragmatic considerations. In doing so, it remained keen to formalise its actions legally to avoid future accountability. At the very least, it adhered to formalities, even when the substance ran counter to the purposes of the law and, perhaps, to its established traditions. It also mobilised mass support and resorted to propaganda mechanisms to provide legitimacy for constitutional amendments or to secure public endorsement for frameworks shaped under sovereign control.

The post–July 1952 regime, in particular, consistently navigated a balance between law and security, while remaining in continuous contestation with various elites in an effort to subordinate or reshape them —most notably the judicial elite. As noted by Amro al-Shalqany, the judiciary experienced a decline in its cultural and political influence compared with the pre-1952 period. Across different phases, the regime largely succeeded in either coercing or co-opting judicial actors, even as calls for judicial independence persisted without interruption. [74]

Of note, the codification of sharia is not merely a matter of political or historical social choice; it also requires deep knowledge of Islamic jurisprudence, legal expertise, and mastery of the craft and conventions of legal drafting. The accumulated body of knowledge possessed by scholars and sharia judges—concerning legal rulings, social realities, and methods of application—evolved over decades and necessitates periodic renewal. Such renewal, particularly in the context of civilisational gaps and periods of societal stagnation, inevitably takes time.

Indeed, alongside the transformations of the nineteenth and twentieth centuries, significant reformist efforts emerged. However, the question of legislation and codification —especially with the rise of the modern state in the Islamic world following the collapse of the Ottoman Empire— prompted scholars to engage in codification in collaboration with constitutional jurists and legal experts.

In practice, the infrastructure for producing cadres capable of codifying sharia has remained robust. Al-Azhar, for instance, houses the Faculty of Sharia and Law, whose graduates often enter the Council of State alongside graduates of secular law faculties. Both the Supreme Council for Islamic Affairs, affiliated with the Ministry of Endowments, and the Al-Azhar Islamic Research Academy maintain, among their core mandates, the dissemination and promotion of Islamic doctrine and law. Moreover, all law faculties in Egypt include departments of sharia, with sharia courses taught throughout the first to fourth years of the Bachelor's degree, in addition to specialised diplomas in sharia required for the Master's degree in legal studies.

There are also prominent constitutional jurists whose rulings struck down certain laws for contravening sharia, such as Awad al-Murr during his tenure as President of the Supreme Constitutional Court.[75] In this light,

[74] Amro al-Shalqani, *Izdihar wa Inhiyar al-Nukhba al-Qanuniyya al-Misriyya, 1805–2005* [The Rise and Fall of the Egyptian Legal Elite, 1805–2005] (Cairo: Dar al-Shuruq, 2013), 317–327.

[75] See also the rulings of Judge Awad al-Murhin, President of the Supreme Constitutional Court, which serve as an important reference for legal professionals and law students: https://www.hewarat.org/index.php/laws/item/509-2023-10-12-12-24-04.

Noah Feldman's conclusion regarding the fragmentation of the legal tradition within law faculties, and the purported decline in the study of sharia during stages of legal and judicial training, appears inaccurate. While the subordination of the judiciary to political authority through various legislative and procedural mechanisms is evident, this does not negate the continued existence of judicial cadres capable of engaging effectively with both the general principles and the detailed rulings of Islamic jurisprudence, as well as with the *maqasid* of sharia.[76]

Notably, during this period, the official religious sphere witnessed a growing civil role for Al-Azhar, while intellectual efforts emerged seeking to articulate a discourse that repeatedly grounded the concept of civility, drawing on the classical heritage outlined in the theoretical introduction. These efforts aimed to reinterpret that legacy within the framework of the modern state and to formulate a vision of an "Islamic civil state." Meanwhile, the dominant Islamist currents remained largely preoccupied with struggles over power.

This indicates that the public discussions prevalent in the first half of the twentieth century, as well as the debates of the 1990s that continued into the early years of the new millennium, had largely subsided due to polarisation. However, the intellectual endeavour concerning independent reasoning (ijtihad) to articulate the civil nature of the Islamic state stemmed from independent Islamic intellectual circles, rather than from within the core of Islamic political movements. The latter confined themselves to reassuring statements or drafting party programmes in moderate language, without producing foundational documents defining the meaning of the desired republic or outlining the features of the civil model they sought.

Among such works are Mohammed al-Abd al-Karim's book on civil reform, Jasser Awdah's book on the civil state, Misfar al-Qahtani's book on civil reform from both traditional and contemporary perspectives, and Abdullah al-Qaisi's book on the civil state from an Islamic viewpoint. None of these books received wide discussion, yet they demonstrate a serious effort to reclaim the meanings of "civility" from the Islamic intellectual tradition and to formulate a vision of reality through it.[77] Meanwhile, the Islamist activist and organisational current continued to suffer from a pronounced intellectual deficit, largely recycling its foundational writings.

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[76] Noah Feldman, *The Fall and Rise of the Islamic State* (Princeton, NJ: Princeton University Press, 2008).

[77] These efforts may be traced back to an early and significant publication that has not received the attention, circulation, or critical discussion its value warrants, particularly given that it appeared amid intense debates between Islamic movements and some secular figures: Al-Shawi, *The Jurisprudence of Shura and Consultation*, 45. Also see: Mohammed al-Abd al-Karim, *Al-Ihtisab al-Madani: Dirasa fi al-Bina al-Maqasidi lil-Ihtisab* [Civil Accountability: A Study in the Maqasid-Based Construction of Accountability] (Beirut: Arab Research and Publishing Network, 2011); Jaser Awdah, *Al-Dawla al-Madaniyya: Nahwa Tajawuz al-Istibdad wa Tahqiq Maqasid al-Shar'* [The Civil State: Toward Overcoming Authoritarianism and Realising the Objectives of Islamic Law] (Beirut: Arab Research and Publishing Network, 2015); Misfar al-Qahtani, *Su'al al-Tadbir: Ru'ya Maqasidiyya fi al-Islah al-Madani* [The Question of Governance: A Maqasid-Based Perspective on Civil Reform] (Beirut: Arab Research and Publishing Network, 2015); Abdallah al-Qaysi, *Al-Dawla al-Madaniyya min Manzur Islami: Ru'ya Tawfiqiyya bayn al-Tayarat al-Islamiyya wa al-Almaniyya* [The Civil State from an Islamic Perspective: A Reconciliatory Vision Between Islamic and Secular Currents] (Istanbul: Al-Safwa Center for Civilisational Studies, 2025).

Finally, the crowded and expansive language found in constitutional preambles points to a latent struggle over defining national identity. The preamble has shifted from a brief introduction expressing the general philosophy of the regime —whether monarchical or republican, socialist or liberal— into a lengthy text attempting to assert particular ideas and negate others concerning the definition of the nation and the political system.

This reflects a crisis in the public sphere, which today has become too constrained to accommodate the kind of intellectual debates that Egypt witnessed from the early twentieth century up until 2011.

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The Concept of the "Civil State" in the Constitution and Political Charters of Sudan

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ABSTRACT

On 30 June 1989, Omar Hassan al-Bashir staged a coup with fellow military officers against the democratically elected government of Sudan. Bashir subsequently arrested the Prime Minister, detained political leaders, and dissolved political parties, declaring himself president. In 2019, after 30 years in power, Bashir himself was ousted in a military coup. From 2019 to 2021 Sudan underwent a transitional period, during which political and civil forces, in collaboration with military leaders, reached an agreement to establish a transitional government designed to pave the way for the formation of a democratic civilian government. These principles were formalised in a political agreement signed in 2019 by representatives of the military and various political parties.

Throughout the transitional period, public demonstrations called for the establishment of a "civil state." For protesters, a civil state represented principles of equality, the elimination of religious discrimination, the withdrawal of the military from political life, and the subjection of military institutions to civilian oversight. As a result, political and legal documents from the transitional period reflect the aspirations of the revolutionary movement to institutionalise a civil state. However, the concept itself lacked a clear and consistent definition among the political elite.

Over time, the notion of the civil state evolved within transitional constitutional and political texts, as growing recognition emerged regarding the necessity to entrench its foundational principles, particularly as a prerequisite for achieving sustainable democracy in Sudan. Nevertheless, evidence from the transitional period indicates that the discourse surrounding the civil state was driven more by political considerations than by a coherent or long-term vision for establishing a democratic civil government.

Keywords: *Civil state, Sudan, December Revolution, constitutionalism, political transition.*

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INTRODUCTION

The concept of a "civil state" in Sudan underwent rapid development following the 2018 December Revolution. This evolution was shaped by public and political debates surrounding the transition from the military dictatorship that ruled Sudan from 1989 to 2019—a regime grounded in the ideology of political Islam. Central to these debates were the revolutionary slogans of "freedom, peace, and justice," which served as foundational reference points for those advocating for democratic transformation, political stability, and peaceful coexistence. Interpretations of these slogans played a key role in advancing discourse around the idea of a civil state as a counterpoint to authoritarianism and exclusionary ideologies.

Leaders of civil society, political parties, and youth movements who spearheaded the revolution were influenced by the rhetoric and demands that emerged from the Arab Spring uprisings—especially those in Tunisia and Egypt[1] —where calls for a civil state were likewise framed as an alternative to dictatorship, repression, and political marginalisation.[2]

While the 2019 Constitutional Charter did not explicitly use the term "civil state," subsequent political agreements, peace accords, the 2022 Transitional Constitution, and various constitutional proposals addressed the concept in different forms. The widespread deployment of the term after December 2018, mirroring trends in other Arab Spring contexts, reflects a clear shift in the political consciousness of the revolutionary generation that demanded systemic change.[3]

This paper undertakes a systematic examination of Sudan's constitutional, legal, and political documents to trace the emergence and evolution of the civil state concept in the aftermath of the 2018 December Revolution. It seeks to address a central question: Did Sudan's transitional documents articulate a coherent definition of the civil state, and did they establish corresponding constitutional principles that could be clearly understood and applied by policymakers during the transitional period?

Addressing this question provides insight into the challenges Sudan has faced in its post-dictatorship political transition. It also offers guidance for political leaders in formulating coherent visions for the civil state and advancing democratic governance in the country. This paper is structured around three main themes. The first concerns the evolution of the concept of the civil state in both global and national political thought, as well as the political motivations behind its adoption in Sudan. The second theme involves a detailed analysis of the legal and political documents issued by the transitional government between 2019 and 2021 that addressed the civil state. The third theme examines the political implications of the concept of the civil state as reflected in Sudan's constitutional and transitional political frameworks.

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1 Rainer Grote and Tilmann J. Röder, eds., *Constitutionalism, Human Rights, and Islam after the Arab Spring* (Oxford: Oxford University Press, 2016), 207.

2 Samah Khalaf Allah and Afaf Doleeb, *Sudan's Turmoil: Revolution, Power Struggles, and the Quest for Stability* (Bergen: Chr. Michelsen Institute, 2023).

3 Grote and Röder, *Constitutionalism, Human Rights, and Islam*, 207.

I. The Concept of the Civil State

This section examines the evolution of the concept of the civil state by tracing its philosophical foundations and political development at both the global and national levels of analysis.

A. The Civil State in Global Political Thought

The concept of the civil state has undergone significant development through various philosophical interpretations and constitutional implementations across the world. The modern understanding of the civil state finds its roots in the intellectual contributions of European philosophers during the Enlightenment and Reformation periods, particularly those who advanced the theory of the social contract. Central figures in this context include Kant, Locke, Montesquieu, Rousseau, and Hobbes. The foundational efforts of these theorists contributed to key principles that underpin the modern civil state, foremost among which is the separation between religious authority and governmental institutions.[4]

Kant explicitly advocated for the establishment of the civil state through what he termed the "republican constitution" (or popular constitution), which he regarded as the only legitimate model of civil governance. This model emphasised freedom, equality, and the rule of law. For Kant, the essential elements of a civil state include the separation of powers, the supremacy of the rule of law, the safeguarding of individual liberties, and resistance to tyranny. In his call for a republican constitution, Kant urged the avoidance of violent or revolutionary change, and promoted a gradual, reformist approach to establishing a civil state.[5]

The concept of a "religious state" was also extensively examined by Reformation philosophers and Enlightenment thinkers. These philosophical discussions ultimately shaped modern constitutional applications of the civil state. Based on the foregoing, it may be concluded that the term has become embedded in the global political and constitutional tradition, encompassing principles and human rights values such as equal citizenship and the active role of the populace in shaping public policy.[6]

Among the most significant constitutional texts to implicitly embody the civil state concept is the American Constitution, which reflects social contract theory, the sovereignty of the people, and the primacy of law. The U.S. Constitution introduced governance based on mutual agreement regarding fundamental principles, thereby institutionalising a civil state based on popular consent. Modern democratic constitutions operationalise the idea of social contract by regulating public freedoms and imposing obligations on governments to uphold these rights. In exchange, citizens accept the rules governing these freedoms, as well as duties such as taxation.[7]

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4 Wolfgang Kersting and Otfried Höffe, "The Civil Constitution in Every State Shall Be a Republican One," in *Kant's Moral and Legal Philosophy*, ed. Karl Ameriks (Cambridge: Cambridge University Press, 2009), 250.

5 Kersting and Höffe, "The Civil Constitution," 264.

6 T. C. Brown, "The Genesis of Social Contract Theory," in *Statelessness: On Almost Not Existing* (Minneapolis: University of Minnesota Press, 2022), 74–81.

7 Brown, "The Genesis of Social Contract Theory," 74-81.

The Fourteenth Amendment to the U.S. Constitution, ratified by Congress in 1866, represents a pivotal historical moment, as it substantially expanded the scope of civil rights by addressing citizenship, equal protection, and due process. It also influenced the distribution of representation in Congress and enhanced popular participation in governmental institutions.[8]

The principle of popular sovereignty is the backbone of the civil state, as it underpins the exercise of public power and is fundamental to civil governance. This principle is reflected in the constitution by establishing a governance regime whose authority derives from the people and in which the government is accountable to them. Moreover, the constitution imposes stringent restrictions on governmental power, a defining feature of the civil state intended to preserve individual freedoms and preventing the abuse of power.[9] These features, rooted in the philosophical legacy of social contract theory, have been institutionalised through constitutional experiences, most notably in the American Constitution.

B. The Concept of the "Civil State" in the Sudanese Context

Political and constitutional thought in Sudan evolved within the framework of the legislative and political legacy of British colonial rule, while also being influenced by modern intellectual currents. This included European intellectual trends and the amendments to the U.S. Constitution that established the participation of citizens in government without discrimination. [10]

The emergence of the civil state idea in Sudan is closely linked to periods of political transition following the collapse of authoritarian regimes, as well as to popular calls for empowerment and self-governance. Despite its prominence in public discourse, the term has remained conceptually ambiguous in political narratives. This ambiguity has shaped the ideological foundations of those advocating for its adoption. Some interpret the civil state as a call for secularism and the exclusion of religious dictates from politics. Others understand it as a demand for civilian governance, the exclusion of the military from political power, and the confinement of the armed forces to their constitutional role of safeguarding national security and territorial integrity.

The development of the concept of the civil state in Sudan has been shaped by two main factors: the legacy of military dictatorship and the combined effects of religious discrimination and political exclusion. These influences are briefly outlined below.

1. The civil state vs. military rule

Sudan's political trajectory has been marked by two dominant forms of authoritarianism: military and religious.

8 U.S. Constitution, The Fourteenth Amendment.
9 Ibid.
10 Ibid.

Both forms of rule manipulated constitutional provisions concerning the "nature of the state" to align with their respective political ideology, neither of which supported the realisation of a civil state. Military regimes in Sudan have historically advanced anti-democratic and anti-civilian doctrines, entrenching the military's role in governing public affairs. The military governed Sudan across four extended periods, cumulatively spanning more than half a century, during which it promoted political ideologies such as nationalism, communism, and political Islam—ideologies that found considerable resonance in both Arab and African contexts at the time.[11]

In response to military dominance over the political landscape and to advance democracy and civil rights, political parties, trade unions, university student movements, and civil society organisations mobilised within political fronts to resist the military dictatorship and its alliances.[12] This resistance coalesced around the demand for civil governance premised on the alternation of power through democratic elections, as well as the removal of the military from government and from political activities directly related to governance. The term "civilian state" thus emerged in Sudanese political discourse as an antithesis to military rule.

While human rights advocates and political activists have been acutely aware of the repression and ideological exclusion practiced by military governments—particularly against communities dissenting from army-supported ideologies—they have attributed such systemic violations to the authoritarian character of the leadership of the ruling army alongside the absence of a democratic civil state and the rule of law.[13]

2. The civil state vs. the religious state

The National Islamic Front, later rebranded as the National Congress Party after its coup against the democratic government in June 1989, formed alliances with certain army generals during periods of military rule, as Islamists leveraged military institutions to consolidate control over the country and its people. The first notable instance of such an alliance occurred between Islamists and Field Marshal Gaafar Nimeiry between 1983 and 1985. The second took place when the National Islamic Front successfully orchestrated a military coup against the democratically elected government led by Prime Minister Sadiq al-Mahdi, initiating a three-decade-long period of Islamist-military rule (1989–2019).[14]

During the two periods of cooperation with military generals, Islamists imposed criminal penalties based on Islamic Sharia during Field Marshal Gaafar Nimeiry's rule, and they successfully adopted a constitution reflecting their political vision in 1998. This constitution established Sharia as the primary source of legislation and mandated the application of Islamic ideology across all political forces, including non-Muslim groups. This political regime faced a strong opposition due to its tyranny, exclusionary practices, and brutal repression.

11 Grote and Röder, *Constitutionalism, Human Rights, and Islam*, 212.
12 Khalaf Allah and Doleeb, *Sudan's Turmoil*.
13 Zack Medow, *The Spread of Non-Violent Action: The Case of the 2018–2019 Revolution in Sudan – Case Study Report* (Freedom House, 2022), 12.
14 Mohammed, Babiker and Atta el-Battahani, *Reflections on Sudan's Constitutional Trajectory, 1953–2023: 70 Years Lacking Legitimacy, Democratic Governance and Ownership Stockholm: International IDEA, 2023), 17.*

The Sudan People's Liberation Movement/Army (SPLM/A), led by the late John Garang, was one of the most vociferous opposing parties, calling for an end to religious discrimination, resisting the Islamization of society, and advocating for a new Sudan based on equality and national identity rather than the imposition of Islam on non-Muslim communities.[15] Thus, all military groups opposed to the central government at the time, as well as political movements and ethnic groups in marginalised areas, demanded a civil state with a secular government that guaranteed full equality of citizenship and ensured state neutrality toward religion.

Between 1989 and 2019, Sudan witnessed the ongoing persecution of politicians and civil society activists, including arrests and torture, accompanied by widespread financial and political corruption. Under this alliance, as the situation deteriorated dramatically after the secession of the South in 2011, the civil war expanded to encompass almost all of Sudan's western, southern, and eastern regions.[16] Islamic scholar Dr. Abdullah Ahmed Al-Na'im attributes this deterioration in human rights conditions to policies grounded in religious ideology. In his discussions of constitutionalism, human rights, and citizenship in several Muslim-majority countries, Al-Na'im contrasts the "civil state and democracy" with the "religious state, discrimination, and human rights violations." He concludes that from 1989 to 2019 Sudan represented the most recent experiment in establishing a religious state and one of the most significant contemporary cases of widespread human rights violations.[17]

The preceding analysis indicates that the political regimes dominating Sudan since its independence in January 1956 did not enjoy broad popular legitimacy due in part to a failure to establish meaningful mechanisms for popular participation in governance and public policymaking.[18] As a result, Sudan failed to develop constitutional provisions explicitly defining or supporting the concept of a civil state.

The prolonged period of dictatorial military rule underscored these regimes' failure to secure popular legitimacy, primarily due to the exclusion of political parties and labour unions from governance. To maintain control, they formed alliances with Islamist groups wielding considerable religious influence which shared the military's opposition to democracy and civilian rule. This partnership, however, resulted in widespread human rights abuses, political marginalisation, and violence targeting religious and ethnic minorities.[19] In response, calls intensified for the removal of both the military and religious authorities from power as a means to achieve political stability, promote peaceful coexistence, and counter terrorism and extremism. Within this context, and amid the transitional political trends following the 2019 overthrow of the authoritarian regime, the term "civil state" emerged as a democratic alternative to both totalitarian and religious rule in Sudan. [20]

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15 Babiker and el-Battahani, *Reflections on Sudan's Constitutional Trajectory*, 17.
16 Ibid., 21.
17 Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge, MA: Harvard University Press, 2008), 727-728.
18 Babiker and el-Battahani, *Reflections on Sudan's Constitutional Trajectory*, 32.
19 An-Na'im, *Islam and the Secular State*, 727-728.
20 Medow, *The Spread of Non-Violent Action*, 14.

Religious rule, however, does not necessarily preclude democratic rule; in their article "Democratic Ideology in Islamist Opposition? The Muslim Brotherhood's 'Civil State,'" authors Chris Harnisch and Quinn Mecham write that the idea of a civil state has gained traction even among the leaders of the Muslim Brotherhood in Egypt. They conclude that the Brotherhood emphasises democracy and political participation but seeks to balance these commitments with the Islamic principles it considers foundational to the state.

This analysis affirms the growing appeal of the civil state concept in countries that have endured prolonged periods of dictatorship. In the Sudanese context, however, the civil state emerged primarily as a response to military rule rather than as a direct challenge to the religious state.[21] This development unfolded within a broader historical and political landscape marked by local political and social resistance to rigid Salafist ideologies, which have impeded progress on issues such as minority rights and women's rights. This dynamic illustrates the complex interplay between religious doctrine and the wider social and political environment.[22]

Parties aligned with a religious ideology generally do not tolerate the idea of a civil state unless it can be utilized as a temporary, tactical stance in opposition to the central government. Hisham Khabbash argues that Morocco's two main Islamist parties concur in their categorical rejection of any non-Muslim ruler and in their affirmation of the importance of political participation in the context of an Islamic system of government […], while diverging on principles such as secularism, the separation of powers, and freedom of religious belief.[23]

An analysis of the context in which the term "civil state" emerged in Sudan reveals that it either failed to gain explicit political recognition in the constitutions and early political experiments following Sudan's independence in 1956, or that it did not receive sufficient conceptual clarification or political attention aligned with the specific requirements of the Sudanese context.

II. Applications of the "Civil State" in the Constitution and Other Transitional Arrangements

Several political and constitutional charters set out legal and political options, programmes, and frameworks aimed at guiding Sudan's political transition, promoting stability, and laying the foundations for a democratic political system. This section examines the 2019 Constitutional Charter (Constitutional Declaration) and selected constitutional proposals that emerged thereafter. The analysis is limited to documents formulated in agreement

21 Chris Harnisch and Quinn Mecham, "Democratic Ideology in Islamist Opposition? The Muslim Brotherhood's 'Civil State'," *Middle Eastern Studies* 45, no. 2 (2009), 189.
22 Ibid.
23 Hisham Khabbash, "The Constant and the Variable in the Attitudes of Moroccan Islamists towards the Civil State," *Al-Muntaqa* 1, no. 2 (2018), 11-31.

with the ruling authority during the political transition period from 2019 to 2021. These include the 2019 Constitutional Charter, the 2020 Juba Peace Agreement, the 2021 Declaration of Principles Agreement, and the 2022 Political Framework Agreement.

A. The 2019 Constitutional Charter

The 2019 Constitutional Charter was drafted following the political agreement signed in July 2019 between the Transitional Military Council and the Forces of Freedom and Change (FFC) Coalition—a broad coalition comprising political parties, civil society organisations, trade unions, and youth and women's groups.[24] This political agreement represented the first formal accord between military and civilian actors, wherein both parties committed to establishing a civil state by the end of the transition period, initially set at 39 months from the date of signing.

The final paragraph of the preamble to the political agreement affirmed that both parties would cooperate to ensure the success of the transition toward a civil state. The 2019 Constitutional Declaration incorporated the goals set forth in the political agreement without modification, including the objective of establishing civilian rule in Sudan. The preamble's concluding paragraph explicitly states that the document was drafted with the aim of laying the foundations for a civilian regime.[25]

1. Principles concerning equal citizenship rights

While the Constitutional Charter does not explicitly use the term "civil state" in its core articles, it contains provisions that implicitly define the concept of a civil state and its associated procedures. For instance, Article 4, which addresses the "nature of the state," omits a direct reference to a "civil state." However, its first paragraph defines Sudan as "an independent, sovereign, democratic, parliamentary, pluralist, decentralised state, where rights and duties are based on citizenship without discrimination due to race, religion, culture, sex, colour, gender, social or economic status, political opinion, disability, regional affiliation or any other cause." This phrasing may be viewed by advocates of a civil state rooted in democratic principles and the exclusion of military authority from governance, as aligned with their demands for the establishment of civilian rule.

2. Provisions governing the relationship between religion and the state

It is noteworthy that the representatives of the revolutionary forces, during negotiations with military leaders over the transitional constitution, succeeded in removing references to a "state religion," including phrases such as "Islam is a source of legislation" and "the religion of the President of the Republic is Islam." Article 5 of the Constitutional Declaration affirms that "sovereignty is vested in the people and is exercised by the state in accordance with the provisions of this Constitutional Charter."

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24 Brooke Davies, *Sudan's 2019 Constitutional Declaration: Its Impact on the Transition* (Stockholm: IDEA, October 2022), 44.
25 Ibid.

Overall, the 2019 Constitutional Charter was the least explicit among the transitional charters in articulating a clear definition of the "civil state." This shortcoming is likely attributable to the intransigence of the military leaders during negotiations, which impeded the inclusion of provisions explicitly supporting a democratic civilian transition and the full transfer of power to civilian authorities in the constitutional drafting process.

3. Provisions governing the relationship between military institutions and civilian authority

Article 8, which outlines the duties of the transitional period, does not include provisions subjecting military institutions to civilian oversight. Similarly, Chapter 7, which defines the structure of the Transitional Legislative Authority, makes no reference to parliamentary oversight of military institutions. Instead, Paragraph 12 of Article 8 grants military institutions the authority to implement internal reforms independently, without interference from civilian bodies.

B. The 2020 Juba Peace Agreement

The Juba Peace Agreement was signed in October 2020 between the transitional government, several major armed movements, and the Sudan Revolutionary Front, which comprises multiple military factions and civilian forces opposed to the government of Omar al-Bashir. The goal of the signatories was to promote stability and peace while integrating armed opposition groups into the transitional arrangements initiated following the overthrow of President Omar Hassan al-Bashir in April 2019. This significance of the agreement is evident based on its incorporation into the 2019 Constitutional Declaration, also known as the Constitutional Charter for the Transitional Period, through the amendment dated 2 November 2020.[26]

1. Provisions governing the relationship between religion and the state

There is significant evidence from the text of the agreements that the negotiators deliberated extensively on this issue,[27] influenced by a long history of governance rooted in religious ideology, dictatorship, and discrimination. Notably, the word "secular" which is often associated with atheism in Sudan, does not appear in any of the agreements; however, the language used is clearly intended to reflect the principles of secularism and accommodate a civil state. The Juba Agreement encompassed multiple internal accords and negotiation tracks, including the Agreement on National Issues, the Darfur Agreement, and the Two Areas Agreement (Blue Nile and South Kordofan).

Article 7.1 of the Agreement on National Issues (ANI), under the heading "General Principles," states: "[There shall be] complete separation between religious institutions and state institutions to guarantee that religion will not be exploited in politics, and that the state will remain equidistant from all religions and sacred beliefs, which should be guaranteed in the country's constitution and laws."

[26] Zaid Al-Ali, *Summary and Analysis of the Juba Peace Agreement* (Stockholm International IDEA, 2021), 9.
[27] Sami Saeed, *The Juba Peace Agreement and the Sudanese Transition: Power Sharing or Democracy Building?* (Technical Paper 2, International IDEA, 2022), 4.

This provision is general in nature and will likely necessitate the enactment of legislation and the formulation of public policies requiring all levels of government to uphold the principle of non-exploitation of religion in politics.[28] Accordingly, this principle extends to all other agreements and has already been incorporated into the Darfur Peace Agreement. As noted below, this article was reiterated in the Declaration of Principles Agreement signed between the Transitional Government and the Sudan People's Liberation Movement in 2021.

The Blue Nile and Kordofan Agreement includes one key provision on the relationship between religion and the state. Article 1 provides that "the state should remain equidistant from all religions and cultures without racial, religious, or cultural bias."

Article 9.2 thereof provides that both areas shall exercise the powers and authorities that are set out under the 1973 Constitution (as amended in 1974). Importantly, Sharia law was only established in Sudan in 1983, which means that the two areas will be allowed to pass legislation that is not based on Sharia, irrespective of legal developments in the rest of the country.[29]

2. Principles concerning equal citizenship rights

The agreements place a great deal of weight on gender, racial, and religious equality. This emphasis is attributed to the main political demands of armed movements opposed to the government of President Omar al-Bashir, which focused on eliminating political marginalisation and ensuring equal citizenship for all Sudanese people. Paragraph 4 of Article 1 stipulates that "the peoples of Sudan are the source of all powers, and the government at all levels shall be accountable to the people." From this text, it is understood that the Sudanese Armed Forces, as part of government institutions, are therefore subject to accountability to the people and their representative institutions. The Agreement on National Issues (ANI) affirms the rights and freedoms approved by the Transitional Constitutional Charter, and Article 1.20 of the ANI provides that the signatories recognise the "importance of women's representation at all levels of authority and decision-making centers in a just and effective way, with no less than 40% representation." Similarly, Article 2 of the Blue Nile and Kordofan Agreement stipulates that "citizenship without discrimination forms the basis of all civil, political, social, economic, and cultural rights and duties."

3. Provisions regulating the relationship between military institutions and civilian authorities

The Juba Agreement contains several provisions that address the status and control of the armed forces. However, it omits key provisions necessary to ensure that military institutions are subject to effective civilian oversight by bodies such as Parliament and the Auditor General. Furthermore, this agreement does not include any clauses that restrict

[28] Nils-Christian Bormann and Ibrahim Elbadawi, "The Juba Power-Sharing Peace Agreement: Will It Promote Peace and Democratic Transition in Sudan?" Economic Research Forum (ERF), Working Paper no. 1490 (2021), 11.

[29] Al-Ali, *Summary and Analysis of the Juba Peace Agreement*, 9.

military leaders from engaging in political activities, participating in government, or conducting economic activities outside the oversight of the Ministry of Finance. Meanwhile, Articles 2 and 26 of Chapter VIII of the Darfur Agreement state that the role of military institutions is to "protect the homeland, citizens, and the constitution." This formulation, however, remains insufficiently precise and fails to create a clear or enforceable obligation.

The most plausible explanation for the absence of provisions limiting the military's authority during the transitional period is that the military leadership within the Transitional Sovereignty Council played a central role in the negotiations in Juba, enabling them to avoid the inclusion of any substantive restrictions on the military's role or activities in public life. Although the ANI general principles do not explicitly reference the term "civil state," the substance of the civil state principle is implicitly articulated in three consecutive paragraphs—Paragraphs 7, 8, and 9—of Article 1 (General Principles), which outline the following provisions:

- The complete separation of religious institutions and state institutions to ensure that religion is not exploited in politics [...]
- A commitment to peaceful civil practice and the renunciation of all forms of violence in political action.
- [A commitment] to building a state based on equal citizenship for all Sudanese people.

C. The Declaration of Principles Agreement (March 2021)

The Declaration of Principles between Lieutenant General Abdel Fattah al-Burhan, Chairman of the Transitional Sovereignty Council, and Abdelaziz al-Hilu, leader of the Sudan People's Liberation Movement-North (SPLM-N), signed in Juba, South Sudan, in March 2021, facilitated more substantive and systematic discussions on the concept of a civil state, with particular focus on the relationship between the state and religions, as well as the protection of freedom of belief without discrimination. These discussions reflect a broader commitment to the principles of citizenship and fundamental freedoms.[30] The Sudan People's Liberation Movement–North (SPLM-N) operates in regions inhabited by non-Muslim communities, including Christians and adherents of local religions, who have long voiced grievances over religious discrimination under the regime of General Omar al-Bashir, whose rule was rooted in the ideology of political Islam. The SPLM-N has declared that, should its objectives for the establishment of a secular system of governance not be realized, it will advocate for the right to self-determination in territories under its control.[31] Article 2.3 of the Declaration of Principles stipulates the "establishment of a civil, democratic, federal state in Sudan, wherein freedom of religion, freedom of belief and religious practices and worship shall be guaranteed to all Sudanese people by separating the identities of culture, region, ethnicity and religion from the state. No religion shall be imposed on anyone, and the state shall not adopt any official religion."[32]

30 Bormann and Elbadawi, "The Juba Power-Sharing Peace Agreement," 9.
31 "Sudan Gov't and SPLM-N Sign Agreement to Pave Way for Peace Talks," *Al Jazeera*, 28 March 2021.
32 Bormann and Elbadawi, "The Juba Power-Sharing Peace Agreement," 27.

The state shall be impartial in matters of religion, faith, and conscience. The state shall guarantee and protect freedom of religion and religious practices. These principles shall be enshrined in the constitution.

It is noteworthy that Article 2 does not provide a definition of the civil state; however, Article 2.1 outlines the characteristics of such a state, even though it does not explicitly use the term "civil state." It provides as follows: "Sudan is a racially, ethnically, religiously and culturally diverse state; therefore, this diversity must be fully recognised and managed, and the question of national identity must be addressed."

The Declaration of Principles was significant in that it constituted a direct agreement with the military component of the transitional government, which had consistently expressed reservations regarding provisions aimed at transferring power to civilian authorities. The concept of a civil state, grounded in the principle of state neutrality toward religion, remained central to the political vision of the Sudan People's Liberation Movement (SPLM), as it represented a response to prolonged wars and internal conflicts rooted in religious and ethnic discrimination. The 2019 Constitutional Charter, which preceded the Declaration of Principles, incorporated the principles of equality and non-discrimination as fundamental components of comprehensive peacebuilding and human security, thereby establishing them as priorities for the transitional period. Accordingly, it was essential for the signatories to the Declaration of Principles to include provisions promoting religious equality and upholding diversity.

In the context of the December 2018 revolution, the revolutionary forces struggled to define the relationship between the state and religion. This dynamic manifested in vigorous political campaigns led by the Islamist movement supporting the regime of General Omar al-Bashir, which sought to undermine the transitional government by portraying advocates of "secularism" or a "civil state" as adversaries of the people's religious beliefs. The Declaration of Principles between the Sudanese government and the Sudan People's Liberation Movement–North (SPLM-N) sought to shape Sudan's democratic transition by affirming the principles of a civil state, including the commitment to state neutrality in matters of religion, as foundational elements.[33] The concept of a civil state, grounded in religious neutrality, was rearticulated and further developed in the Declaration of Principles through the political lens of the SPLM-N, which views the root of Sudan's conflict as stemming from the entrenchment of Islamist state ideologies within the central government's frameworks and institutions, thereby resulting in the exclusion of non-Muslim groups from governance and high-level national decision-making.[34]

D. Draft Constitution of the Sudanese Bar Association (2022)

The Sudanese Armed Forces, in coordination with the Rapid Support Forces, staged a military coup against the transitional government on 25 October 2021—halting the political transition and detaining Prime Minister Abdalla Hamdok and other members of the cabinet. However, the leaders of the revolution, with backing from the international community, engaged in extensive efforts to initiate direct dialogue with the military leadership.[35]

33 Ibid.
34 "Sudan Gov't and SPLM-N Sign Agreement."
35 International Crisis Group, *A Critical Window to Bolster Sudan's Next Government* Brussels: International Crisis Group, 2023

To facilitate the restoration of the democratic transition, the Sudanese Bar Association initiated a new process to draft a political framework, garnering strong support from revolutionary forces, including the Forces of Freedom and Change, civil society organisations, and the Sudanese Professionals Association. The Sudanese Armed Forces and the Rapid Support Forces agreed to engage in the proposed framework agreement, which aimed to reinstate the democratic transition and redefine the political partnership between civilian and military actors, thereby guiding the transitional period to its conclusion. The framework agreement was subsequently signed on 5 December 2022, in the presence of civilian representatives and international and regional stakeholders.[36]

Based on the principles and provisions outlined in the Framework Agreement, the Sudanese Bar Association formed a technical committee to draft a proposal for a new Transitional Constitutional Charter. Both the Framework Agreement and the Draft Constitutional Charter placed strong emphasis on the concept of a "civil state" and the principle of civilian rule. These terms were employed to promote democratic governance and limit military control over key sectors, such as national security, the economy, the media, and foreign relations.[37] As such, both documents, drafted by civilian actors, aimed to affirm the central role of civilians in governance and preclude military involvement in political affairs.

This vision echoed the slogans of revolutionary youth at the time, who demanded the withdrawal of the military from politics and the dissolution of the Rapid Support Forces, chanting *Al-'askar lilthakanat w-al janjaweed yinhil*, which means, "the military to the barracks, and the Janjaweed dissolved." These developments—along with the demands voiced by revolutionaries in the streets—were reflected in the evolution of the civilian-military partnership framework and in provisions concerning security sector reform and the establishment of a fully civilian state by the end of the transitional period. Collectively, these efforts may be understood as a concerted attempt to institutionalise civilian rule and preclude military involvement in future political affairs.[38]

The term "civil state" features prominently in both documents, and references to "civil government," "civil state," and "civilian rule" recur throughout their respective chapters. In this context, observers might interpret the drafting of these texts as a direct response to the 25 October 2021 coup, which revealed the military's reluctance to advance the agreed-upon transitional process, dismantle the remnants of the former authoritarian regime, and transfer power to civilians during the final phase of the transition.[39] Accordingly, the concepts of "civil state" and "civilian rule" were emphasised in these documents as mechanisms to structure the democratic transition and to extricate the military establishment from political authority.

36 Ibid.
37 D. Rosalind Marsden, "A Critical Juncture for Sudan's Democratic Transition," *XCEPT*, 2023.
38 Ibid.
39 Ibid.

1. The main principles in the 2022 Draft Constitution of the Bar Association regarding the position of the military in a civilian state

The preamble explicitly stipulates provisions specific to a democratic civil state, affirming that sovereignty resides in the people, who are the ultimate source of authority (Paragraph 3). It also recognizes the religious, ethnic, and cultural diversity of the Sudanese people (Paragraphs 2 and 4) and stipulates that the state must remain neutral and impartial with respect to any religion (Paragraph 5). The preamble prohibits military coups against the government and defines the role of the army as protecting Sudan's borders and defending democratic civilian rule (Paragraphs 10 and 11). It further mandates that the transitional period should be characterised by "civilian" rule, explicitly excluding the participation of the "army" (Paragraph 14).

2. Nature of the state

Article 3 does not explicitly use the term "civil state," but it addresses the concept, adopting an approach comparable to that of the United States Constitution in articulating the nature and characteristics of such a state. Article 3 declares that the Republic of Sudan is "a democratic federal state whose diverse cultures, ethnicities, languages, schools of thought, and religions coexist. Its system of governance is parliamentary. Rights and duties are based on citizenship without discrimination on grounds of ethnicity, religion, culture, colour, language, gender, social or economic status, disability, regional affiliation, or any other type of discrimination." This approach stands in contrast to the 2021 Framework Agreement, which, in Article 2, called for the establishment of a democratic civil state while intentionally avoiding any reference to a "secular state," a concept that constitutes a central tenet of the political theory advanced by the Sudan People's Liberation Movement-North.

3. Civilian oversight of military agencies

Paragraph 2 of Article 34 (Security and Military Agencies Reform), in Chapter Three of the Draft Constitution prepared by the Bar Association (Mandate of the Transitional Period), provides that the relationship between the military and civilians shall be governed by a democratic constitution. This provision affirms that the performance of the armed forces shall be subject to oversight by institutions of democratic civilian governance. To foster an environment conducive to the integration of military and security institutions into Sudan's democratic transition, Article 34 further mandates that all legislation regulating security institutions be subject to comprehensive institutional and legislative reform. In democratic systems, civilian institutions—including parliaments—are responsible for directing and overseeing the military and determining national defence policies. This responsibility does not derive from the assumption that civilian officials possess greater expertise than military professionals, but rather from their representative mandate on behalf of the citizenry, which entrusts them with decisions affecting national security and the safety of the state.[40]

[40] Wolfgang Wagner, *Parliamentary Control of Military Missions: Accounting for Pluralism*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) Occasional Paper no. 12 (Geneva: DCAF, 2006), 29–31.

4. The nationalist nature of the military institution

Paragraph 1 of Article 69 (Military Forces) of the draft constitution stipulates that the Sudanese Armed Forces shall constitute a non-partisan national force representing all Sudanese equally. "It shall undertake the duty of defending the homeland, its unity and sovereignty, safeguarding its security, territorial integrity, and borders." The article also provides that the military "may not be used against the Sudanese people and their revolution," nor against the civilian government. Paragraph 6 of Article 69 defines the relationship between the military and civilians, affirming that the military is mandated to serve the people. It prohibits the military from engaging in investment and commercial activities involving goods and services or from participating in profit-driven competition, with the exception of military industries that strengthen national defence capabilities and operate within a policy framework approved by the transitional government.

Paragraph 7 of the draft constitution outlines the mandate of the military institutions during the transitional period. Within this paragraph, the term "civilian government" is referenced three times:

- "Abiding by the constitutional order and respecting the rule of law, the democratic civilian government […]"
- "Respecting the will of the Sudanese people to establish a pluralistic democratic civilian government and operating under its authority."
- "Implementing policies related to security and military reform in accordance with the plan of the civilian transitional government […]."

In these three provisions, the constitution drafters emphasised the central role of civilian institutions in approving the overarching strategies governing the functions and responsibilities of the military, as well as in overseeing the military's performance in implementing these strategies.

Paragraph 7 assigns additional duties to the national military forces, including—but not limited to—protecting the people's national security and defending Sudan's territories. In fulfilling these duties, the military shall remain non-partisan and shall not represent or support any political ideology, religious movement, or ethnic group. The loyalty of the army and its leadership must be directed toward the supreme values of the nation as articulated in the constitution, including the protection of the rule of law and the preservation of democratic principles.[41]

The framework agreement between Sudan's military establishment and civilian forces was articulated with significant inclusivity and participation.[42] The civilian forces sought to address the shortcomings of the 2019 Interim Constitution in drafting the new constitution. A central focus was the entrenchment of the civil state within the constitutional framework. The provisions outlined in the Bar Association's draft constitution reflect a keen awareness of the military's role in undermining political stability and obstructing democratic development in Sudan. The draft further acknowledges the divisive effects of religious, cultural, and ethnic discrimination on society and its institutions.[43]

41 Ibid.
42 Marsden, "A Critical Juncture for Sudan's Democratic Transition."
43 Wagner, *Parliamentary Control of Military Missions*, 29-31.

E. The Effects of Implementing the Concept of the Civil State on Democratic Transition

Numerous political factors contributed to the incorporation of the concept of the civil state in all political and legal negotiations conducted during the transitional period. Accumulated experience played a key role in the development of constitutional provisions relating to the civil state. Notably, while these principles held a significant position within transitional documents, they did not translate into effective practical implementation. In general, the growing demand for the establishment of a civil state produced both positive and negative effects. Two principal consequences of the widespread presence of the concept of the civil state in Sudan's political transition documents are highlighted here: the increasing political significance of the concept of the civil state and the mounting apprehension among military leaders concerning its implementation.

One of the most significant outcomes accompanying the implementation of the concept of the civil state during the transitional period was the marked development of legal provisions pertaining to its establishment. There has been a steady but accelerated increase in the number of texts and provisions governing the civil state. For instance, the 2022 Bar Association Draft Constitution was drafted following the signing of the Declaration of Principles Agreement in 2021 by Lieutenant General Abdel Fattah al-Burhan, Chairman of the Transitional Sovereignty Council, and Abdelaziz al-Hilu, leader of the Sudan People's Liberation Movement-North. As a result, the constitutional provisions in the Bar Association's draft, particularly those addressing the relationship between religion and the state, were clearly and significantly influenced by the tenets and clauses of the Declaration of Principles Agreement, especially with respect to the state's neutrality toward religion.[44] This development reflects an increased awareness of the concept of the civil state among the political elite, youth activists, and civil society.

One major consequence of the insistence on implementing the principle of the civil state was the heightened concern among military leaders regarding their political interests and future. Although the military leadership signed a political partnership agreement with civilian forces in 2019, which included a power-sharing arrangement during the transitional period, the erosion of mutual trust culminated in a coup led by the army commander on 25 October 2021, thereby derailing the path to civilian rule and democratic transition. In an effort to restore the transitional process, the Bar Association proposed a framework agreement in December 2022. Demands for the establishment of a civil state re-emerged, intensifying political tensions among the parties to the framework agreement, particularly as negotiations turned to the topic of security sector reform and the future of the Rapid Support Forces.[45]

In the absence of a dispute resolution mechanism among the principal actors in the political transition, political tensions escalated beyond the negotiation table, eventually erupting into armed conflict and culminating in a war between the Sudanese Armed Forces and the Rapid Support Forces in April 2023. This development effectively derailed the opportunity for a successful and peaceful democratic transition.[46]

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44 "Sudan Gov't and SPLM-N Sign Agreement."
45 Khalaf Allah and Doleeb, *Sudan's Turmoil*.
46 International Crisis Group, *A Critical Window*.

Both the framework agreement and the Bar Association's draft constitution addressed the concept of the civil state in detail and introduced specific provisions defining the role of the military establishment during the transitional period.

In her article "A Critical Juncture for Sudan's Democratic Transition," Rosalind Marsden, a writer and diplomat specialising in Sudanese affairs, asserts that available evidence demonstrates the military leadership's lack of commitment to democracy and the civil state principle. Marsden explains that this was the rationale behind the military's efforts to undermine and terminate the transitional period in 2021.[47] Discussions surrounding the establishment of a civil state in the 2022 Framework Agreement likely called explicitly for the military component to be excluded from governance and the national economy, limiting its role to defending the state and safeguarding democracy.[48] It was therefore expected that military leaders would perceive the implementation of civil state principles as a threat to their interests, especially given that these principles would end immunities and impose strict civilian oversight over the military's economic enterprises.[49] If the application of these principles served to curb the political role of the military, it makes sense that senior military leaders would harbour concerns regarding their personal interests and the institutional role of the military in both politics and the economy.[50]

Finally, it is important to note that political demands for the implementation of the civil state—particularly from youth sectors, civil society, and political parties—far outpaced the corresponding constitutional responses. In reaction to these demands, constitutional initiatives gradually incorporated content related to the civil state. The Bar Association's draft constitution effectively constitutes a revision of the 2019 Constitutional Document, with two key differences: (a) it does not include the power-sharing arrangement between the military and civilians that was central to the original document, and (b) it contains several amendments reflecting the firm stance of pro-democracy civilian forces against the continued political involvement of the military following the 2021 coup.

Although the demand for a civil state emerged from the outset of the revolution against military rule in December 2018, the Constitutional Charter neither addressed these demands nor fostered an environment conducive to their realisation during the transitional period.

Despite the progress reflected in the Bar Association's draft constitution as a subsequent response to the demands of revolutionary and democratic forces, it contained several significant flaws that could undermine its capacity to establish effective transitional governance and ensure the continuity of the transitional process. Notably, the lack of clarity in its rules and procedures, the absence of institutional independence among the entities tasked with implementing its provisions during the transitional phase, and the requirement to finalise the drafting of a permanent constitution prior to the elections, all represent significant vulnerabilities within the proposed draft—weaknesses that opponents of the transitional process could readily exploit.[51]

47 Marsden, "A Critical Juncture for Sudan's Democratic Transition."
48 ACLED, "New Political Deal Amid Rising Disorder in Sudan," *Context Assessment*, 3 March 2023.
49 International Crisis Group, *A Critical Window*.
50 Khalaf Allah and Doleeb, *Sudan's Turmoil*.
51 ACLED, "New Political Deal Amid Rising Disorder in Sudan."

CONCLUSION

The concept of a "civil state" gained considerable prominence in Sudan following the December 2018 revolution, emerging as a core demand of civil forces advocating for political stability and sustainable democratic governance. Various political factors contributed to the widespread adoption of the term, including Sudan's extended history of military dictatorship, as well as a period of religious rule, during which grave human rights violations were committed. The period of political Islam's governance stands out as the longest since Sudan's independence and proved particularly detrimental to the principles of national unity and social cohesion. These experiences of failed governance played a central role in shaping a political and legal understanding of the "civil state" in Sudan—one that rejects military involvement in politics and mandates the state's impartiality with respect to religion.

The 2019 Constitutional Charter, the 2020 Juba Peace Agreement, the Declaration of Principles signed in March 2021 between the transitional government and the Sudan People's Liberation Movement-North (SPLM-N) and the 2022 draft constitution prepared by the Sudanese Bar Association, collectively contributed to embedding the concept of a civil state within Sudan's transitional legal framework. This rapid articulation of a Sudanese conception of the civil state reflects the perspectives of the civil forces that played a central role in toppling Bashir's authoritarian regime. The swift emergence and broad adoption of the term by revolutionary youth and civil society fostered the development of a collective consciousness regarding the foundational requirements for political stability and peaceful coexistence.

The notion of a "civil state" emerged as a response to the root causes of Sudan's enduring crises, with its incorporation into political and legal instruments symbolising the Sudanese people's aspirations for a state free from dictatorship, human rights violations, discrimination, and oppression.

Yet, Sudanese political and legal charters governing transitional periods do not provide a precise or comprehensive definition of the term "civil state." This definitional gap, it can be argued, stems from an absence of in-depth analysis of the political and ideological dynamics that continued to shape the public sphere during successive authoritarian regimes in Sudan. As a result, no coherent political vision for a democratic project materialised in the aftermath of the revolution against dictatorship. Within this context, narratives surrounding the civil state concept have been heavily influenced by the prevailing ideological currents that dominated the post-revolution political scene. For some, the term refers to a civil state as opposed to a military regime, while others interpret it as the antithesis of a religious state—envisioning a system that safeguards public freedoms and guarantees equality without discrimination.

Despite significant advancements in articulating the civil state concept during the 2019–2021 transitional period, the relevant legal texts and general principles lacked the institutional mechanisms required to ensure their effective implementation. Therefore, it is essential that any transitional constitution not only enunciate general principles affirming the civil state but also establish concrete structures for their operationalisation through institutions, legislation, and public policies. Moreover, transitional constitutional provisions must be carefully designed to address the military's persistent reluctance to support the civil state model.

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

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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.

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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]

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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]

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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]

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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]

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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,

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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.

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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]

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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).

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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]"

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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]

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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]

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[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,

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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.

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[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]

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[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]

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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]

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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]

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[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]

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[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.

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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.

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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]

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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]

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[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.

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[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]

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[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]

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[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.

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[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]

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[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]

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[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]

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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]

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[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.

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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]

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[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]

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[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.

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[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*.

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[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.

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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."

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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]

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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]

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[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]

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[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.

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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.

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The Stakes of Secularising the Political Sphere in Morocco

Dr. Mohamed Tozy *

ABSTRACT

The Moroccan Constitution that was adopted by referendum in July 2011 reaffirmed the principal religious foundations of the regime, despite demands for a civil state and a parliamentary monarchy during the unprecedented protest movement catalysed by the Arab Spring. Since then, the constitutional monopoly over religious authority has been consolidated. The ambiguous title of 'Commander of the Faithful' —introduced during the reign of Hassan II as an expression of an established tradition— has, by virtue of the constitutional text, become the only power exercised by the king independently of the other constitutional institutions (Article 41 of the 2011 Constitution).

These constitutional reforms purported to radically limit the King's political and legislative powers while strengthening the hierarchy of legal norms by reinforcing the principle of supremacy of the constitution and subjecting royal decrees (*dahirs*) to judicial review. However, the reforms have in practice, expanded the scope of royal authority —particularly through the institutionalisation of a state Islam administered by a bureaucracy under supervision.

Keywords: *civil state; secularism; Commander of the Faithful; Islamisation.*

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Introduction: The Monotheistic Paradigm and the Question of Power

In most Muslim countries, the islamisation of societies was initially driven by the state. Very early on, states rushed to exploit the opportunities offered by religion to consolidate authoritarian rule. Religious public policies in countries founded upon secular ideologies that underpin the nation-state project —such as Egypt, Pakistan, Algeria, Turkey and Morocco— display profound similarities: a monopoly over the production of religious orthodoxy and, more recently, a religious orthopraxy; control over the training of religious scholars (*ulemas*); and the islamisation of political authority.

The evolution of Islamist movements in the 1980s forced these nation-states to overemphasise the theological foundations of their legitimacy and to favour the most conservative elements of their political heritage —those that sacralise authority by associating the need for order with the need for religion. This instrumentalisation of an ideological reading of Islam enabled them to govern by, and in the name of, religion. Although the ways in which this option is deployed differ from one country to another, they all rest on the premise of the theological necessity of power and exploit the principle that "disorder is worse than murder" (*Al-fitna ashad min al-qatl*).

The majority of Sunni *ulemas* associate God's presence in the city (human society) with social peace, which implies accepting all forms of power, including that of an unjust or impious ruler. Obedience thus becomes a religious imperative unless the *ulemas* waive this obligation. Muslims who are compelled to obey these *ulemas* rely on them to act as a countervailing power and to determine when dissent is justified. This theoretical authority of the *ulemas* is based on several references in the Quran, as well as on certain *haditha*. The most important verse is the one that confers upon them a kind of monopoly over the "fear of God": "And among people and moving creatures and grazing livestock are various colours likewise. Only those among His servants who have knowledge truly fear Allah."[1] (Quran 35:28). As for the *haditha*, the one most often cited by the *ulemas* describes *ulemas* as the heirs of the prophets.[2]

As a result, the *ulemas* represent a significant challenge for the existing authorities. Most studies focus on strategies to neutralise them through political means. The weaker and less theologically recognised *ulemas* tend to support the government, endorsing the logic of order and the struggle against disorder and anarchy.

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1 In his interpretation of the Quran, Berque offers a translation that highlights the privileges scholars may derive from their status as sacred figures by virtue of their position. He explains this in a footnote to his translation of verse 28. Berque writes: «« Ceux qui connaissent » plutôt que les « savants » ou que les oulémas. Il n'y a pas ici privilège de professionnalisme, ce qui serait anachronique, mais la foi raisonnée : c'est à peu près la position de Zamakhchari.» ("'Those who have knowledge' rather than 'scholars' or '*ulemas*'. There is no privilege here of professionalism, which would be anachronistic, but rather reasoned faith: this is more or less the position of Zamakhshari.")

2 "Those who follow a path in quest of knowledge, Allah will make the path to Jannah easy for them. The angels lower their wings over the seeker of knowledge, pleased with what they do. The inhabitants of the heavens and the earth, and even the fish in the depths of the oceans, seek forgiveness for them. The superiority of the learned person over the devout worshipper is like that of the full moon to the other stars in brightness. The learned are the heirs of the Prophets […]." For an analysis of this *ḥadith* and its contextualisation, see: Guillaume De Vaulx, "Man Haddatha Hadith Abi Al-Darda (T. 31/652) Fi Al-Ulama Warathat Al-Anbiya Wa Man Warrathah?" [Who narrated the hadith of Abu al-Darda (d. 31/652) about 'the scholars are the heirs of the prophets,' and who did he pass it on to?], *MIDÉO*, no. 34 (2019): 127–144.

A minority, however, manage to maintain their independence, assuming the risk of costly dissent.[3]

The possibility of dissent inherent in the logic of the monotheistic model —which we will address below—forces those in power, at best, to persuade religious leaders and, at worst, to compel them to align themselves with the government, a course that ultimately undermines their credibility. In any case, a minority of steadfast figures persists, reminding us that at the foundation of monotheism lies one God, the sole sovereign, and that humans cannot escape their status as creatures who have arrogantly accepted the role of His delegate. This principle of *istikhlaf*, which defines the nature and limits of human authority over other humans and over nature, has remained a structuring model without achieving consensus on the modalities of its implementation: the recipient of the delegation (an individual or the entire community), the manner of their appointment, the scope of their authority, and the procedures for its exercise.

The theory of the Caliphate, fossilised by al-Mawardi[4] at the very moment when the institution was in crisis, favoured an authoritarian interpretation that minimised the obligation to consult and provided a restrictive reading of the principle of the political contract, which became a contract of adhesion. This is particularly evident given that the circle of those who bind and unbind communities is small, and they are not considered representatives of the community; their voice is largely unheard and their role has been marginalised, often depicted as a source of disorder. Nevertheless, this shift in doctrinal authority has been unable to undermine the foundations of the monotheistic model. The devolution of power and its exercise are left to the arbitration of social power relations, which have frequently followed chaotic trajectories, marked by despotic cycles and punctuated by episodes of dissidence, often taking the form of Mahdism or reformist preaching.

Muslim philosophy continues to provide fertile ground for exploring the consequences of radical unitarianism (*tawhid*/monotheism), in which the seat of power is saturated with the presence of an abstract God. Two consequences arise from this foundational matrix of sovereign power. On the one hand, the one God—and, consequently, the sovereign power of which He is the sole depositary—cannot be embodied in any creature. The limits of delegation once prophecy has ended are so clearly defined that there is a temptation to assume it is always linked to a congenital blindness inherent in human weakness, which carries the risk of usurping God's status. Humans are freed from any duty of obedience to another human, albeit at the risk of falling into *shirk* (associationism); exclusive submission to God liberates humanity and renders dissent both a duty and a path to self-fulfilment. On this basis, Sunni historiography distinguishes between the caliphate, conceived according to the prophetic methodology—which forbids any theocratic tendencies and any paternalistic functions of monarchy—

[3] The most remarkable case is that of the Kingdom of Saudi Arabia, where Crown Prince Mohammed bin Salman declared war on a group of scholars associated with Wahhabi thought. Among them were the 68-year-old Salafi scholar Safar al-Hawali and Sheikh Salman al-Ouda, both leaders of an opposition movement known as the "Awakening," which emerged following the mobilisation in 1990, when the regime invited the United States, alongside other Arab and foreign forces, to defend the country against an imminent invasion by Iraqi President Saddam Hussein.

[4] Abul Hasan Ali ibn Muhammad al-Mawardi, *Al-Ahkam al-Sultaniyyah: The Laws of Islamic Governance* (Cairo: Dar Attaqafah, 2018).

and kingship, which, despite its circumstantial necessity and its justification through a juristic discourse advanced by scholars in the name of pragmatic necessity, remains, at best, nothing more than an unavoidable evil.

On the other hand, the impossibility of establishing an exclusive religious authority arises from the ease with which any Muslim may approach God directly in pursuit of salvation. Accordingly, disobedience to any authority claiming to represent God is regarded as one of the legitimate paths to salvation. Neither the caliph nor the king can assert any paternalistic function, for the benefits of salvation remain within the domain of shared prerogatives, allowing each Muslim to follow their own path. This, to say the least, reshapes our understanding of the historical development of relentless absolutist authoritarianism. Muslim nation-states are thus tempted to seek religious legitimisation of power and to exploit Islam in ways that operate outside the framework of God's absolute sovereignty.[5] The impossibility of incarnating the sovereign liberates humans, and the corollary of this theocracy is a human society whose governance is a human affair. This paradoxical observation gives full meaning to Louis Massignon's striking formulation,[6] which described Islam as a "secular and egalitarian theocracy." Morocco presents an interesting trajectory, appearing to offer a compromise with this paradox.

The monotheistic model of a sovereign God, however, allows for both trajectories. The question of sovereignty largely frames the debate over whether the state is civil or religious in nature.

- Power monopolised by a single individual (the caliph) or by a clergy claiming legislative authority directly derived from sacred texts, thereby imposing a theocracy. In this model, the state exists outside society. Power is never immune to structural dissent among believers, which it often suppresses with extreme violence.
- A sovereign community by delegation, in which religion functions as a form of natural law, permitting legislation free from the normative and non-ethical constraints of the sacred texts. Here, the state is an emanation of society.

I. The Moroccan Trajectory of the Relationship between Religion and Politics

The religious character of Moroccan royal power is now well established. Anthropologists, political scientists, historians, and sociologists have highlighted a particularism carefully maintained by the majority of political elites allied with the monarchy, whether they are left-wing nationalists, conservatives, liberal monarchists, or Islamists.

5 Mohamed Tozy, *Monarchie et islam politique au Maroc* (Paris: Presse des Sciences Po, 1999).
6 Louis Gardet, *La Cité musulmane : vie sociale et politique* (Paris: Vrin, 1954), 31; and *Les hommes de l'Islam : approche des mentalités* (Brussels: Complexe, 1999), 74–75.

This particularism, promoted as a distinctive feature, was further consolidated by the new constitution, adopted in July 2011. The association between the monarchy, Islam, and nationalism dates back to the Protectorate era and was reaffirmed after independence through the reactivation of traditional categories of legitimacy in Islam, such as allegiance and imamate, which served as reference points for a re-traditionalisation of the Moroccan political regime.

The question of power —which lay at the heart of the political tensions between nationalism and the monarchy after independence— has never been posed outside this conceptual framework.[7]

To this day, political elites perceive no incompatibility between, on the one hand, the demand for a modern political regime—whether a constitutional or even parliamentary monarchy—and, on the other, the commandership of the faithful, which remains solely within the theological domain. The argument is straightforward: the prophetic ancestry of the king and the *bay'a* constitute the two principles of legitimacy in the Islamic doctrine of power. These principles have been continuously combined in the Moroccan monarchy since the advent of the Sharifian dynasties in the sixteenth century, following the decline of the tribal dynasties that had replaced the first Idrissid Chorfa dynasty in Morocco. Unlike prophetic ancestry, which is hereditary and general for the descendants of the Prophet, the *bay'a* is exclusive to the holder of sovereign authority. The first principle pertains to the ruling family as a whole; the second, by contrast, concerns only the reigning king.[8]

A. The Reinvention of the Legislating Sultan by the French Protectorate

This doctrine, which was largely customary, began to be institutionalised under the Protectorate. From the early years of Hubert Lyautey's proconsulship, officials at the Residence advanced a striking interpretation of the Treaty of Fez: the Resident-General was regarded as the ultimate recipient of the absolute power traditionally vested in the Sultan. In a chapter of the book *The Cherifian Government and the Administration of the Protectorate*,[9] which marked the tenth anniversary of the protectorate treaty —likely written by Lyautey himself, or at least by a team under his direct supervision— we find a statement that stands in stark opposition to the classical theory of power in Islam:

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7 Even the most conventional writings can no longer ignore this situation. See, on this subject: Mohamed Kably, ed., *Histoire du Maroc : réactualisation et synthèse* (Rabat: Institut royal pour la recherche sur l'histoire du Maroc, 2011), 648–765.

8 Between March and June 2011, amid discussions within the constitutional review committee concerning the foundations of Moroccan institutional authority, and even as a certain degree of consensus emerged recognising the constitution as the source of all powers, including royal authority, the Minister of Islamic Affairs hastened to convene a meeting that received extensive media coverage, presenting the *bay'a* (oath of allegiance) as the sole act constituting the bond between the Moroccan people and their king. He subsequently made the *bay'a* the central theme of his Ramadan lecture that same year and mobilised the entire religious apparatus in this direction.

9 *La Renaissance du Maroc: 10 ans de Protectorat, 1912–1922* (Rabat: Résidence générale de la République française au Maroc; Paris: Rue des Pyramides, 1922).

"The Sultan is both a temporal and spiritual leader [...] it is the spiritual aspect that prevails, for it is he who determines temporal power[10][...] The two orders of power held by the Sultans are inseparable according to the very terms of the Quran, that little book of divine inspiration, which is at once the Bible, the Gospel, the catechism, the civil code, the penal code, and the constitutional charter of the State."[11]

The author draws the following practical conclusion:

"This doctrine is translated into the idea that the Sultan, in our view, is the local source of all Moroccan legislation. His legislative authority derives from the consolidation of all powers and functions in his person. The legislative measures issued by the Sultan were transformed into *dawahir sharifa*—noble decrees—considered equivalent to our old royal decrees; in practice, they functioned as laws and formed the legal foundation for all reforms undertaken in the country."[12]

However, measures issued under the *dawahir* were taken on the recommendation of the (French) Residence and only came into effect if the latter so decided. In other words, the Sultan did not enjoy the authority to propose laws independently.

B. The Consolidation of the Status of the Divine Monarchy by the Nation-State

It is clear that even before the adoption of the first constitution of independent Morocco, the monarchy under the Protectorate had come to be defined as a "theocratic monarchy." The king's speeches served as a reference point for this definition, and court judgments were issued in the name of this theocratic monarchy, even though the early years following independence witnessed a heated debate over the status of the king's acts within the hierarchy of norms.[13] The five constitutions that followed consistently reinforced this aspect, particularly Articles 6, 19, and 23, which remained unchanged until the sixth and final constitution, promulgated in July 2011. These articles, which established the "founding" principles of the regime, stipulated that:

- "Islam is the religion of the State, which guarantees everyone the free exercise of their religion" (Article 6).
- "(1) The king, Commander of the Faithful (*Amiral-Mouminin*), Supreme Representative of the nation, Symbol of its unity and guarantor of the permanence and continuity of the State, ensures the observance of Islam and the Constitution. He is the protector of the rights and liberties of the citizen, social groups, and collectivities. (2) He guarantees the independence of the Nation and the territorial integrity of the Kingdom within its authentic borders" (Article 19).
- "The person of the king is inviolable and sacred" (Article 23).

10 Ibid., 108.
11 Ibid., 109.
12 Ibid., 123.
13 Michel Rousset, « De l'indépendance du pouvoir judiciaire au contrôle de l'administration, » *Revue juridique, politique et économique du Maroc* (1970): 527.

II. The Turning Point of the Arab Spring

The Arab Spring sparked a new and unprecedented, albeit cautious, debate in Tunisia and Morocco concerning the issue of a civil state (*dawla madaniyya*). This is not the place to revisit the debates that took place or the compromises that were reached. It should simply be noted that, in Morocco, the period offered an opportunity to denounce Hassan II's abuse of Article 19, which had remained unchanged in the four constitutions preceding that of 2011.[14]

The protests of 20 February paved the way for a new compromise. Article 19 was reconceived to address gender equality, functioning somewhat as a symbolic gesture to gauge the sensitivities of a conservative society. The issue of parity enshrined in this article generated tension between divergent interpretations of the Quran and increased pressure on the king, prompting the mobilisation of a diverse coalition composed of elements of the King's entourage, Islamists from the Justice and Development Party (PJD), and the Ministry of Islamic Affairs. Consequently, the latest version of the text, revised by the so-called "political mechanism,"[15] introduced an extremely vague limitation, specifying the need to respect "the constants of the Kingdom," the precise content of which remains undefined.

More directly, the issue of the King's religious powers was addressed in Articles 41 and 42. These articles clearly distinguish between the statuses of Head of State and Commander of the Faithful, both of which are endowed with powers that significantly define the scope of the King's authority. This revolution in the text—including the removal of the sanctity of the King's person, introduced in the first constitution of 1961 by French experts—did not alter the substance of the problem: the pre-eminence of the King's power due to his position within the religious sphere. On the contrary, the constitutionalisation of the Supreme Council of Ulemas, of which he is president, reinforced this position, as did the conservative interpretations of the constitutional text by jurists.

The repercussions of this definition of royal power on the country's political life are now widely acknowledged. They are significant, as they derive from a theocratic logic upheld by all the conservative key actors within the ideological production system—the Ministry of Islamic Affairs, the Mohammedia League of Scholars, and the Supreme Council of Ulemas. The successive ministers of Islamic affairs, Abdelkebir Mdaghri Alaoui[16] and then Ahmed Taoufiq, consistently defended the view that the constitution cannot constitute the sole source of authority and must be reinforced by the *bay'a*, its original founding pact. All worked towards reinventing a monarchical tradition grounded in the Sunni theory of the caliphate.

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14 Mohamed Tozy, « Le Roi commandeur des croyants, » in *Édification d'un État moderne : le Maroc sous Hassan II*, ed. Driss Basri et al. (Paris: Albin Michel, 1986), 50–69.

15 A few days after the appointment of the constitutional review committee following the 9 March 2011 speech, which aimed to defuse the crisis triggered by the Arab Spring, the king established a second committee, the "Political Mechanism for Monitoring, Consultation, and Dialogue," chaired by his adviser Mohamed Moatassime and including leaders of the political parties. This committee played an important role in facilitating the drafting of the constitutional text. The conservatives, particularly the Justice and Development Party and the Istiqlal Party, sought to limit the scope of reform insofar as it affected their interests—that is, religion and the Arabic language, respectively.

16 As Minister of Islamic Affairs from 1984 to 2002, he never concealed his closeness to Wahhabism. He authored a book that paved the way for Islamists to attain power: A. M. Alaoui, *Al Houkouma al moultahiya (Le gouvernement barbu : étude prospective)* (Rabat: Dar Al Amane, 2006).

A. The Elements of a Compromise

The political situation in the country, particularly the practical functioning of its predominantly secular political system, ensures that this aspect of the King's religious power aligns with the interests of other key actors who advocate for the separation of religion and politics and who feel threatened by the rise of Islamists. The aim is a form of reformist appropriation of religion that establishes a framework for delimiting the intersection of politics and religion at a time when Islamist forces seek to abolish the boundaries between the two spheres. Some political scientists have even rethought secularism[17]—without breaking from this model—by situating the separation in a vertical perspective. In this conception, the neutrality of politics does not constrain the king, and incompatibility applies only within the bounds of monarchical authority.

The constitution, adopted by referendum in July 2011, retained the principal religious markers of the system despite the political context in which it emerged, marked by the Arab Spring and the unprecedented mobilisation of the "20 February Movement," which advocated a parliamentary monarchy. The constitution now institutionalises the King's religious monopoly. The ambiguous status of 'Commander of the Faithful'—entirely invented during the reign of Hassan II as an expression of a centuries-old tradition—has, by virtue of the text, become the only power the king possesses independently of the other constitutional institutions (Article 41 of the 2011 Constitution[18]). This reform, which purported to drastically limit the king's political and legislative powers and consolidate the hierarchy of norms by removing any ambiguity regarding the principle of constitutional supremacy and the subjection of royal edicts to legal review, in fact leaves wide scope for royal power in the religious sphere. Its impact was neutralised by the mobilisation of the coalition mentioned above and by a balance of power within society that remained highly favourable to conservatives.

This coalition, composed of the Islamist party (PJD), conservative parties (Istiqlal, Popular Movement, etc.), and *ulemas* close to the palace, was able to constrain a liberal interpretation of the constitution by adding to most articles that could have expanded the scope of religious law —particularly Article 19 on gender equality— the requirement to respect "the constants of the Kingdom." This interpretation, invoking a vaguely defined Islam enables Islamists and their allies to intervene whenever they perceive Islam to be under threat. They have thus taken the initiative to promote a particular interpretation of the constitution that invokes the caliphate.

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17 Omar Saghi, *Comprendre la monarchie marocaine* (Casablanca: La Croisée des chemins, 2016). Youssef Belal, *Le cheikh et le calife: sociologie religieuse de l'islam politique au Maroc* (Lyon: Éditions de l'ENS, 2011).

18 Article 41 reads as follows: "The King, Commander of the Faithful [*Amir al-Mouminin*], sees to the respect for Islam. He is the Guarantor of the free exercise of beliefs [*cultes*]. He presides over the Superior Council of the Ulema [*Conseil supérieur des Oulema*], charged with the study of questions that He submits to it. The Council is the sole instance enabled [*habilitée*] to comment [*prononcer*] on the religious consultations (*fatwas*) before being officially agreed to, on the questions to which it has been referred [*saisi*] and this, on the basis of the tolerant principles, precepts and designs of Islam. The attributions, the composition and the modalities of functioning of the Council are established by *dahir* [royal decree]. The King exercises by *dahirs* the religious prerogatives inherent in the institution of the Emirate of the Faithful *[Imarat al-Mouminin*] which are conferred on Him in [sic] exclusive manner by this Article.''

In practice, the king now holds sole religious authority, with the *ulemas* functioning merely as his subordinates; their referral to him and the transfer of their work to the state sphere constitute a royal prerogative. As the central actor in the political sphere, the king becomes the supreme and exclusive authority in the religious domain by virtue of the principle of commandership of the faithful. The independence of the *ulemas*—enshrined in the tradition of rebellious *ulema* narratives and maintained by the courageous actions of certain dissident *ulemas*—is now constitutionally impossible.[19] The religious sphere is firmly under the authority of the king, who embodies the political choices of the moment.

The constitutional framing of the royal monopoly served to consolidate a transformation that began in 1999 with the accession of the new king, Mohammed VI. While Mohammed VI inherited a relatively dense supervisory apparatus, the effectiveness of this system had previously been closely tied to the personal capacities of Hassan II, who was himself a religious scholar who did not hesitate to confront and challenge the *ulemas* in the realm of religious interpretation.[20]

The authoritarian context of the time allowed compensating for the temporary weaknesses of the king–*ulema* and neutralised any consequences arising from the fragility of his status due to the daily exercise of political management and the need to make compromises that were difficult to justify theologically.

Mohammed VI, by contrast, has never claimed the status of *ulema*: he possesses neither the inclination nor the means. Instead, he was impelled to establish a dedicated bureaucracy to manage this domain—not merely to govern at a distance or through intermediaries,[21] but to equip himself with the capacity to administer it directly. The imaginary and operational modes of the imperial tradition, efficient in terms of human management, were abandoned in favour of a highly costly, centralised, and bureaucratic system—precisely at a time when, in other domains representative of overtly displayed modernity, governance continued to draw upon imperial administrative techniques. [22]

This new process of administering religion through bureaucratisation differs markedly from what I previously described and characterised as the nationalisation of religion. In the 1980s,[23] the term "nationalisation" referred to a process of pyramidal institutionalisation that relied exclusively on the personal performance of the king as Commander of the Faithful.

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19 The most prominent figures after independence were Moulay Larbi Alaoui, who had supported the "No" camp during the 1961 constitutional referendum, and Abdeslam Yassine, who on two occasions challenged King Hassan II and his successor Mohammed VI.

20 Mohamed Tozy, « Monopolisation de la production symbolique et hiérarchisation du champ politico-religieux, » in *Le Maghreb musulman en 1979*, ed. Claude Souriau (Paris: CNRS Editions, 1981), 219–234.

21 Béatrice Hibou and Mohamed Tozy, « Une lecture wébérienne de la trajectoire de l'État au Maroc, » *Sociétés politiques comparées*, no. 37 (September–December 2015) : 1–22.

22 Béatrice Hibou and Mohamed Tozy, *Tisser le temps politique au Maroc : imaginaire de l'État à l'âge néolibéral* (Paris: Karthala, 2020).

23 Mohamed Tozy, « Le Roi commandeur des croyants, » in *Édification d'un État moderne : le Maroc sous Hassan II*, ed. Driss Basri, Abderrahim Belhaj, Mohamed J. Essaïd, Abdallah Laroui, Ahmed Osman, and Michel Rousset (Paris: Albin Michel, 1986), 50–69.

Previously, the civil service status of the *ulemas* and the control of mosques were fragmented and ad hoc measures — reactions to specific events that did not amount to a rationally conceived policy. The current process is markedly different. In addition to borrowing from the lexicon of "good governance,"[24] the bureaucratisation of religion is taking on the character of a proactive policy that explicitly calls for a strategy of "restructuring the religious field" through quantitative performance targets. This restructuring combines traditional control measures with innovative approaches, including public–private partnerships, the adoption of new public management techniques, the importation of engineering executives from the Ministry of Equipment, the monitoring of discourse content in the name of rationalisation, the creation of procedural manuals, the use of new information technologies, and the redefinition of the *ulemas*' tasks.[25]

B. Revisiting the Debate on Secularisation

When analysing the forms and indicators of religious practice over the long term, one is struck by the profound changes that have taken place since the country's independence. Ideologically, Islam has become a marker of identity, even though its presence in norms and practices is in decline. This observation is not specific to Muslim countries; secularisation is a general trend, and the clout of ideologies that seek to exploit religion cannot alter it. Religion is therefore increasingly confined to specific spaces. Religious practice has gained in fervour and intensity, yet it is increasingly restricted in both space and time. Social time is dissociated from religious time, just as sacred space is separated from profane space. The mosque is no longer central, either in the city or in the countryside. State interference in mosque management has deprived communities of control and prohibited their multifunctionality. Mosques are now closed between prayers and can no longer serve as the centre of civic activity for small village communities, nor as a house of God open to travellers seeking overnight shelter. When examining mosque attendance, it is evident that the crowd effect, which once caused alarm among "journalists," is now observable only on Fridays and religious holidays.[26]

This duality of experience reinforces a discreet but inevitable secularisation. Daily life is no longer punctuated by the call of the *muezzin*, except during the month of Ramadan. The transition to religious time is increasingly ritualised to emphasise the discontinuities between the religious and the secular. The adoption of appropriate dress and language allows for a heightened intensity of religious experience and delineates the sequences of daily life. The sacred now has its own specialised shops, markets, and objects; it is forbidden to exist elsewhere. These everyday realities are mirrored at the state level. A statistical analysis of the state's normative output reveals the rarity of religiously inspired texts. Article 3, which stipulates that Islam is the state religion while specifying that the state guarantees freedom of worship, follows Article 1, which defines Morocco as a constitutional, democratic, parliamentary, and social monarchy and specifies that the constitutional regime of the Kingdom is founded on the separation, balance, and collaboration of powers, as well as on citizen participation and participatory democracy.

24 Tozy, *Monarchie et islam politique au Maroc*, 1999.
25 Mohamed Tozy, « Des oulémas frondeurs à la bureaucratie du 'croire'. Les péripéties d'une structuration annoncée du champ religieux au Maroc, » in *La bureaucratisation néolibérale*, ed. Béatrice Hibou (Paris: La Découverte, 2013), 129–154.
26 Mohammed El Ayadi, Hassan Rachik, and Mohamed Tozy, *L'Islam au quotidien: enquête sur les valeurs et les pratiques religieuses au Maroc* (Casablanca: Marsam Editions, 2007).

It also follows Article 2, which stipulates that sovereignty belongs to the nation, exercised directly through referendums and indirectly through its representatives.

More than the order of enunciation, which places religion after the sovereign nation and the constitutional nature of the regime, it is the consequences of the Islamic character of the state that merit close attention. The Moroccan state mobilises religion only marginally. The designation of the king as Commander of the Faithful is the most striking manifestation of the use of religion to legitimise the king and, through him, the state. The status of Commander of the Faithful carries a symbolic and ritual function rather than an effective political one. It enjoys consensus among the political elite insofar as it represents, as previously noted, a political compromise at a historic moment marked by combined pressures from Islamists and conservatives close to the palace. It reflects the desire of all, including modernists, to distinguish between the religious and political spheres and gives meaning to their coexistence.

- An executive branch embodying the civil aspect of the state, represented by the Head of State (Article 42 of the July 2011 Constitution), an elected government, and a parliament with exclusive legislative power, responsible for regulating and administering the implementation of public religious policy.
- A religious sphere embodied by the Commander of the Faithful (Article 41 of the July 2011 Constitution), the hierarchical superior of all religious authorities (*ulemas*, *imams*, and ministers of religion) in the Kingdom, who oversees a religion that is now institutionalised and confined to specific domains, with no possibility of entering the political arena except through religion's intermediary role.

It should be noted, however, that the very limited role of religion in the workings of the state—its normative production, administrative organisation, and influence on the daily life of Moroccans—is not always reflected in thought. Intellectuals, like politicians, struggle to describe the rather unusual situation of a society experiencing advanced secularisation. The absence of public debate, even among the elite, is due as much to the weight of conservative forces (the Istiqlal Party, the PJD, the Popular Movement, and the Palace entourage composed of *ulemas*) as to a linguistic misunderstanding. Most importantly, this misunderstanding is linked to the use of the word "secularism" in Arabic, which is often misinterpreted or misunderstood.

The concept of secularism is often viewed through the lens of the French experience, which was characterised by strong opposition to the Church, and indeed to religion in general. Consequently, religious actors—whether Islamists or those close to the authorities—exploit the term to discredit their opponents. They also reject its application to the contemporary reality, in which political authority is largely separate from religion. The same observation applies to the concept of the "civil state," which was one of the main demands during the Arab Spring and the Algerian Hirak of 2019. However, the slogan of the civil state did not carry the same meaning everywhere: in Cairo's Tahrir Square or in front of Emir Abdelkader's statue in Algeria, it was primarily directed against the army, whereas in Tunisia or Casablanca it was aimed at the authority of religious leaders.

In the Moroccan case, theoretical reflections on the issue are rare, with few connections between philosophical analyses—such as the work of the socialist thinker Mohamed Abed El Jabri on the secular foundations of the original Muslim state[27] —and the work of theologians.

This disconnect is even more pronounced in the political sphere. Ideologues have never succeeded in translating their ideas into political doctrine. Even the party with which Mohamed Abed El Jabri was affiliated—the Socialist Union of Popular Forces, for which he drafted the ideological report at its formation in the late 1970s—has been unable to transform this philosophical legacy, which outlines the conditions for a civil state, into a political project capable of giving substance to the ongoing process of separating religion and politics.

Indeed, it is difficult to discuss the civil character of the state publicly, and consequently to acknowledge that society is gradually moving towards secularism. These difficulties are sometimes compounded, as occurs when a law with a religious character is contested for political reasons, as was the case during the reform of the family law.

Morocco has witnessed the formation of two reform committees under King Mohammed VI. In each instance, religious figures were represented alongside individuals known for their secular orientations. Participants were always required to frame reforms within a juristic context, drawing on debates over interpretation and exploiting the flexibility of the Maghrebi Maliki school, which largely accounts for the modest scope of the reforms. Moving beyond the religious framework is a complex endeavour and often takes unexpected turns. The example below, illustrating the sharp debate between the Minister of Endowments and Islamic Affairs and the leader of the ruling Islamist party during the period 2011–2021, goes beyond mere narrative; it provides evidence of intense tension.

A few days after President Macron's visit to Morocco in October 2024, the Minister of Endowments and Islamic Affairs, Ahmed Al-Tawfiq, reported to the House of Representatives that he had explained to his devoutly Catholic French counterpart, Minister of the Interior Bruno Retailleau, that Morocco was a secular country, despite the king bearing the title of Commander of the Faithful. A few days later, following a surge of attention on social media, PJD leader A. Benkirane made a statement: "Moroccans have historically been attached to their religion and continue to be so, and this attachment to Islam is not limited to individual faith, but constitutes an integral part of the very essence of the Moroccan state, governed by the Commander of the Faithful." He added: "Morocco has never been a secular state."[28]

Al-Tawfiq, a distinguished historian well-versed in theoretical debates, responded in an open letter to Benkirane framed as a plea addressed to God. The press, which widely reported on this exceptional missive, published only two passages.

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27 See the four volumes by Mohammed Abed El Jabri on the *Critique of Arab Political Reason*, published in Arabic between 1984 and 2001.

28 Nawfal Kaiss, « Laïcité au Maroc : Ahmed Toufiq réfute les interprétations de Benkirane, » *MÉDIAS 24*, 4 December 2024.

In the first passage, the minister defends himself against accusations that he referred to the State as secular, suggesting that Benkirane was acting in bad faith: "You reacted to what people understood, namely that I affirmed that the State in Morocco is secular. However, I did not mention the State, since the State is that of the Commander of the Faithful, and you know that I have been involved, by the grace of God, in religious affairs for more than two decades."[29]

The letter becomes more contentious as the Minister of Endowments and Islamic Affairs confronts the former Prime Minister with the contradictions of his decade-long tenure in public office. He states: "You are the leader of a modern political party, and the modern political party is derived from a secular Western system. You were elected on the principle of equal votes for all citizens, irrespective of their beliefs or backgrounds—a principle likewise drawn from a secular Western model. During your time as Prime Minister, you worked on legislative texts that served rational interests and were submitted to parliamentary voting—again, a practice derived from a secular Western system—because, had you sought the consultation of religious sect elders, much time would have been lost due to their disagreements. You enacted a number of laws based on consensual agreements or international decisions, which are similarly taken from a secular Western model. As Prime Minister, you were obliged to uphold individual liberties as enshrined in the Constitution and to protect them through the rules of public order, a principle drawn from the Western secular context. All matters relating to citizenship were subject to your review, referencing a historical secular framework, even if, in our view, it remains distant from the details of our religious heritage."[30]

He continued: "There are dozens of other phenomena that have entered our lives with the advent of this system, which we have adopted under its banner—'progress'—without objection. To understand, before dwelling on what is ours and what is theirs, we must remain mindful that the history of all peoples, without exception, unfolds in every circumstance according to God's will, decree, and laws, and this history constitutes an open space between those who walk on the earth and those who look upon it."[31]

It appears that the most important point, and the one largely overlooked by most commentators, is the way in which Al-Tawfiq defines the concept of secularism.

Tawfiq chose to express the concept in English—*secularism*—rather than using the common Arabic translation, *al-'ilmaniyya*, in order to avoid the negative connotations that the latter may carry in the Arab world.

He returned to his role as a teacher, which he had held for many years, to explain and resolve the paradox of a secular state coexisting with the preservation of the religious institution of the Commander of the Faithful, portrayed as a uniquely Moroccan particularity. He concluded his message with a genuine lesson in the social sciences, directed at the former Prime Minister.[32]

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29 See: *https://www.yabiladi.com/articles/details/157070/laicite-maroc-ahmed-toufiq-repond.html*.
30 Available in Arabic on the following link: https://al3omk.com/1027658.html.
31 Ibid.
32 Ibid.

"Mr President, not every 'leader' can handle the discussion of secularism effectively, as it is a complex concept in political philosophy—one over which debate has not even concluded in its original context. There is, for instance, the French laïcité, which emerged within the historical context of the tense relationship between the Church and society, a tension mitigated by the French Revolution—a particular case. Then there is the form of secularism in which the state takes the religious needs of its citizens into account, as exists in other Western countries. I recall that in 2008, stemming from the same interest, I asked the German Ambassador to Morocco about the official levy collected by the state from citizens for religious expenditure, and I was surprised to learn that, for the year 2006, the amount was eight and a half billion euros."

Conclusion

The debate is far from over, but in practice the State, through its Minister of Endowments and Religious Affairs, is treading a tortuous path. It implicitly asserts that the state currently operates under secular law, connected to religion only by a tenuous, historical link that is more spiritual than regulatory.

The Minister maintains that the state has the right to manage religion as a public service and the capacity to prevent interference by religious authorities through highly bureaucratic and complex mechanisms. This was evident during the reform of the Family Code in 2001. The king entrusted the project to a committee in which scholars were a minority, imposing his view while encouraging them to seek solutions for certain issues in local customs or according to the Hanafi school. This was a precarious undertaking, as the Islamic movement at that time was very strong, capable of mobilising over a million protesters in a single demonstration.

By contrast, the reform of the Family Code twenty years later, in 2025, proved less risky. The reactivation of the Supreme Council of Ulemas and the institutionalisation of collective *ijtihad* (juristic reasoning) allowed modest but significant progress. *Ulemas* occasionally expressed reservations on certain issues, but legislative authority now rests with Parliament. Today, the outcome depends on the balance of power among the various key players in society. While Morocco is portrayed in its laws as a civil state, it remains a country where the monarchy derives its legitimacy both from its capacity for good governance and from its connection to religion.

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