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New Constitution

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It was a historic milestone when the Tunisian parliament adopted a new constitution on January 26, 2014. With only a few weeks left before the next parliamentary elections on October 26, it is now a propitious time to assess the political performance of the largest party in the National Constituent Assembly. Ennahdha, the Islamist movement and party, has managed to reconcile Islamic values with democratic and pluralistic values but not with liberal ones. It clearly has shown its flexibility and pragmatism to adapt to different political contexts and its ability to compromise in political negotiations.

Introduction

Over the past decades, many books have examined Islamists' ideologies and their impact on the social and political orders of their respective countries. The 2011 Arab Spring, which allowed for the swift ascent of Islamists all over the Arab world, tested the claims of Islamists against reality. Tunisia's Islamist Ennahdha movement and party gained 41 percent of the vote in Tunisia's first free and democratic elections in October 2011 and became the largest party in its National Constituent Assembly (NCA). It soon forged a ruling troika with two non-Islamist partners. Ennahdha, leading amid turbulent revolutionary waves and conditions of persistent polarization, offers an interesting opportunity to scrutinize the Islamist vision of a social and political order and what it means in practical terms. This paper examines the party's ideological claims and practical positions on democracy and pluralism, gender order, and the rule of sharia.

Democracy and Pluralism

Ennahdha has repeatedly demanded a parliamentary democratic system to protect public sovereignty as well as political freedoms. The party's 2011 electoral platform states: "The mission and priorities of Ennahdha consist of the pride of Tunisia, its progress, independence, sovereignty, its republican system based on the separation of powers, the independence of its judiciary, democracy, good governance, justice and equality for all citizens."¹ In this context, Ennahdha's party platform considers human rights to be compatible with Islamic values. Instead of following the well-known Islamist slogan "Islam is the solution," Ennahdha

follows slogans such as "Islam is democracy" and "Islam is human rights." The statements of Ennahdha members reveal a similar picture. "We believe that we can be perfect democrats and Muslims at the same time."²

While democracy as a political and institutional order is clearly uncontested within Ennahdha, pluralistic (i.e. liberal) norms are more controversial. The party platform demands equality among citizens and human rights for every Tunisian citizen. Religious minority rights and freedom of press and expression are also highlighted in the party platform. At the same time, Ennahdha's pluralistic commitment has boundaries, especially when it comes to the discussion about so called "blasphemy laws" (criminalizing the insult, offences or contempt toward religion). Ennahdha's official position – and the position of many interviewed Islamist MPs – is in favor of criminalizing alleged offenses against "the sacred." The MPs argued that such laws are necessary to fight incitement to discrimination, hostility, and violence. However, Ennahdha members had different views on what scope of such laws should have. While some interviewed MPs supported a broad protection by law of everything that is "sacred," others expressed the need to clearly define what "sacred" means and to limit "blasphemy laws" in order to avoid selective, arbitrary, and discriminatory implementation. Other Ennahdha MPs made it very clear that they refer to offences against religion when they talk about the "sacred." As one MP put it, "The problem is when you insult. When you are not in an intellectual debate, theological, philosophical debate. You are insulting, you are behaving in a manner which expresses no

respect for others. This is problematic.”³ Ennahdha’s commitment to pluralism can be stretched to its limits when its members believe that their religion is under attack.

Conservative Gender Order and Sharia

Ennahdha’s position on gender issues is rather ambiguous. On the one hand, it emphasizes its full commitment to women’s rights and female participation. It aims to promote women’s participation in the social, political, cultural and economic sphere. “It thus aims, in the coming phase, to: Protect and consolidate the achievements of Tunisian women, continuing to further their social, political, cultural, and economic development until they achieve full citizenship as equal partners in building the country and its social wellbeing in all spheres.”⁴

While this position distances Ennahdha from fundamentalist positions restricting women to the private sphere, the group’s position on women is evidently traditional and conservative. It equates the notion of “family” with the traditional family unit, including marriage and children. One leading Ennahdha member explained why unmarried, single mothers should not receive the same social and legal protection as married couples and their children. She underlined the need for their children to receive social and legal protection but said that they should not be treated legally on equal terms. “We do not want to normalize children outside marriage.”⁵

Another telling example of Ennahdha’s conservatism is the rejection of certain articles of the CEDAW (Committee on the Elimination of Discrimination against Women) by some members. “If you go into the detail of some of these articles you will find that they go against some fundamental texts.”⁶ Ennahdha’s conservative and patriarchal values can manifest themselves in discriminatory heritage, marital, and divorce laws.

As for sharia, most Ennahdha members follow a reformist understanding of Islamic law, which sees it as a mostly abstract ideal ethical framework and does not ask for the imposition of rigid legal codes. “I believe that Islam is a system of values.”⁷ Nevertheless, Ennahdha avoids the use of the term sharia, and relies instead on references to the Islamic identity: “cultural and civilizational heritage of Tunisian society and its Arab and Islamic identity.”⁸

Ennahdha’s Vision in Practice

Unlike other Islamists, Ennahdha has not only ascended to power in a democratic manner but also had to work with non-Islamists partners. Moreover, it stayed in power long enough for its democratic claims to be tested. One crucial indicator of its democratic credentials is the negotiation of the new constitution and the way in which it has translated its vision into particular articles of Tunisia’s new constitution.

In accordance with Ennahdha’s concept of a democratic political system, the new Tunisian Constitution ensures basic democratic principles. Article 2 enshrines Tunisia as a “civil state, based on the principle of citizenship, the will of its people, and the supremacy of the law” and cannot be modified in any future revisions of the constitution.⁹

These democratic achievements reflect the will of all political fractions in the NCA, including Ennahdha, to overcome decades of dictatorship and repression. A more controversial topic while negotiating the constitution was the notion of freedom of expression. Ennahdha members announced on numerous occasions that freedom of expression should adhere to Islamic values and respect religion as well as religious figures. In a previous draft, Ennahdha members supported a constitutional clause that made clear that the “state is the protector of the sacred.” The introduction of this so-called “blasphemy clause” by Ennahdha members of the Rights and Liberties Committee caused heated debate in Tunisia as well as abroad. Indeed, it triggered one of the most divisive debates dur-

ing the drafting of the new constitution. The vague wording of this clause triggered fears about broad restrictions of freedom of expression and met with strong resistance in liberal parties and civil society, whose participants have warned that such laws could be used to stifle discussion and dissent in the public sphere. Ennahdha was accused of introducing the legal framework to censor politicians, journalists, intellectuals, and artists by criminalizing blasphemy.

All these developments caused Ennahdha to rethink the wording of the constitution and discuss the issue with other party members as well as with external experts. Despite the fact that some party members still see the need to protect the “sacred,” Ennahdha has accepted the removal of criminalizing language. Many have explained their change of opinion by noting that the constitution is not the place for penalizing legislation and that such a procedure contradicts Ennahdha’s gradual approach of convincing, not coercing.

Although Tunisia’s new constitution does not include such a “blasphemy clause,” its Article 6 remains rather vague and could not dispel all the fears. It will likely perpetuate further debates about the role of religion in Tunisian public life.

While disagreeing on other issues, MPs in the NCA were united on a cross-party basis that women’s legal achievements in Tunisia should not be curtailed. Several articles of the new constitution reflect this broad agreement, especially Article 46: “The State shall commit to protecting women’s achieved rights and seek to support and develop them. The State shall guarantee equal opportunities between men and women in bearing of all the various responsibilities in all fields.” The constitution further commits the state to eliminating violence against women and grants women the right to run for the position of president.

Ennahdha’s willingness to foster women’s rights, which was already stated in its 2011 electoral platform, explains its support for these legal achievements. However, its conservative and religiously legitimized idea of a gender order led to much

debate during the drafting of the new constitution. This is especially true for Article 28, the first constitutional draft of which stated that the “roles” of men and women “complement one another within the family.” This wording triggered demonstrations, protests, and a firestorm of criticism from local and international media. Misinterpretations and rumors that were circulated in the national and international press led many to believe that Ennahdha wanted to reduce women to the “complements” of men, instead of acknowledging their full equality.

Although these rumors were somewhat misleading, the wording of the article implied what many Ennahdha members confirmed. They are convinced that men and women are equal before God but that they should indeed have different roles within society, especially with regard to family obligations. From a women’s rights perspective, Article 28 did indeed have problematic wording, since it did not use clear legal language that affirmed equality. Women’s rights activists and other civil society groups accused Ennahdha of threatening the legal achievements of women in Tunisia with a conservative and patriarchal Islamic agenda.

As a result of the domestic and international pressure, Ennahdha’s members of the Rights and Liberties Committee replaced the vague language with less ambiguous wording: “All citizens, male and female alike, have equal rights and duties, and are equal before the law without any discrimination” (Article 21). Once again, Ennahdha made ideological concessions and proved itself capable of adapting to the political context.

Ennahdha members provoked another firestorm of criticism, however, with their initial proposal of an article stipulating “sharia as the main source of legislation.” To the party’s critics, this suggestion was unacceptable because it did not specify which interpretation of Islamic Law it was referring to.

Despite its largely reformist understanding of sharia, which does not necessarily contradict democratic values, the movement ultimately avoided using the term so that it would not provide its

political enemies with a target, and after various consultations, debates, and negotiations, it decided not to include such a provision in the new constitution. Most Ennahdha members explained this decision with the will to avoid confusing the Tunisian public. “If we use the word sharia, there is a lack of precision and clarity.”¹⁰ The result of this pragmatic decision is that Article 1 of the new constitution does not include any references to sharia while at the same time acknowledging the Islamic identity of Tunisia: “Islam is the religion of Tunisia,” the same wording as the old constitution of 1959.

Since Ennahdha was seeking to win as many votes as possible – and at the same time assuage fears against an Islamist takeover – consideration of public opinion is also reflected in its electoral platform of 2011, where the word “sharia” is not even mentioned. This pragmatic decision once again shows that Ennahdha is highly attentive to the specifications of the Tunisian public opinion and political landscape and acts accordingly.

Conclusion

While Ennahdha’s limited tenure does not yet allow for any authoritative conclusions on its democratic practice, scrutinizing the party’s electoral platform and positions adopted during the constitutional drafting process can be quite indicative. The party’s commitment to democracy as a political and institutional order is uncontested, and so is the commitment to pluralistic norms. This is not without limits, however, but rather ends with the “protection of the sacred,” which could pose a threat to freedom of expression in the future. The group’s position on gender order is not fundamentalist, but it is nonetheless conservative and could possibly lead to a restriction of women’s rights (in areas like inheritance laws, for example). And its performance during the negotiations for the

new constitution showed that many of its positions are far from fully elaborated. They are also not intransigent.

Overall, however, the case of Ennahdha shows how an Islamist party can reconcile Islamic values with democratic and pluralistic values; just not with liberal ones. During this challenging process, Ennahdha has proven not only keen to discuss controversial issues but also able to pursue a flexible and pragmatic approach. It has been able to compromise on numerous occasions and retreated from more rigid positions when it was confronted with strong criticism from Tunisia and abroad.

It is important to recall that Ennahdha was outlawed in Tunisia between 1991 and 2011 and as such, had no visible presence in the country during those years. This is therefore the first time that the party has faced the realities of having to govern a country, and it can be expected that Ennahdha will continue to play a major political role in Tunisia after the elections on October 26. Therefore, it will be even more crucial to observe how its positions will translate into concrete policies and legislation under the next parliament. This said, Ennahdha is an Islamist movement that has evolved within a democratic context. This democratic context made it not only necessary to discuss and sell certain positions within the Islamist party and movement but has also forced Ennahdha to debate and negotiate with other parties (especially within the three-party coalition) and within civil society as well as to consider the broader Tunisian public. There is no doubt that the answer to its democratic deficits is more inclusion and sustaining democratic foundations.

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Notes

- 1 A few days before this paper's editorial deadline, Ennahdha unveiled its new electoral program, which unfortunately could not be considered in this policy brief. It is available at <<http://election-2014.net/>> (accessed September 29, 2011).
- 2 Author interview with male Ennahdha MP, April 2013, Tunis.
- 3 Ibid.
- 4 Ennahdha's electoral platform, 2011.
- 5 Author interview with female Ennahdha MP, April 2013, Tunis.
- 6 Author interview with another female Ennahdha MP who refers to religious texts, April 2013, Tunis.
- 7 Author interview with Zied Ladhari, April 2013, Tunis.
- 8 Ennahdha's electoral platform, 2011, official English version, p.241.
- 9 There are numerous other articles in the new constitution that ensure democratic principles. The constitution clearly states that the Tunisian people possesses full sovereignty and are the source of all power. It also recognizes the rights of political opposition as an important component of parliamentary work (Article 60) and expresses the need of an independent judiciary (Article 102). The state is obliged to guarantee basic freedoms, human rights, judicial independence, justice, and equality for all Tunisians. Another significant provision is Article 6, which bans accusations of apostasy.
- 10 Author interview with Ennahdha MP, April 2013, Tunis.

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