

## Who is threatening free speech in post-revolutionary Tunisia?

**Middle East specialist Rory McCarthy examines the role of Islamist movement Ennahdha in shaping, and constraining, freedom of speech in Tunisia after the Arab Spring.**



Barely a year after a popular revolution toppled the Tunisian regime and provoked a wave of revolts across the Arab world, a small art exhibition was held in La Marsa, a suburb of Tunis on the Mediterranean coast. Some of the works at the Printemps des Arts festival celebrated the revolution; others questioned the new political climate. On the final day of the show, in mid-June 2012, a minor local court official declared some of the artwork blasphemous and ordered it immediately removed. A large crowd quickly gathered, many of them young Salafists, and protests soon spread. The president, prime minister and speaker of parliament condemned the violence. However, they also criticised the artists for their 'attack on the sacred,' which they [declared](#) to be a provocative attempt to sow discord in fragile times. In the face of death threats one artist fled the country. Another, who had created a sculpture of three veiled women sinking into a circle of stones, was formally accused of "undermining public morality" and was threatened with up to five years in jail. It was but one of many fraught battles over free speech and revealed how contested the

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meaning of freedom has become in a fledgling democracy.

Throughout the country's post-revolutionary state-rebuilding project Tunisians have been jailed for what they have said, written or sung. In the most serious case, Jabeur Mejri, a young blogger, was jailed for seven and a half years in March 2012 for a Facebook post which included lewd caricatures of the Prophet Mohammad. Amnesty International named him a [prisoner of conscience](#). His co-accused, Ghazi Beji, was granted political asylum in France. Two months later, Nabil Karoui, the owner of a private television station, was [fined](#) for broadcasting the animated film *Persepolis*, which some critics had denounced as blasphemous. Amina Sboui, a Femen activist, was [jailed](#) in May 2013 not long after she had posted a photograph of herself topless on the web. In June 2013 the young rapper Alaa Eddine Yaakoubi, who performs as Weld El 15, was jailed for a song critical of police brutality, *Boulicia Kleb* (Police are dogs). In December 2013 he was jailed a second time for performing another song. As Amna Guellali, a Human Rights Watch researcher, [put it](#), many Tunisians have found themselves "suddenly caught in the coils of arbitrary justice."

Many among the Tunisian elite hold the Islamist movement Ennahdha responsible. After two decades in hiding, Ennahdha re-emerged in the weeks after the revolution and swept to power in the country's first free elections in October 2011. The party insists its commitment to democracy was reinforced, not weakened, by the repression it faced throughout the 1990s and 2000s, when thousands of its members were jailed or forced into exile. However it argues that some freedoms, including freedom of expression, must be limited to accommodate its understanding of Tunisia's culturally specific Arab Islamic heritage. "Freedom of expression and freedom of artistic creativity are among the freedoms we accept but they are not unrestricted and those who exercise them must call to mind the belief and morals of our people," said Sahbi Atig, head of the Ennahdha bloc inside the Constituent Assembly. The complexity of the Tunisian transition lies in the on-going conflict between the legacy of an authoritarian regime and the awkward evolution of this Islamist movement.

The Tunisian dictator Zine el-Abidine Ben Ali was toppled in January 2011, but some pillars of his rule remain. All the free speech prosecutions since the revolution have come under Ben Ali-era laws, which were crafted with deliberate ambiguity. One of the most commonly used is article 121.3 of the penal code, which orders between six months and five years in jail and a fine for anyone caught distributing, selling or displaying in public any pamphlets, leaflets and stickers that "disturb public order or undermine public morality." The Ben Ali regime regularly used it to lock up its critics. But after the revolution, this same article was used to prosecute Karoui, the television director, Mejri, the blogger, and Nadia Jelassi, the sculptor who made the veiled women exhibit at the Printemps des Arts and head of fine arts at the Institut Supérieur Des Beaux Arts in Tunis. Jelassi was summoned before a court. "The magistrate asked me what were my intentions in making my work," she said. "It's a question that I could accept from a spectator, an art critic, a student. But for a judge who is accusing me to ask exactly what happened in my head? Did I really intend to provoke or be against religion? It's not his business to ask at all."

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Ennahdha leaders argue they cannot be held responsible for judges' decisions. "These recent sentences don't reflect the policy of the government," said Zied Ladhari, an elected Ennahdha representative at the Constituent Assembly. He complained that some judges were playing "political games" to undermine Ennahdha. This, in his view, explained why a court decided to give only suspended sentences to 20 men convicted of attacking the US embassy in September 2012 in riots in which four people were killed and the nearby American school burnt to the ground.

However, the judiciary does not always seem to act independently. There are clear links between some prosecutions and the Ennahdha-led government, including the case against the artist Jelassi, which was initiated by the public prosecutor who acts on behalf of the state. In other instances Islamists themselves have initiated cases. For example, an elected Ennahdha representative brought a case against Raja Ben Slama, a psychoanalyst and university professor, for the offence of defaming a public official without evidence after she accused him on a television talk show of watering down free speech protections in a draft constitutional article. Though there is no direct evidence of an Ennahdha directive to judges encouraging them to pursue this flood of free speech cases, it is likely that at least in some cases judges are bowing to Islamist views. As Ben Slama herself argued: "I think there are judges who, without being either Islamist or conservative, prefer to submit to the pressure of the general atmosphere or prefer to be obliging to the new rulers of Tunisia. There are judges that were obliging to the Ben Ali regime who have become opportunistically obliging to the new rulers." In addition, judicial reform has been halting and attempts to weed out corrupt judges have been heavy-handed. In May 2012, the then Ennahdha justice minister, Nouredine Bhiri, announced the summary dismissal of 82 judges in a process Human Rights Watch [dismissed](#) as "unfair and arbitrary." That may have served as a warning to other judges to step into line with Ennahdha's statements about the need to restrict freedom of speech.

Whatever role the judiciary has played in the battles over free speech, the focus of most attention and criticism has been Ennahdha itself. Dismissed as unchanging and reactionary by its secular opponents, Ennahdha is better understood as an Islamist movement undergoing a long, difficult evolution. It emerged as a political force in 1981, arguing for the establishment of a "contemporary image of the Islamic system of government." By the late 1980s it had accepted the principles of democracy and a civil state. However Ben Ali repressed the movement and its members were jailed for many years or fled into exile. Since the revolution, Ennahdha leaders have insisted that their party has been a model of compromise. They emphasise that the party chose not to put up a candidate for the presidency for fear of provoking a backlash and that it shared power in coalition with two secular, social democratic parties. In debates over the new constitution, Ennahdha compromised: it withdrew mention of sharia law, revised an article that gave women only 'complementary' status to that of men, dropped plans to ban 'attacks against the sacred' and to make Islam the religion of the state, and ceded ground to those who wanted a mixed parliamentary and presidential system of government. In September, Rachid Ghannouchi, the movement's leader, agreed in principle that his government would step down in favour of a technocratic cabinet after months of opposition criticism.

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Though Ennahdha is moving towards the political centre its Islamic project has become less and less clear. This ambiguity comes in part because the movement wants to appeal to a broad conservative constituency and fears losing support to radical Salafist movements with their more clearly articulated vision of an Islamic caliphate under sharia law. Ennahdha's ideology has been reduced to core issues: accepting democratic principles, emphasising Arab-Islamic identity, and taking a conservative position on questions of gender and free speech. The result in Tunisia is that a movement that was persecuted for the expression of its political beliefs is intent on once again introducing some limits to freedom of expression. An Ennahdha leader, Sahbi Atig, argued that any 'insulting' of 'the sacred' was against the people's 'good morals' and should be criminalised. In August 2012 the party submitted a draft bill against blasphemy to do just that.

These conservative statements on freedom of expression, apparently at odds with the party's moderation and pragmatism on other issues, were also an effort to forge party identity amid diverse strands of opinion. The more Ennahdha moved to a centrist position, the more it risked undoing its internal ideological unity. Senior leaders in both the moderate and conservative wings of the party share this hawkish position on free speech. Samir Dilou, the current human rights minister and an Ennahdha moderate, said of the long jail term given to the blogger Jabeur Mejri, the Amnesty prisoner of conscience: "We must not forget that in Tunisia, with its culture and Arab-Muslim traditions, an attack on the Prophet cannot be regarded as a freedom of expression." Habib Ellouz, a conservative and early member of Ennahdha, also defended the jailing of Mejri. "To provoke people on the basis of their religion is totally rejected," he said. "These kind of provocations will strengthen the jihadi Salafist trend. If you want to see more al-Qaida supporters in Tunisia then be flexible on blasphemy."

Tunisia's political stage has become bitterly polarised in the past three years and the most striking practical test of this apparently irreconcilable ideological discord was in the drafting of the new Tunisian constitution, the primary task given to the elected Constituent Assembly and a job it was supposed to have completed within a year of the 2011 elections. The debates in the assembly at Bardo, the grand residency of the Husainid beys from the 18th century, have been fraught. On 1 July 2013, the first day of the plenary debate on the final draft of the constitution, most of the opposition parties walked out in protest at Ennahdha's handling of the drafting process. The following day the atmosphere in the chamber was tense. Ennahdha members defended their proposals. Moments later Slaheddine Zahaf, an independent representative from Sfax, where he runs the city's successful football club, turned to his Ennahdha opponents and said: "We did not make a revolution to turn Tunisia into Afghanistan. This constitution paves the way to make Tunisia an Islamist country. You lived in fear and today you are still in fear. But you will live all your life in fear because you don't accept the meaning of democracy."

To draft the constitution, the assembly was divided into six commissions. The rights and freedoms commission, which dealt with freedom of expression, had nine Ennahdha representatives among its twenty-two members who all sat through months of public hearings and debates. By the fourth draft of the constitution in June 2013, limits were placed on freedom of expression, on the media

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and on publication which were broadly in line with and in fact slightly less restrictive than the key International Covenant on Civil and Political Rights of 1966, which Tunisia ratified in 1969.

However, behind the scenes, some members of the Tunisian rights and freedom commission described acrimonious debates over the precise wording to be used. Salma Mabrouk, a secular commission member, said there had been strong opposition to placing any limits on freedom of expression, except where such limits followed principles of necessity and proportionality in achieving their aim. “We lived 23 years with articles that said freedom of expression was limited by a law that protects public order and the authorities interpreted this however they wanted,” said Mabrouk. “We want to avoid this and to protect all freedoms in general. Where you don’t have this role of necessity and proportionality the authorities can stamp on your rights. That is what we had for 23 years.” She claimed, as have other opposition representatives, that Ennahdha officials ignored the internal votes on this and other questions and pressed ahead with their preferred draft, which in this case allowed for certain restrictions on the freedom of expression. Ennahdha has denied this. Farida Labidi, the senior Ennahdha representative who led the rights and freedoms commission, admitted there had been disagreements on the precise limits to be applied to certain freedoms. “There are some asking for freedom of expression without limits,” she said. Ennahdha had pressed, in vain, to have the protection of ‘public morals’ included as a legal restriction on freedom of expression, as it is in Article 19 of the International Covenant. However, other articles in the draft constitution also have an impact on freedom of speech and in reality amount to a constitutional stand against blasphemy. Article 6 describes the state as the “protector of the sacred,” without defining what ‘the sacred’ means and what protecting it might involve. Such ambiguities in the drafting process have angered the opposition, forced significant delays in the finalising of the constitution and emboldened protestors to demand Ennahdha’s resignation.

The battles over the limits of free speech have played a defining role in Tunisia’s transition to democracy, but this is much more than the polarised Islamist-secularist battle it is often presumed to be. In part it is about an unreformed judiciary treading warily in a new post-revolutionary landscape. Yet it is also the story of an Islamist movement that has compromised and moderated its views in some areas but that is clinging to questions of identity and protection of the sacred as crucial to its political project. The constitution drafting process has brought compromise but has left some troubling ambiguities. Meanwhile, the slow pace of economic recovery and the continued lack of social justice, which should surely be the real priorities of the transition, combined with a rising tide of Salafist radicalism, have driven the political process to deadlock. The Arab Spring has no better chance of a successful transition to democracy than in Tunisia, but even here freedoms once taken as won must still be painfully negotiated.

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This piece was republished by [Eurozine](#).

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Published on: January 6, 2014