

Piety and Politics: Political Opportunity Structure
and the Role of the 'ulama in Family Law Reform in
Morocco and Tunisia

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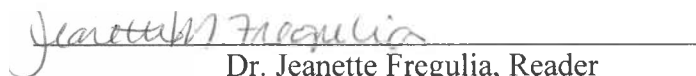
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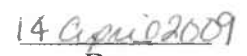
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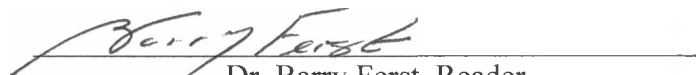
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Introduction

The imposition of modern governmental structures in the majority-Muslim world has largely reframed the discussion of political authority. The secularization of Arab governments is traditionally seen as a byproduct of this modernization.¹ Moreover, this secularization necessitates a rethinking of traditional authoritative modes. Western historians Joseph Schacht and N.J. Coulson contend that the *'ulama* (Islamic scholars) acted as the gatekeepers of *shari'a* law. They promulgated modern interpretations of the *usul al-fiqh*;² issuing legal rulings in response to modern dilemmas.³ Islamic modernists and contemporary theorists argue that the social situation in majority-Muslim countries must not be ignored by the *'ulama*.⁴ Rather, they have been making decisions that result from their analysis of the socioeconomic conditions of society, and that they ought to do so for the preservation of the integrity of Islamic law. Scholars contend that the modernization of society, whether technologically, economically, or socially necessitates reflection on the role held by the *'ulama* in contemporary society.⁵

¹ John L. Esposito, "Introduction," in John L. Esposito and Azzam Tamimi, eds., *Islam and Secularism in the Middle East* (New York, NY: New York University, 2000), p. 1.

² the Qur'an, the *hadith* (Prophetic commentary on the Qur'an), and the *sunna* (the path of the prophet)

³ Joseph Schacht, *An Introduction to Islamic Law* (New York: Oxford University, 1982), p. 105. See also N. J. Coulson, *History of Islamic Law* (Edinburgh, GB: Edinburgh University, 1994), pp. 142-143.

⁴ Mansoor Moaddel and Kamran Talattof, "Contemporary Debates in Islam: Modernism Versus Fundamentalism An Anthology of Islamic Thought," in Mansoor Moaddel and Kamran Talattof, eds., *Modernist and Fundamentalist Debates in Islam: A Reader* (New York, NY: Palgrave MacMillan, 2002), pp. 7-16.

⁵ *Ibid.* pp. 7-23. The first chapter of this work attempts to anthologize scholastic writings on modernism and feminism. The work summarizes the key arguments of the most important Islamic scholars on both sides.

While the importance of kin-based solidarities to the reformation of Islamic law cannot be ignored, the study of the political context with which Islamic law is reformed is particularly important. Moreover, an evaluation of all of the important actors within that political context is important for analyzing the causes of legal reform and the implications thereof. The role of the *'ulama* in the political atmosphere of majority-Muslim countries is an understudied area, due to their piety and the historical tendency for *'ulama* to remain detached from the political process. The case of Muhammad Maghrawi in Morocco and the headscarf controversy in Tunisia illustrate the common conception of the *'ulama* in the political realm.

On 14 September 2008, Moroccan Islamic scholar Muhammad Maghrawi sparked controversy by claiming that girls as young as nine years old could legally marry. The government of King Muhammad VI quickly punished Mr. Maghrawi—closing three dozen Islamic *madrasas* (religious schools) that may or may not be linked to him and shutting down his website.⁶

Of course, the Moroccan monarchy felt the need to issue a harsh response to Mr. Maghrawi's statements. In 2004, King Muhammad VI reformed the Moroccan personal status code (*mudawana*) amidst considerable controversy and political unrest.⁷ The reform was criticized by rural citizens of the country, fearing the destruction of their culturally constructed notions of patriarchy. Additionally, religious traditionalists from the country's townships and countryside opposed the King's new *mudawana* because it

⁶ "Moroccan sheik hushed for letting 9-year-olds wed," *USA Today*, http://www.usatoday.com/news/world/2008-09-26-3374121661_x.htm; See also James Copnall, "Action against Moroccan preacher," *BBC News*, <http://news.bbc.co.uk/2/hi/africa/7638990.stm>, Rabat.

⁷ Marvine Howe, *Morocco: The Islamist Awakening and Other Challenges* (New York, NY: Oxford University Press, 2005).

was contradictory to the traditional Moroccan understanding of Islam.⁸ It seems that fundamentalists in Morocco were keenly aware of the implications of a predominately Muslim country abandoning traditional family law.

Since its independence, the Tunisian state has vehemently promoted secularism, even at the cost of contracting the rights of citizens. Certain elements of the Tunisian population resent the strict disallowance of the *hijab*. Women face persecution for wearing what former President Habib Bourguiba called an “odious rag.” The Tunisian Code of Personal Status promulgated shortly after independence, outlawed polygamy and set the minimum age of marriage at 18. While debate in the country remains over the necessity of secularism, prominent Islamic activists and scholars are notably missing from the debate. The Tunisian state is infamous for cracking down on Islamist dissidents.

How similar are the cases of *'ulama* repression in Morocco and Tunisia? Is there an ideal method to find the similarities and differences of *'ulama* activism in two separate countries? This research paper will attempt to evaluate the political situation occupied by the *'ulama* in monarchical Morocco and autocratic Tunisia. In so doing, I will attempt to answer several questions: Can *'ulama* groups, heralded for their religious piety, capably amass social movements in response to modernizing Family Law reform? Additionally, is the methodology of political opportunity structure a relevant tool for the comparison of social movements in modernized, yet autocratically ruled Muslim states?

To answer these questions, I will examine Family law reform in Morocco and Tunisia—through the *'ulama* lens. In discussing this issue I plan to evaluate historical

⁸ Abdeslam Maghraoui, “Political Authority in Crisis: Mohammed VI’s Morocco,” *Middle East Report*, No. 218 (Spring, 2001), p. 16.

narratives on Morocco and Tunisia—analyzing the traditional conception of the scholarly community.

Chapter I

Islamic Scholars and Family Law

Family law—made up of marriage law, divorce law, and inheritance law—remains a steadfast facet of Islamic law. There are two important reasons for this. First, *'urf* (cultural customs) which precluded the imposition of *shari'a* law in some areas were particularly strict in their interpretation of laws pertaining to the family. In the Maghreb, for example, the Berber conception of the family is primarily patriarchal. Women are endowed with no innate human rights and are sometimes valued as nothing more than property.⁹ Second, the necessity of political administration in the caliphate era resulted in the severance of civil and criminal law from the *shari'a* courts guarded over by the caliphs. The caliphs, well aware of the difficulties of administering large territories, forged for themselves significant flexibility in their authority to manipulate Islamic doctrine for the efficacy of their administration. This is suggestive of the expediency necessary for the caliphs of the Islamic empires to administer their protectorates. Before going further, I think it is prudent to briefly discuss history of Islamic Family law, paying careful attention to the impetus for reformation, and the role of the *'ulama* when a dichotomy exists between the two.

Muslim conceptions of family law are rooted in two sources. First, the *'urf* of many different pre-Islamic Arabian societies constitutes the bulk of the informal code for the treatment of matters of the family. Women, having few or no rights independent of

⁹ N. J. Coulson, *A History of Islamic Law* (Edinburgh, GB: Edinburgh University, 1994), p. 136.

their male kin, were essentially passed from the family to the husband upon marriage.¹⁰ Thus, the law of the family in pre-Islamic society conceptualized the female as subordinate to the male. Islamic law permeated the existing customary code differently based on geographic area. For example, the Berber-speaking people of Morocco, while adopting some aspects of Islam, were none too pleased with state encroachment into the customs of family practice. Second, Islamic law reformed certain aspects of family law within society to differing extents.¹¹ N. J. Coulson gives the example of tribes in Yemen, while other aspects of the *shari'a* were adopted willingly, some of the tribes refused women's proprietary rights entirely.¹²

During the time of the Prophet, the Islamic doctrine and particularly the notion of the Islamic *'umma* (community) were supposed to transcend the construct of patrilineal families. Arabian tribalism, at least in theory, was to be curtailed by the foundation of the law of Islam during the Prophet's life.¹³ Whether or not that is actually the case is an entirely different matter. The Qur'an supports a reformation of the Arabian construct of women. The net result of Muhammad's era was the elevated status of women, particularly in the area of rights.¹⁴

Though modern scholars on the subject of rights, particularly women's rights, note that the gap between the theory of women's rights, as interpreted through the *shari'a*

¹⁰ John Esposito with Natana DeLong-Bas, *Women in Muslim Family Law* (Syracuse, NY: University Press, 2001), pp. 12-13.

¹¹ Mounira Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (Berkeley, CA: University of California Press, 2001), p. 45.

¹² N. J. Coulson, *A History of Islamic Law* (Edinburgh, GB: Edinburgh University, 1994), p. 137.

¹³ *Ibid.* p. 15.

¹⁴ Esposito, *Women in Muslim Family Law* pp. 12-13. See also Schacht, *Introduction*, p. 161.

and the actual practice of women's rights is considerably large.¹⁵ While it is interesting to note that of the tenets of *shari'a* law—laws of tax, penal laws, civil transactional law, and the law of the family (to name a few)—the law of the family has the smallest theory-practice gap.¹⁶

Some modernist scholars, notably Egyptian reformist Mohammed Abduh, attempted to provide a jurisprudential device, one rooted in Qur'anic literature, to implement family law reform in Egypt. He advocated the use of *takhayyur*, which means acting outside of a jurist's typical school, in order to answer a difficult social question.¹⁷ Like Abduh, other Egyptian legal reformists sought to bring outdated Islamic legal concepts up to date by first establishing the Qur'anic intent to protect the rights of the family, particularly women and children, then advocate the use of an assortment of legal interpretations and practices to gradually reform family law.¹⁸

Most contend that modernization of majority-Muslim countries precipitates the attenuation of influence held by the country's religious scholars. In his book on Arab politics, Michael C. Hudson's first mention of the *'ulama* is: ". . .the former influence of the *ulama*, the scholars and interpreters of the Shari'a [*sic*], has been decimated."¹⁹ This loss of influence can happen in two separate, though sometimes interconnected forms.

¹⁵ Charrad, *States and Women's Rights*, pp. 31-32. See also Schacht, *Introduction*, pp. 76-86. A recurring theme in the Schacht book is this notion of the difference in theory and practice. In this section of the book he explains that the gap between the *Shari'a* theory of the family and the practice on the ground are closer than any other aspect of *Shari'a* law.

¹⁶ Schacht, *Introduction*, p. 76

¹⁷ John L. Esposito, with Natana J. DeLong-Bas, *Women in Muslim Family Law* (Syracuse, NY: University Press, 2001), pp. 47-48.

¹⁸ *Ibid.* pp. 61-62.

¹⁹ Michael C. Hudson, *Arab Politics: The Search for Legitimacy* (New Haven, CT: Yale University Press, 1977), p. 50.

First, the societal influence of the religious elite can be curtailed. Along these lines modern anthropologists and social scientists contend that a technologically modernizing society may see this decrease because of the ease with which information can be disseminated, and knowledge can spread. Dale Eickelman, one such modern scholar, argues that the *madrasas* role in Muslim societies, specifically Morocco, is dwindling because of an increase in education and literacy rates for members of society.²⁰ Increases in these rates reflect the viability of additional options of learning outside the traditionally exclusive *madrasa*.²¹

Second, government attempts at reforming the role of the *'ulama* marginalize influence. Eickelman suggests that Morocco's *madrasa* system was weakened by French colonial reforms of the country's educational system. Moroccan governmental reforms of the *madrasa* legitimized state-sponsored secular schools, and upheld the notion that the *madrasa* was not a viable substitute for secular schooling.²² Modern governments can employ several tools to co-opt the religious independence of the *'ulama*.

Much of the literature on the subject acknowledges a typical pattern in modernizing Muslim states: Independence, secularization, modernization, and religious cooptation.²³ Once the religious elite is co-opted, they legitimate the secularization attempts of the state by making religious pronouncements that calm the Islamic citizenry and quell attempts at retribution. In addition to these modernizing steps, it seems that a

²⁰ Dale F. Eickelman, "Madrasas in Morocco: Their Vanishing Public Role," in Robert W. Hefner and Muhammad Qasim Zaman, eds., *Schooling Islam: The Culture and Politics of Modern Education* (Princeton, NJ: Princeton University, 2007), p 136.

²¹ Ibid. pp. 141-142.

²² Ibid. pp. 141-146.

²³ Donald E. Smith, "Religion and Political Modernization: Comparative Perspectives," in Donald E. Smith, ed., *Religion and Political Modernization* (New Haven, CT: Yale University, 1974), p. 13.

modernized political system leads to an increase in the level of political access granted to the citizenry; including access for religiopolitical reformers.²⁴

Even in the midst of this discussion of co-optation, the *'ulama* continue to exert considerable influence in the realm of the family and in family law. Their role as *qadi* (judge) has been lessened in most majority-Muslim countries by the secularization of legal code, yet the *'ulama* have remained an influential keeper of Islamic family law. This aspect of *'ulama* influence reflects the traditional conception of family relations in the Muslim world as primarily patriarchal, and also suggests that the reformation of such family laws would be grounds for considerable opposition.

Many templates for the role of the *'ulama* in contemporary Muslim states exist. In attempting to explain three such templates Shmuel Bachar, Shmuel Bar, Rachel Machtiger, and Yair Minzili note that modern societies, ignoring the outliers of the Afghani Taliban and the Iranian Jurist state, subjugate the religious authority of the *'ulama* in one way or another. The three templates examined in their paper are Egypt, Saudi Arabia, and Jordan. The Egyptian state relies on the *'ulama* for religious legitimation, and in return gives the *'ulama* latitude in making religious proclamations that do not risk lessening the government's control or influence.²⁵ One reason may be the location of the most influential religious educational institution in the Sunni Muslim world: al-Azhar University. The Saudi model, due in part to its fundamentalist *Wahhabi* background, is an anomaly. The al-Sa'ud dynasty is the manifestation of the *Wahhabi*

²⁴ Ibid. pp. 17-18.

²⁵ Shmuel Bachar, Shmuel Bar, Rachel Machtiger, and Yair Minzili, "Establishment Ulama and Radicalism in Egypt, Saudi Arabia, and Jordan," Hudson Institute: Center on Islam, Democracy, and the Future of the Muslim World, *Research Monographs on the Muslim World*, Series No. 1, paper No. 4 (Dec. 2006), pp. 3-4.

religious movement, and as a result the dichotomy between state and religious leader is indistinct.²⁶ In the Jordanian model the scholar has no access to government. The Jordanian Hashemites neither depend on *'ulama* groups for their legitimation, nor do they allow the *'ulama* the freedom of making controversial religious proclamations.²⁷

Bachar et al's study classifies two different roles: the establishment *'ulama* and the non-establishment *'ulama*. The authors claim that the establishment *'ulama* are those who usually become co-opted by the state, but in so doing, actualize the concept of the state and usually support its actions or attempt to work through it for reform. The non-establishment, or peripheral *'ulama* are those that seek to work outside of the political system by organizing mass opposition to the state, calling for violence against people in and outside of the state, or attempt to reform its very nature.²⁸

Similarly, Muhammad Qasim Zaman speaks of the *'ulama* in contemporary society as a duality—the mainstream *'ulama* and the peripheral *'ulama*.²⁹ Borrowing the concept from Malika Zeghal, he explains that the *'ulama* have an often misunderstood role in the political system. By examining the *'ulama* in India, Egypt, and Pakistan, Zaman explains that the *'ulama* may act as the vanguard of the Islamic faith. Not necessarily in contrast with the prevailing notions of the “new Islamic community,” one in which information is quickly disseminated and the religious elite are not necessary for their ability to ascertain the meaning of complicated religious theories and texts, the

²⁶ Ibid. p. 4

²⁷ Ibid. pp. 26-29.

²⁸ Ibid. pp. 1-2.

²⁹ Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton, NJ: Princeton University, 2002), *passim*.

dichotomous understanding of *'ulama* groups is exacerbated by the technological revolution and the ease with which information is dispersed.³⁰

The *'ulama* constitute a much smaller percentage of those experts expounding on religious thought. As Zeghal argues, a re-emergence of the *'ulama* occurred beginning in the 1970s at al-Azhar University.³¹ To emphasize this point, she explains that the resurgence of the *'ulama* carried with it an ideological fragmentation of the official religious teachings that they sponsored.³²

The theory of modernization would seem to support the concept of a fragmented *'ulama* with considerably less social and political clout. While one may see a failure of unity in the official doctrine of these groups, one cannot prove that their influence has been curtailed to any significant extent. In fact, some scholars argue that the fragmentation of the *'ulama* constitutes the primary reason for an increase in their religiopolitical activism, and its resulting effect on the governments of majority-Muslim countries.³³

The secular government of Egyptian President Gamal Abdel Nasser attempted to reform al-Azhar by bringing it under government oversight. Unfortunately for Nasser, his modernist regime still depended on the explicit support of the religious elite, primarily

³⁰ Malika Zeghal, "The 'Recentering' of Religious Knowledge and Discourse: The Case of al-Azhar in Twentieth-Century Egypt." in Robert W. Hefner and Muhammad Qasim Zaman, eds., *Schooling Islam: The Culture and Politics of Modern Education* (Princeton, NJ: Princeton University, 2007), pp. 107-108.

³¹ Ibid. pp. 120-122.

³² Ibid. pp. 120-122.

³³ Gail Minault, "Islam and Mass Politics: The Indian Ulama and the Khilafat Movement," in Donald E. Smith, ed., *Religion and Political Modernization* (New Haven, CT: Yale University, 1974), p. 169.

constituted by the *'ulama* to legitimize the regime's practices for the average Muslim.³⁴ In his dependency, Nasser was left with no choice but grant the Egyptian *'ulama* considerable flexibility in their capacity to interpret the *shari'a*.³⁵ Pakistan and Saudi Arabia have experienced a similar phenomenon. Zaman amends Zeghal's argument by suggesting that a government's dependence on the *'ulama* to appease the Muslim polity has resulted in an enhanced status for the once declining religious elite.³⁶ In addition to this phenomenon, the *'ulama* in other societies have been capable of pursuing their agenda even after co-option by the state had run its course.

One can make the case that *'ulama* activism is not exacerbated by the state exclusively. In analyzing the Indian *'ulama* of the Deobandi school, Gail Minault emphasizes that the *'ulama* acted as the political middleman for like-minded Islamists. In attempting to reject British occupation in the late 1800s and early 1900s various sub-groups of the Deobandi *'ulama* remained ambivalent toward the political process, choosing to dissociate themselves from direct involvement by issuing *fatwas* challenging the legitimacy of the colonial government and providing the space necessary for Islamist opposition groups to assemble.³⁷ Yet, the *'ulama* resorted to politics as a last resort, when nothing else could stop the subjugation of the faith, as she explains: "Broadly speaking, the westernized leaders were involved in the defense of religion for political advantage; the *ulama* were involved in politics for the defense of religion."³⁸

³⁴ Ibid. pp. 144-146.

³⁵ Ibid.

³⁶ Ibid. pp. 144-160.

³⁷ Gail Minault, "Islam and Mass Politics: The Indian Ulama and the Khilafat Movement," in Donald E. Smith, ed., *Religion and Political Modernization* (New Haven, CT: Yale University, 1974) pp. 179-180.

³⁸ Ibid. p. 177.

The *'ulama* of the periphery, struggling to identify their changing role in the sociopolitical sphere of modernizing countries can either adapt to the new situation, maintaining their influence in society, or retreat from public life altogether. The literature on the subject explains that numerous paths have been taken by *'ulama* groups facing a crisis of identity. The most likely scenario may be an acceptance of subjugation, permitting the co-optation of religious legitimacy by the ruling elite in exchange for the capability to influence the elite in areas of the law unthreatening to the regime. Cooptation may be advantageous for *'ulama* groups. This Egyptian model of *'ulama* groups may be the closest representation in the modern Muslim world to the Moroccan *'ulama*, but unfortunately the political opportunity structure of the Moroccan state lends them little additional influence.

Examination of the literature on modern *'ulama* groups suggests the necessity of reforming traditionally static conceptions of the institution. The literature, while useful in qualifying the activism of the *'ulama*, does little to analyze the propensity for activism. Moreover, the case of Morocco, wherein the King is bestowed the title of *amir al-muminin* (commander of the faithful), transcends the literature on the subject. The *'ulama* designate the King capable of ruling in accordance with Islam, thus the King need not rely on the *'ulama* for reasons of political legitimacy.³⁹ Using the social movement theory of political opportunity structure, I will attempt to assess the causes of *'ulama* activism.

³⁹ C.R. Pennell, *Morocco since 1830: A History* (New York, NY: University Press, 2000), p. 15.

Chapter II

Political Opportunity Structure as a methodology in the majority-Muslim world

In determining situations conducive to family law reform, social movement theory seems to be an ideal framework. Social movement theory may constitute many different methodologies; examining the organization of social movements, focusing on the ideological frames with which groups can successfully mobilize support, or analyzing political processes most advantageous to movement mobilization. The latter of these, political opportunity structure, has many different theoretical conceptions. Sidney Tarrow defines it as “. . . [the] *consistent – but not necessarily formal, permanent, or national – signals to social or political actors which either encourage or discourage them to use their internal resources to form social movements.*”⁴⁰ As two of the seminal contributors to the subject, William Gamson and David Meyer note, a guided interpretation of political opportunity structure is a must.

Part of the problem is that analysts use political opportunity structure to serve a wide variety of functions, and define it accordingly. Scholars who want to explain the emergence and influence of a movement over time use it as a set of *independent variables*, to describe dynamic aspects of the political environment that change to allow or encourage the emergence of challengers. . . .⁴¹

Taking this observation one step farther, Doug McAdam argues that three areas of variation could undermine the use of political opportunity structure. First, one must differentiate facilitators from political opportunities. It is easy to conflate the role of cultural similarity with the perpetuation of political structures—unfortunately, that would

⁴⁰ Sidney Tarrow, “States and Opportunities,” in Doug McAdam, John D. McCarthy, and Mayer N. Zald eds., *Comparative Perspectives on Social Movements*, (New York, NY: University of Cambridge, 1996), p. 54, italicized in the original work.

⁴¹ William A. Gamson and David S. Meyer, “Framing Political Opportunity,” in Doug McAdam, John D. McCarthy, and Mayer N. Zald eds., *Comparative Perspectives on Social Movements*, (New York, NY: University of Cambridge, 1996), p. 275.

be mixing two things that ought to be kept separate.⁴² This suggests a vertical view of the problems in political opportunity structure. Many different theoretical issues, primarily of different subject areas, are viewed as the problem. Second, the various dimensions of the political opportunity ought to be clearly differentiated. In trying to analyze the political opportunity structure, one must differentiate the various stakeholders in the political system, and the other political elements that constitute the political opportunity structure.⁴³ Third, articulating the dependent variable of the study is necessary for the applicability of political opportunity structure.⁴⁴

Three broad sets of properties, according to Hanspeter Kriesi, constitute the political opportunity structure: "The formal institutional structure of a political system, its informal procedures and prevailing strategies with regard to challengers, and the configuration of power relevant for the confrontation of power."⁴⁵ Understanding these foundational dimensions of political opportunity structure is necessary for its applicability to the study of social movements.

Kriesi's typology is limited insofar as it only addresses the institutional structure. The relative openness or closure of the political system, the first dimension of McAdam's typology, is addressed in considerably more detail by Kriesi. Sidney Tarrow takes a slightly different approach, focusing exclusively on the influence of elite allies on social movement formation. Tarrow's typology omits the formalistic elements addressed by Kriesi and McAdam, but nonetheless the author reaches important conclusions about the

⁴² McAdam, "Conceptual Origins, problems, future directions," pp. 25-26.

⁴³ Ibid. pp. 26-29.

⁴⁴ Ibid.

⁴⁵ Hanspeter Kriesi, "New Social Movements in a Political Context," in Doug McAdam, John D. McCarthy, and Mayer N. Zald eds., *Comparative Perspectives on Social Movements*, (New York, NY: University of Cambridge, 1996), p. 161.

utility of elite theory. Figure 1 shows the political opportunity structure typology of the three authors previously mentioned.

Figure 1: Author typologies of Political Opportunity Structure

Typology	McAdams	Tarrow	Kriesi
Institutionalized State structure	Openness or closure of the institutionalized political system	The opening up of political access	Strategy and strength of the state
Elite Fragmentation	-The stability or instability of elite alignment	-Dividing elites	N/A
Alliances	-The presence or absence of elite allies	-Unstable alignment -Influential allies	N/A
State enforcement mechanisms	Capacity and Propensity for Repression	N/A	N/A

Building on the work of other social movement theorists, McAdam builds his dimensions which influence the formation and expansion of social movements. He notes four dimensions of political opportunity structure:

1. The relative openness or closure of the institutionalized political system
2. The stability or instability of that broad set of elite alignments that typically under-gird a polity
3. The presence or absence of elite allies
4. The state's capacity and propensity for repression.⁴⁶

McAdam's conceptualization of these horizontal dynamics seems primarily predicated on the incorporation of factors easily distinguishable when analyzing the political structure of a nation-state. For McAdam, the methodological importance of observing the political structure of a government is to analyze the make-up of that structure only. In the majority-Muslim world, particularly in the cases of Morocco and Tunisia, the prevailing governing structure tends to be autocratic in nature. Given this condition political access

⁴⁶ McAdam, "Conceptual Origins, problems, future directions," p. 27.

for emerging social movements is dictated by the government rather than popular support. Thus a top-down approach to political opportunity structure—analyzing the factors that influence a government’s willingness to incorporate new social movements, is preferable to a bottom-up approach in the majority-Muslim world.

For the purposes of this study, I will be examining the political opportunity structure, carefully considering Kriesi’s broad categories and using McAdam’s four dimensions. I will attempt to compare, using political opportunity structure, the social movements of the Islamic revivalist *‘ulama* groups of Morocco to their likeminded counterparts in Tunisia. Some purport that these revivalists merely use Islam as a pretext for political power grabs.⁴⁷ While others state that Islamic participation in the political system is merely an attempt to re-sanctify the *shari’a* as impetus for governance by taking on undesirable reform to adjust to the modernization of society.⁴⁸ I do not plan to analyze the philosophical or theoretical legitimacy of Moroccan *‘ulama* groups in this study. Instead, I seek to understand the role of the *‘ulama* as an impetus for social movements by examining the *‘ulama* and their opposition to family law reform in Morocco and Tunisia.

Increasing modernization of society usually leads to fragmentation and disorganization in the religious elite and that has the effect of decreasing their societal

⁴⁷ Edmund Burke III, “Islam and Social Movements: Methodological Reflections,” in Edmund Burke III, Ira Marvin Lapidus, and Ervand Abrahamian, eds., *Islam, Politics and Social Movements* (Berkeley, CA: University of California Press, 1988) pp. 18-19. See also Bassam Tibi, “The Return of the Sacred to Politics as a Constitutional Law: The Case of the Shari’atization of Politics in Islamic Civilization,” *Theoria*, No. 115 (April, 2008), pp. 91-95.

⁴⁸ I define *shari’a* law as a non-codified set of Qur’anic principles, that attempts to prescribe a way of life for Muslims; for a discussion of *shari’a* reformation see Zaman, *The Ulama in Contemporary Islam*, pp. 7-11.

legitimacy, and religion's perception as a monolithic entity capable of influencing societal action. As noted above, this fragmentation can lead to *'ulama* in the center and those on the periphery. In order to preserve the sanctity of the regime and to prevent an uprising by Islamic fundamentalist movements, regimes often take measures to shore up the support of religious scholars, who grant religious legitimacy to the actions of the elite.⁴⁹

In the majority of cases, the dependence of the ruling apparatus on the *'ulama* allows them the capacity to set the boundaries of what is and is not Islamic.⁵⁰ The ensuing influence usually allows the *'ulama* to act as the custodians of the faith and to pursue their interpretations of Islam as long as it does not interfere with the aims of the autocrat. Not all of the *'ulama* are so attuned to the governing elite. In areas where the autocrat would be unwilling to compromise on an issue, the *'ulama* of the periphery are often capable of promoting opposition freely, without government reprisal. Yet, the Moroccan case is starkly different. The autocrat in control of the state is assimilated into the body of *'ulama*. Monarchs are capable of making decisions that affect the Islamic faith and he is able to challenge the *'ulama* by asserting that their actions or interpretations are not in accordance with the true character of Islam. This assimilation, when coupled with the powerful military and administrative institutions that surround the monarch, undermines any religiopolitical activism. Any attempts by *'ulama* members to protest governmental actions can be quieted expeditiously.

⁴⁹ Francois Bourgat, "Veils and Obscuring Lenses," in John L. Esposito and Francois Bourgat eds., *Modernizing Islam: Religion in the Public Sphere in Europe and the Middle East* (New Brunswick, NJ: Rutgers University Press, 2003), p. 29.

⁵⁰ Zaman, *Ulama in Contemporary Islam*, p. 151.

Chapter III

Morocco: Monarchical Divinity or Power Grab?

Morocco, having remained independent even as the rest of Africa, particularly its neighbors were divided up by western colonialists, was on the verge of collapse near the turn of the twentieth century. The Moroccan government was incapable of making the necessary political reforms to alleviate the poverty felt by all but the wealthiest of Moroccans.⁵¹ Out-dated autocratic rule of the Alouites was susceptible to incendiary socialist rhetoric. As Halstead claims: "At the turn of the century, the question was not whether Morocco would retain her independence, but to which European power she would surrender it."⁵² France would informally govern the country from 1912-1956 and are responsible for endowing today's political authorities with a consolidated administrative state.

Having crafted a brilliant strategy to persuade the Moroccan government to accept protectorate status, the French foreign ministry began the process of reforming the political and social spheres of Morocco. Sultan Moulay Abdelhafid signed the Treaty of Fez on 13 March 1912. Fez protected the religious and political sovereignty of the sultan, but made the office accountable to the protectorate government.⁵³ The Resident General of the protectorate government became the real power of the Moroccan state, even though Morocco still maintained "independence." France, careful not to disrupt the

⁵¹ Pennell, *Morocco Since 1830*, pp. 43-44; the *makhzan* has two meanings in Moroccan politics. It can be the formal name for the government, and be referred to positively. The term also carries a negative connotation, it is used to describe the patronage/clientelism of the government. Use of the term in this way is an acknowledgement of the corruption of political administration.

⁵² John P. Halstead, *Rebirth of a Nation: The Origins and Rise of Moroccan Nationalism, 1912-1944* (Cambridge, MA: Harvard University Press, 1967), p. 11.

⁵³ Pennell, *Morocco since 1830*, p. 152.

legitimacy of the sultan, reformed the administrative capabilities of the Moroccan state. French Resident General Marshal Lyautey (1912-1925) successfully executed a two-part strategy for bolstering the sultan. First, he made deals with regional *'ulama* groups to thwart any revolutionary religiopolitical advocacies.⁵⁴ Second, Lyautey pacified the incendiary tribalism that plagued central Morocco by reorganizing the army and presenting a capable military to deter any anti-French or anti-sultan tribal rebellion.⁵⁵

After the protectorate government pacified the citizenry, the priority became internal political reform. The *makhzan* and its convoluted, but highly autocratic governing structure were reformed by the French. Lyautey attempted to be culturally sensitive in governing over Morocco, but he was an astute caretaker of public sentiment as well. To maintain order he carefully strengthened the position of the sultan by showering whoever filled it with praise and respect.⁵⁶ Paradoxically, he did not spare Islamic law from French administrative reform. As C.R. Pennell observes, "The *shari'a* courts had a Muslim form, but a French bureaucracy."⁵⁷ Lyautey's ability to carefully craft reforms and to assimilate certain aspects of the *makhzan*, like the courts, rather than outright reforming it afforded him a peaceful and subdued political climate.

The French protectorate government could do little to enforce the judicial code on the Berber tribal areas of the Atlas Mountains. As a result, Lyautey mandated that Sidi Muhammad issue a 1914 *dahir* (Sultanate decree) exempting the tribal areas from

⁵⁴ "Historical Setting," in Harold D. Nelson ed., *Morocco: A Country Study* (Washington, D.C.: The American University Press, 1985), pp. 44-48.

⁵⁵ Halstead, *Rebirth of a Nation*, p. 30-34.

⁵⁶ Pennell, *Morocco since 1830*, p. 160.

⁵⁷ *Ibid.* p. 173.

jurisdiction of the new Moroccan legal code.⁵⁸ The rural citizenry of Morocco became integral to the independence movement, yet they were but one part of the larger cause of independence.

The Era of Istiqlal

The *Istiqlal* (independence party) manifesto of 11 January 1944, illustrates the importance of the sultanate regime to the people of Morocco. Having remained in steadfast support of occupied France during World War II, prominent Moroccan scholars Ahmed Balafrej, Omar Abdeljalil, Allal al-Fasi and others wrote a party platform based solely on independence. As Pennell states: "The manifesto made four demands: an independent Morocco under Sidi Mohammed; that Sidi Mohammed himself should negotiate independence; that Morocco should sign the Atlantic Charter and take part in the peace conference; and that the Sultan should establish a democratic government."⁵⁹

Swept by international attitude toward the formation of independent democracy in former protectorates, the *Istiqlal* party remained loyal to the institution of the sultan. But with the increased nationalist fervor, the newly created party would have an indispensable role in the formation of the new government. It seemed that even the King felt unsure about the roles all would play in the new state. Two days after returning to Morocco from his exile in Madagascar, King Muhammad V said, "Our first objective is the constitution of a Moroccan government that is responsible and representative."⁶⁰ Nonetheless, the inflated independence rhetoric of the Moroccan state was quickly halted. The euphoria of the post-independence period was short-lived, and the subsequent

⁵⁸Charrad, *States and Women's Rights*, p. 139.

⁵⁹ Pennell, *Morocco since 1830*, p. 265.

⁶⁰ Ibid. p. 299. Pennell quote taken from Agnouche, *Histoire*, p. 310.

interactions between the *istiqlal*, the monarchy, and the tribal areas would be played out as a determinant of the political opportunity structure of the nascent state.

Political Organization: from the King down

French reforms, which relegated the King's role to the religious sphere, had the ultimate impact of strengthening his ties to Islamic law. The title of *amir al-muminin* was an important point of legitimacy for King Muhammad V, as it had been to sultans of the pre-colonial era. With this title, the King was charged with ensuring governmental compliance with the tenets of Islam, and *de facto*, in accordance with the *Maliki maddhab*, which remains to this day the predominant school of Islamic jurisprudence in Morocco. Pennell notes that the institution of the *bay'a* became the measure of popular sovereignty.⁶¹ *Bay'a*, while originally used to affirm the religious sanctity of the incoming sultan, was now an affirmation of ruling authority.⁶²

While the King's ruling sovereignty was shored up by the unheralded level of admiration that he was afforded as the commander of the faithful and "popularly sovereign," like other ruling monarchs the King felt the necessity to command a military force capable of ensuring the legitimacy of his regime. The *Istiqlal* party was primarily responsible for mobilizing violent resistance against the French (and to a certain extent the Spanish) and the ties they formed with the militia gave them an advantage over the King in the formation of the state. Allal al-Fasi, the party's leader, said after independence:

⁶¹ Ibid. p. 298.

⁶² Clifford Geertz, *Islam Observed: Religious Developments in Morocco and Indonesia* (Chicago, IL: University Press, 1968), pp. 75-77.

There are only three powers in Morocco: the first is the Istiqlal, the second power is that of the Army of Liberation and the third is that of the palace. And if we consider that the Army of Liberation derives its strength from the Party and belongs to it, there are really only two powers: Istiqlal and the Palace or the throne.⁶³

The Moroccan Liberation Army continued fighting after the King pronounced his sovereignty in conjunction with the independence of the state. Having no civilian police or military to speak of, the King quickly established both of those things attempting to subdue the violence.⁶⁴ While far from the only militia in the country, the King's army quickly became the most powerful. In addition, the holdover administrative institutions of the French empowered the King by giving him the capability to govern, both in a militaristic and political sense. No longer tied to the French, this administrative apparatus would transform during independence.

Preservation of elite families in both rural and urban portions of the Moroccan population gave that small percentage of the population a disproportionately high level of influence in the Moroccan state. The *makhzan* is certainly not a phenomenon of the post-independence period; an informal patronage network that has existed in Morocco for as long as the sultan. And is integral in the political and economic spheres of the country. Whether afforded crucial positions in the ruling administration or benefiting from economic policies geared at preserving their relatively wealthy socioeconomic status, the *makhzan* are traditionally supported by the King and he is supported by them.⁶⁵ This symbiotic relationship is detrimental to the creation of social movements and favors traditional Moroccan families in the democratic process.

⁶³ Muhammad Darif, *al-Azhab al-siyasiyya al-maghribiyya*, al-Dar al-Baida: Ifriqiya al-Sharq, 1988 p. 85. As quoted in Pennell, *Morocco Since 1830*, p.300.

⁶⁴ C.R. Pennell, *Morocco since 1830*, pp. 300-301.

⁶⁵ Howe, *Morocco*, pp. 355-356.

During the protectorate era, though the nationalist *Istiqlal* party was widely acclaimed for its anti-French activities in the years leading up to independence, the party failed to garner nationwide support. As Charrad argues, “The segmentation of Moroccan society and the persistence of tribal organization in rural areas made it difficult for the party to reach out to the countryside.”⁶⁶ Indeed, the statistics she uses make the case for a demographic not attuned to the spread of a political party founded on urbanized middle-class rhetoric. Between 51 to 77 percent of the population in that period were members of tribes.⁶⁷

The party’s head, Allal al-Fasi, was a well educated religious scholar born in Fez. Born to an upper-class family and afforded opportunities that others in the rural communities were not, al-Fasi possessed a distinctly different, albeit modern view of Islam and its legal interpretations. Al-Fasi sought the reformation of Islamic law, and that rhetoric was elevated after the monarchy was reestablished as the legitimate ruling apparatus of the state.

The *Istiqlal* party struggled because of a division in its upper echelons. The more conservative sect of the party was heavily influenced by Allal al-Fasi, while the rest of the party came to be associated with Mehdi Ben Barka.⁶⁸ Al-Fasi is the most widely known of the *Istiqlal* scholars and the one most integral in the formation of the state of Morocco. He was very close with Muhammad V and accepted several different positions in the *makhzan* after independence. Several other *‘ulama* were involved in the *Istiqlal*

⁶⁶Charrad, *States and Women’s Rights*, p. 148.

⁶⁷ *Ibid.* p. 152.

⁶⁸ Lise Storm, *Democratization in Morocco* (New York, NY: Routledge, 2007) p. 15.

party, while others not involved in the political process still played a role in the formation of government and in the codification efforts of the *makhzan*.

Al-Fasi was arrested in 1930 for protesting the *dahir* which curtailed the judicial sovereignty of the Berbers. The solidarity shown by most members of the urban political elite for the rural communities of Morocco was an incendiary for the nationalist movement. But the act could not salvage al-Fasi's legalistic credentials with the country's rural tribes. He continued to fan the flame of nationalism by combating the French on matters of Islamic law, criticizing their attempted reforms and attempting to eliminate French involvement from the religious sphere. Al-Fasi established numerous "free schools" in urban centers of Morocco that preached a *salafi* interpretation of Islam. One which depicts the present state of Islam as corrupted, largely due to foreign influence. The ultimate belief being that an avoidance of all things not present at the time of Islam's inception will result in a purer Islam.⁶⁹ Al-Fasi's religious influence was matched only by the institution of the *'ulama* because of their historical role as guardians of Islam.

In pre-colonial sultanate rule, the *'ulama* would appoint the sultan and in so doing, affirmed his religious legitimacy and capacity to uphold the sanctity of Islam.⁷⁰ The pious scholars of Morocco were not at the whim of the existing ruling establishment, and did not appoint the sultan's successor merely based on lineage.

While the role of the *'ulama* were altered by French attempts to regulate the *madrasas* in Morocco during the protectorate era, the *'ulama* still maintained considerable legitimacy in the eyes of the faithful. As the custodians of the faith, the

⁶⁹ C.R. Pennell, *Morocco since 1830*, p. 299.

⁷⁰ Agnouche, *Histoire*, pp. 186 quoted in: Pennell, *Morocco since 1830*, p. 299.

'*ulama* were capable of issuing *fatwas* that could clarify matters not covered in the *shari'a*.⁷¹ But during French occupation this practice assumed another meaning. During the protectorate era the '*ulama*, whether independently or prompted, issued numerous *fatwas* catalyzing opposition to French occupation, or as an assurance to the faithful that the sultan was the preeminent ruling authority.⁷²

Continued French presence in Morocco slowly diminished the influence of the '*ulama* over legal, social and political matters. With the exception of the rural tribal areas, the French administrative system threw off the careful balance between the *makhzan* whom were charged with governing, and the '*ulama* whose piety afforded them significant sway with the populace, which acted as a check against government abuses of power.

'*Ulama* subjugation worsened in the protectorate era, and the post-independence era that followed. While the '*ulama* would retain their Islamic legitimacy throughout this time period, their influence began to wane before the protectorate era, and continued to decline thereafter. Some suggest that the modernization of society juxtaposed two different forms of '*ulama* in majority-Muslim society, those of the center and those of the periphery. Yet, others contend that the traditionally conservative elements of Muslim societies, notably the rural populace, constitute a base of support that must be appealed to by ruling factions.

The tribes of the rural areas of Morocco constituted a significant hurdle to the centralization of authority, whether undertaken by the French protectorate, the pre-colonial sultanate of the Aloui family, or the modern monarchical state. These tribes

⁷¹ Pennell, *Morocco since 1830*, p. 17.

⁷² Pennell, *Morocco since 1830*, p. 42.

were not sympathetic to urban attempts at liberation from the French. It seems that the tribal portions of the Moroccan countryside sought to enhance their status in the new political situation of Morocco. Charrad states:

Tribal areas entered the political system of the new Moroccan nation-state as active partners, not as useless relics from the past. Moroccan politics at independence can be understood only if one considers the strategic position of notables in tribal areas and their place within the national political system. . . . In Moroccan politics at independence, power often was determined by the number and influence of one's followers, represented by the people who would provide backing in a show of force.⁷³

Amidst the wavering political situation, the rural portions of the Moroccan population firmed up their anti-*Istiqlal* stance. The primarily urban *Istiqlal* were considerably powerful, having sewn up the majority of the appointed administrative posts by pleading to the King. Fear was wide-spread amongst the rural (and predominately Berber) portion of the population. The members of the *Istiqlal* that were appointed to government posts spoke primarily Arabic or French and did not take the time to familiarize themselves with the language of the Berber's.⁷⁴

The notion of tribalism as the propagator of family law reform has been studied in detail in the Maghreb. Mounira Charrad's work on kin-based solidarities and the role they play in the adoption of family law comes to a pretty powerful conclusion. As she articulates:

⁷³Charrad, *States and Women's Rights*, p. 153.

⁷⁴Pennell, *Morocco since 1830*, p. 304.

The closer the ties of the victorious nationalist leadership with kin groupings, the smaller were the prospects for family law reform at independence. Allied with coalitions anchored in tribal areas, Morocco promptly took a conservative stand, restricting its action almost entirely to a codification of Islamic law in a concise text (1957-1958).⁷⁵

Moreover, she explains that tribal-kin groupings in Morocco were left alone by French colonists, and not significantly curtailed or debilitated by colonial governance.⁷⁶ The rural Berber population constituted a significantly large portion of political influence in the making of the Moroccan constitution, serving as a foundation for the political opportunity structure of the society. One can not decisively conclude that their presence was the primary reason why the Moroccan constitution solidified the political actors the way that it did, or that these kin-based solidarities of the rural localities were responsible for the codification of a *Maliki*-oriented law of personal status.

The "Ideal" state and a Constitutional Monarchy: Muhammad V

The political structure in Morocco was not conducive to the modernist Islamic reformers of the *Istiqlal* party and as such, the preservation of the status quo, traditional *Maliki* Moroccan family law, with its emphasis on agnate bonds was all but assured, but the emphasis on the relationship between the tribal kin-based solidarities and the monarch is not the primary reason for this propensity to uphold the status quo. Instead, the fractionalization of the *Istiqlal* party and the King's choice to side with religious scholars led to the imposition of the traditional *mudawana* of 1957.

In October 1956 the *Istiqlal* party asked King Muhammad V to give it an increased presence in the cabinet seats of the weak coalition government, which had been

⁷⁵Charrad, *States and Women's Rights*, p. 233.

⁷⁶Ibid. pp. 234-235.

set up shortly after independence.⁷⁷ The King begrudgingly accepted their offer, which seemed to make the likelihood of family law reform much greater. The party, while suffering from its historic failure to relate to the rural population, attempted to remedy that problem by using those appointments to dictate local customary code in those areas.⁷⁸ Charged with forming a strong central government with jurisdiction over all of Morocco's citizens, the King was faced with a difficult decision—either relinquishing authority for the codification of the *mudawana* to the government of the *Istiqlal* or attempting the task by his own devices. In August 1957, the King chose the latter and appointed a commission charged with making recommendations on the codification of the country's incoherent customary codes. He appointed a committee that included five prominent regional *'ulama*, al-Fasi, and two of his own advisors.⁷⁹

Fearing a backlash from Morocco's rural population, who traditionally relied on customary code, the King gave the authority in codifying the law to his Minister of Justice.⁸⁰ Pennell suggests that the *Istiqlal* was never highly regarded as a unifying entity by the King because of its association with the urban middle-class; in fact, the rural rebellion of 1958 was primarily directed at the *Istiqlal* party.⁸¹ For this reason, al-Fasi's role in the commission was entirely consultative—he did not even have a vote in the outcome.⁸² The religiopolitical activism of the *'ulama* was not present in the initial post-independence period. The *'ulama*, giving Muhammad V their full-fledged support in his efforts to achieve independence for the state, were a crucial entity in the codification of

⁷⁷ Pennell, *Morocco Since 1830*, p. 303.

⁷⁸ Charrad, *States and Women's Rights*, p. 149.

⁷⁹ *Ibid.* p. 162.

⁸⁰ *Ibid.*

⁸¹ Pennell, *Morocco Since 1830*, p. 304.

⁸² Charrad, *States and Women's Rights*, p. 162.

the first *mudawana* of 1957. In so doing, the *'ulama* allowed themselves to be co-opted, but because Muhammad V chose to defer codification of the Moroccan *mudawana*, they were still consulted.

The Era of Enlightened Rule: King Hassan II

The Moroccan political system remained an informal monarchy until the referendum which passed the Constitution of 1962. Muhammad V was no longer king because his son Hassan II accepted the *bay'a* as King shortly before. *Bay'a* constitutes an act of formal legitimation for the King. Every important figure in society whether political, religious, or otherwise formally acknowledges the sovereignty of the King and by pledging their allegiance they lend credence to the unilateral decision-making efforts of the sovereign.⁸³

The constitution of 1962 was the first attempt by the King to solidify the political institutions of the state. The King's role in that document was that of arbiter. With a parliament created by the constitution, the King was able to govern if that body was at a standstill. What is more, the 1962 bicameral parliament stratified the institution of King above both houses; while the unelected House of Councilors, appointed by the King and representing the traditionally elite *makhzan*, would have considerably more influence than the elected house.⁸⁴ The King feverishly organized a political party, the FDIC, to run in the first election against the *Istiqlal* and the other opposition party, the UNFP. The

⁸³ Pennell, *Morocco Since 1830*, p. 318.

⁸⁴ Storm, *Democratization in Morocco*, p. 21.

platform of the King's party reiterated the necessity of loyalty to Hassan II and little else.⁸⁵

The opposition UNFP boycotted the parliament shortly after the referendum and denounced the constitution and the government it institutionalized. In response, the King suspended the newly promulgated constitution and silenced the parliament.⁸⁶ The King began to rule by decree, claiming that the vulnerability of Moroccan policy necessitated action that could not wait for the approval of a new constitution:

But when would the new constitution be submitted directly to the people? Judging by the procrastination and incoherence of the debates in the first Parliament, I felt that the procedure would have plunged the nation into further uncertainty and disorder – and this at a time when the economic situation and our foreign policy demanded firm and stable government.⁸⁷

While Muhammad V seemed intent on establishing a constitutional monarchy in the state:

If we are to give the nation sound and healthy institutions, we must avoid any precipitate action or improvisation. The real danger lies not in the absence of representative institutions; it consists in the establishment of a parliamentary system which is a pure formality, and which might be an agent for disorder and destruction. A true democracy must be an agent for construction and stability.⁸⁸

After his passing, the *'ulama* pledged *bay'a* to Hassan II. This act did not necessarily disengage the *'ulama* from an oppositional role to the King, however, Hassan II subdued any potential religious opposition by declaring himself *amir al-muminin* as a descendent of the Prophet. Attempts to subdue the peripheral *'ulama* by Hassan II reach farther than

⁸⁵ Pennell, *Morocco Since 1830*, p. 322.

⁸⁶ Hassan II, *The Challenge* (London, GB: MacMillan London Limited, 1978), p. 78.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.* p. 65.

attempts at co-optation. In 1984, fearing the resurgence in popularity of Islamist parties, mosques were closed unless they were holding prayer.⁸⁹

The Monarch's status as commander of the faithful is unique to Morocco. This title is innately religious, and it allows the monarchy the luxury of legitimating any political action in accordance with Islam. The King showed little restraint in attempting to stifle dissent. When scholars criticized the government they were detained without charge. In Morocco, starting with Hassan II, even the *'ulama* that attempted to challenge the monarch were subject to imprisonment for inciting rebellion.

Hassan may be most known for his negative interactions with the *'ulama*. However, the positive interactions in this relationship may be just as vital to the subjugation of the scholarly class. As commander of the faithful, Hassan was obligated to preserve the integrity of Islam by using his stature to institutionalize policies with such aims. Moroccan scholar Azzedine Layachi attributes the imposition of mandatory prayer in schools, the creation of many additional *madrasas*, and the establishment of the Higher Council of *'ulama*, which Hassan chaired, to oversee the religious sanctity of governmental policies.⁹⁰

The modernization of Moroccan society led to a different treatment of social movements. The 1993 parliamentary elections exacerbated the political deadlock of Moroccan society and only the constitutional reforms of 13 September 1996 referendum

⁸⁹ Dale Eickelman, "Royal Authority and Religious Legitimacy: Morocco's Elections, 1960-1984," in Myron Joel Aronoff ed., *The Frailty of Authority* (Edison, NJ: Transaction Publishers, 1986) p. 184.

⁹⁰ Azzedine Layachi, *State, Society and Democracy in Morocco: The Limits of Associative Life* (Washington, D.C.: The Center for Contemporary Arab Studies Press, 1998), p. 52.

rekindled the government's political undertakings.⁹¹ During those three years, numerous strikes and riots broke out in city centers.⁹² McAdam's fourth dimension can be called into question given these facts. The failure of peripheral *'ulama* to mobilize social protests may not necessarily be the result of state propensity to repress, rather it seems that something else prevented the mobilization of opposition to the 1993 *mudawana* reforms.

Most scholars of Islamic politics suggest that the monarchy of Morocco has usurped the authority of religious circles. The lineage of Hassan II endows him with a supposed spiritual understanding of the *shari'a* that others lack. The authenticity of this claim has been contested by numerous opposition groups, religious intellectuals and members of the Moroccan *'ulama*. None more so than Sheikh Abdesselam Yassine, one of Morocco's most well-renowned scholars and political activists. Indeed, Mr. Yassine has abandoned a traditional scholarly role, choosing to actively combat the authoritarian nature of King Hassan II and questioning his legitimacy as commander of the faithful. In a scathing letter written to Hassan II in 1974, "Islam or the Deluge," Yassine questioned Hassan II as commander of the faithful explaining that he should have been appointed to such a position by the *'ulama*. Hassan II treated Yassine similarly to other dissidents; he ordered his arrest and imprisonment in an insane asylum for more than three years.⁹³

The heavy-handed treatment of dissidents during Hassan II's reign waned in the 1990s. Propagating a minimalist reform of the *mudawana*, one regarded by most Moroccans as piecemeal modernization, Hassan II faced challenges from his own

⁹¹ Layachi, *State, Society and Democracy in Morocco*, pp. 83-88.

⁹² *Ibid.* p. 88.

⁹³ Howe, *Morocco*, p. 113.

Minister of Islamic Justice and the vocal opposition of *'ulama* both at the center and the periphery.⁹⁴ The issue was exceedingly contentious, but the debate on civil society reform did not find its way to the streets. The *mudawana* reform of 1993 went through without protests or vocalized opposition in civil society.

The King of the Poor: Muhammad VI and his Political Environment

The succession of Hassan II by Muhammad VI renewed the modernists fight for emergence of civil society. Muhammad VI was regarded as the “King of the poor,” by the majority of Morocco’s impoverished persons. Wealthy elite, profiting from their association with the *makhzan* have a slightly different view. Calling Muhammad the “Women’s King,”⁹⁵ for his crass attempts at reforming the *mudawana*, Muhammad’s human rights record is already better than his Father’s—one of his first acts as King was to compensate people imprisoned by Hassan II.⁹⁶ Muhammad’s lofty expectations have proven more idealistic than pragmatic in his first nine years as commander of the faithful. Urged to initiate his promised reforms of women status by members of the women’s rights movement, Muhammad VI appointed a commission to reform the *mudawana*. The commission was criticized by the women’s rights movement because they were not allowed a representative on it. Subsequently, a few women were appointed, as well as several members of the *'ulama* and the head of the Moroccan Supreme Court.⁹⁷ The

⁹⁴ Ibid. p. 165.

⁹⁵ Fannane, Samir, Student at al-Akhawayn University, 15 July 2008, (In Person). I refer to Samir as a member of the upper-class because he is a student at al-Akhawayn University in Ifrane. Which boasts an extremely expensive tuition and a difficult admissions process.

⁹⁶ Abdeslam Maghraoui, “Political Authority in Crisis: Muhammad VI’s Morocco,” *Middle East Report*, No. 218 (Spring 2001), p. 14.

⁹⁷ Howe, *Morocco: The Islamist Awakening*, pp. 168-169.

resultant plan to reform the *mudawana* constituted a major overhaul of the existing code—in favor of increasing women’s legal status by equalizing men and women under the law. 50,000 women mobilized in Rabat on 8 March 2000, approving of the King’s aspirations for reform. On that same day, as many as one million Islamist protesters rallied in Casablanca attempting to stall the efforts.⁹⁸ The protest was arguably the largest in Morocco’s history, certainly the largest of the last quarter century. The decision to stall the *mudawana* reform was made shortly after the day of protest, igniting political discussion of an opening of Moroccan civil society.⁹⁹

After the 16 May 2003 Casablanca terrorist attack, the government renewed its commitment to *mudawana* reform. The committee, composed of ten *‘ulama* and four others, announced that their efforts brought about a monumental reform effort.¹⁰⁰ The perseverance of the women’s movement was validated when the King mandated the radical *mudawana* reform of 5 February 2004. The legal age of marriage was raised to 18; divorce proceedings would take place in a court and could not be halted unilaterally by the male. The reform did not ban polygamy, but it limited the practice. The husband would need consent from his first wife to marry again.

Political scholars note that the King’s vigor for *mudawana* reform can be attributed to the changing international order. Namely, the 11 September terrorist attacks

⁹⁸ Ibid. p. 16.

⁹⁹ Howe, *Morocco*, p. 167.

¹⁰⁰ Ibid. p. 170.

forced political elite in the majority-Muslim world to question their role in modernization efforts and in promulgating a civil society devoid of fundamentalist Islamic elements.¹⁰¹

The state's capacity and propensity for repression, McAdam's fourth dimension of political opportunity structure, lessened significantly in Muhammad VI's Morocco. The mobilization of Islamists, whom were supported by Sheikh Yassine and other peripheral *'ulama*, in opposition to the reform advocated by Muhammad VI constitutes empirical validation of the change in political opportunity structure of Morocco, though the initial influx of openness has dwindled in the years after the protests.

¹⁰¹ Maddy-Weitzman, "Women, Islam, and the Moroccan State," pp. 399-400. The purpose of my study is not to analyze this specific event as a catalyst for family law reform, though that would certainly be an interesting avenue of research.

Chapter IV

Tunisia: Bourguibism and beyond

The history of Tunisia follows a more traditional African colonial path than Morocco. Tunisia was officially an Ottoman province in 1830, but was quasi-autonomous under the authority of the Husaynid *Beys* (1705-1881). Tunisia was responsible for implementing the first constitution in a majority-Muslim state in 1861. The Tunisian political system, established by Habib Bourguiba shortly after independence, took a course that mirrored the western governments of Europe, by advocating a secular political climate and constructing law based on western legal tenets. Bourguiba himself was a student of political science and philosophy in France's Latin Quarter, and many of his political beliefs reflected it. Bourguibism, if nothing more than a broad set of philosophical maxims, seemed rooted in a western construction of positive law and government.¹⁰²

While there is a general consensus in the field suggesting an elevated societal status of the *'ulama*, there is considerable variance in different societies. Several factors may contribute to this variation. The number of highly regarded religious universities in a society might afford graduates more acclaim. Additionally, the imprecision with which the term *'ulama* is used may contribute to this uncertainty.¹⁰³ Arnold H. Green uses a two-part evaluative framework to categorize *'ulama* groups in various Arab countries. He suggests that the level of *maddhabi* homogeneity and stratification of *'ulama* groups can be expansively different throughout the majority-Muslim world. Tunisia is an

¹⁰² Georgie Anne Geyer, *Tunisia: A Journey Through a Country that Works* (London, UK: Stacey International Press, 2003), p. 40.

¹⁰³ Arnold Green, *Tunisian Ulama 1873-1915* (Leiden, Netherlands: E. J. Brill, 1978) p. 26.

exemplary case of moderation, insofar as Green places it directly in the middle of both of those aspects.¹⁰⁴ Green's attribution of moderation is important in our discussion of Tunisian 'ulama groupings, because we may rule out the common argument that influential religious figures were cast aside in Tunisia society as a byproduct of French occupation.

Tunisian Protectorate era and before

Having remained self-governing during occupation by the Ottoman Empire, Tunisia was of particular strategic interest to the French in 1881. Algeria was already colonized by the French in 1830, allowing them the proximity to influence local Tunisian markets.¹⁰⁵ Fifty-one years passed before Tunisia was officially proclaimed a French protectorate. Jamil Abun-Nasr argues that this may have to do with a resistance by French citizens of undertaking new colonial ventures.¹⁰⁶

The Tunisian 'ulama, probably because they represented the waning commercial interests of Tunisian merchants, resented increased European influence. The 'ulama could not persevere over the modernizing influences in Tunisia, and Europeans were capable of augmenting their commercial and cultural influence over Tunisia as a result.¹⁰⁷ In contrast to the 'ulama of Morocco, who had little to fear by the imposition of colonial rule, modernization of Tunisia can not be attributed to outside influences exclusively.

¹⁰⁴ Arnold Green, *Tunisian Ulama 1873-1915* (Leiden, Netherlands: E. J. Brill, 1978), p. 69.

¹⁰⁵ Kenneth Perkins, *A History of Modern Tunisia* (Cambridge, UK: University Press, 2004), p. 15.

¹⁰⁶ Jamil Abun-Nasr, *A History of the Maghreb* (Cambridge, GB: University Press, 1975), p. 278.

¹⁰⁷ Kenneth Perkins, *A History of Modern Tunisia*, p. 24.

Muhammad al-Sadiq's ascension as *bey* in 1859 brought financial dependence on France along with an emphasis on creating a constitution to model its European counterparts.¹⁰⁸

The French protectorate, led by Resident General Paul Cambon, quickly moved to consolidate administrative capability in the protectorate. But first he moved to establish a protectorate *de jure*. Cambon negotiated with diplomats from Italy and Britain to dissolve the International Financial Commission, which protected Europe's interest in Tunisia and forbade the existence of a protectorate in Tunisia. The al-Marsa Convention of 8 June 1883 formally established a protectorate government in Tunisia.¹⁰⁹ Like Morocco, the convention allowed the *bey* of Tunisia to remain as a symbol of Tunisian society, though the position carried little political power. In fact, the al-Marsa Convention prescribed a "dual decree" system wherein the *bey* and resident general of France would issue legal correspondences simultaneously. The only problem for the ruling *bey* was that the convention also permitted the resident general to reform the beylical administration indefinitely.¹¹⁰

Administrative reforms of this magnitude were not new to the Tunisian citizenry. While still a semi-autonomous territory of the Ottoman Empire, Prime Minister Khayr al-Din promulgated a codified Tunisian jurisprudence during what has been called the Indigenous Reforms period (1837-1881). A commission was appointed to elucidate the complete Tunisian Law Code, by rectifying conflicts between the *Hanafi* and *Maliki*

¹⁰⁸ Eickelman, Dale F., "Madrasas in Morocco: Their Vanishing Public Role," in Robert W. Hefner and Muhammad Qasim Zaman, eds., *Schooling Islam: The Culture and Politics of Modern Education* (Princeton, NJ: Princeton University, 2007), p. 166. and Kenneth Perkins, *A History of Modern Tunisia*, pp. 25-26.

¹⁰⁹ Jamil Abun-Nasr, *A History of the Maghreb* (Cambridge, GB: University Press, 1975), p. 279.

¹¹⁰ "Historical Setting," in Harold D. Nelson ed., *Tunisia: A Country Study* (Washington, D.C.: The American University Press, 1988), p. 32.

maddhabs.¹¹¹ Attempts at codification of this magnitude have been described in Islamic literature as the breakdown in the informal power relationship between the *'ulama* as the custodians of law, and the otherwise infallible executor.¹¹²

Khayr al-Din's largest contribution to the secularization of Tunisian society may have been his educational reforms. He founded the College Sadiqi in 1875, seeking to train Tunisian Muslims for a career in civil service. The modern curriculum of the college taught courses in mathematics and the sciences.¹¹³ Moreover, Khayr al-Din reformed the educational instruction of Zaytuna mosque, adding modern subjects to the Islamic studies curriculum.¹¹⁴

Just as in Morocco, the French consolidated the Tunisian administrative apparatus. But unlike Morocco, whose ruling authorities resisted European attempts to intrude in the public sphere, Tunisian reforms prior to the protectorate paved the way for effective French reform. Khayr al-Din's tenure as Prime Minister was laid out in his book *Aqwam al-masalik li marifat ahwal al-mamalik* (*The Surest Path to Knowledge Concerning Conditions of Countries*.) Published in 1967, the book spoke to the necessity of effective governance—in particular the willing incorporation of certain western governing tendencies. It also reaffirmed Khayr al-Din's dedication to Muslim piety. He explained that any political reforms ought to be in accordance with Islamic law, which

¹¹¹ Arnold Green, "Political Activities of the Ulama in the Liberal Age: Tunisia as an Exceptional Case," *International Journal of Middle Eastern Studies*, vol. 7, No. 2 (April, 1976), p. 227.

¹¹² Coulson, *A History of Islamic Law*, p. 151; see also Noah Feldman, *The Fall and Rise of the Islamic State* (Princeton, NJ: Princeton University, 2008), pp. 62-67; These scholars of Islamic jurisprudence essentially argue that the informality of *maddhabi* jurisprudence necessitated careful attention to the *usul al-fiqh*, rather than relying on the written doctrine for rulings.

¹¹³ Charrad, *States and Women's Rights*, p. 96.

¹¹⁴ *Ibid.*, p. 97.

could only be affirmed by the support of the *'ulama*.¹¹⁵ But, as mentioned above, the *'ulama* were intransigent toward the Prime Minister's reforms of the educational system. So why then did the reforms occur?

The Tunisian *'ulama* remained complacent and did nothing more than look on contemptuously as westernizing reforms preceded colonialism. The Tunisian Code of Personal Status, which constitutes a significant change from traditional *shari'a* family law, was under the direction of the political sphere. Habib Bourguiba's secularized ideals were reified in his post-independence actions, free from the interference of the *'ulama*. Indeed, it seems that actions of Prime Minister Khayr al-Din coupled with steadfast nationalist resolve contributed to the implementation of a reformist family law.

Nationalism and Independence: Aggravators of 'ulama cooptation

Nationalism may constitute another reason that the Tunisian *'ulama* failed to counter attempts at westernizing traditionally Islamic norms. As Green argues, the Tunisian government supported reforms aimed at westernization amidst the tenuous economic situation of the nineteenth century. The Tunisian nationalist movement, which consisted primarily of western-educated Tunisians and European immigrants, had taken a considerable foothold as the world wars of the twentieth century raged through the country. Abolition of the French protectorate was their primary concern, and western notions of governance and secularism prevailed.

The nationalist movement started to take a hold with the economic collapse created by World War I. French investment generated considerable growth in the Tunisian economic sector. The economic expansion ceased when Europe was engulfed

¹¹⁵ Perkins, *A History of Modern Tunisia*, p. 33.

in war. The resulting socioeconomic strife created conditions idyllic for nationalist party formation. The *Destour* (Constitution) was one such party. Nationalist parties existed before the economic crisis, but the wealthy urban make-up, including some 'ulama, of the preceding parties struggled to recruit outside of Tunis.¹¹⁶

The most important figure of the Tunisian independence movement was Habib Bourguiba, who began his oppositional activities upon returning from France in 1927. By 1950, Bourguiba was the head of the Neo-*Destour* party, a faction representing the new Tunisian elite.¹¹⁷ Richard Brace argues that Tunisia's independence movement, though capable of resorting to violence if the situation necessitated it, was for the most part passive in its insistence on independence, unlike the "fiery" Moroccan *Istiqlal* party.¹¹⁸ The moderation of the Neo-*Destour* made a broad nationalist call more likely, because ideological divisions that hampered the previous nationalist parties were cast aside in favor of a unified call for independence, what Charrad calls: "ideological independence."¹¹⁹ However, two prominent Destourians vied for leadership of the party: Habib Bourguiba and Salah Ben Youssef.

Salah Ben Youssef represented the conservative aspect of the party leadership. He emphasized the need of the party to build strong relationships with the traditional elements of society like the rural strongholds and the religious establishment.¹²⁰ Ben

¹¹⁶ Arnold Green, "Political Activities of the Ulama," pp. 76-79.

¹¹⁷ Abun-Nasr, *A History of the Maghreb*, p. 345.

¹¹⁸ Richard Brace, *Morocco, Algeria, Tunisia* (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1964), p. 88.

¹¹⁹ Charrad, *States and Women's Rights*, p. 204.

¹²⁰ Perkins, *A History of Modern Tunisia*, p. 121.

Youssef appealed to conservative society because of a dedication to Pan-Arabism, and Pan-Islamism.¹²¹

Habib Bourguiba, ever the pragmatist, urged a gradualist approach to independence.¹²² He appealed to a primarily urban audience; he emphasized a cultural reckoning between what was considered French and Tunisian. Bourguiba laid out a party proposal in April 1950, Bourguiba laid out a proposal that emphasized cooperation with the French, and a new relationship to ensure Tunisian sovereignty while still protecting French interests.¹²³

The two factions of the Neo-*Destour* would maintain a strenuous rivalry—both advocating independence through different paths. Ben Youssef was forced out of his post as Secretary-General of the Neo-*Destour* in November 1955, fleeing to Cairo shortly thereafter to avoid arrest.¹²⁴ The gradualist approach of the Neo-*Destour* party won out after Morocco was given its independence in January 1956. The French agreed to sign a protocol repealing the Bardo Agreement of 1881, giving Habib Bourguiba's party the unenviable task of coordinating a smooth political transition.¹²⁵ In addition Bourguiba would have the authority to promulgate the country's family law.

The Tunisian Code of Personal Status, adopted on 13 August 1956, was unlike any other in the Muslim world. The Code was accepted by beylical decree, signed by then Prime Minister Bourguiba.¹²⁶ It promulgated a new understanding of women, who

¹²¹ Charrad, *States and Women's Rights*, p. 206.

¹²² Perkins, *A History of Modern Tunisia*, p. 97.

¹²³ Perkins, *A History of Modern Tunisia*, p. 118.

¹²⁴ Brace, *Morocco, Algeria, Tunisia*, p. 116.

¹²⁵ "Historical Setting," in Harold D. Nelson ed., *Tunisia: A Country Study* (Washington, D.C.: The American University Press, 1988), p. 50.

¹²⁶ Charrad, *States and Women's Rights*, p. 222.

were deemed a contributor to the maintenance of the home and were afforded the right to divorce and spared the practice of polygamy.¹²⁷ Women now possessed additional freedoms, but women neither helped write the law nor advocated its passage. Habib Bourguiba even went so far as to admit this.¹²⁸

The reformist faction of the Neo-*Destour*, led by Habib Bourguiba, championed this fundamentally different Islamic legal code and suppressed the backlash of the *'ulama* by summing up their actions as *ijtihad* (interpretation). Perhaps the strangest part of this proclamation was that it incited little backlash. The response from Zaytuna was strangely quiet, with the *'ulama* expressing neither satisfaction nor discontent with Bourguiba's new Code of Personal Status.¹²⁹ A leading scholar at Zaytuna issued a statement proclaiming that the code he was given for review differed from that which became law, and several *'ulama* resigned over the new code.¹³⁰ Charrad credits the decline of Ben Youssef as the reason for the passivity of the *'ulama*:

The religious establishment, the guardian of orthodoxy and the principal defender of Islamic law, did not have enough influence or political weight to resist government decisions with any chance of success. What was left of the tribal areas and the religious establishment both had lost their political voice with the defeat of the Ben Youssef faction at the end of the nationalist struggle.¹³¹

This is an important detail in light of Ben Youssef's support from the conservative elements of society, notably the religious establishment. This explanation does not explain the passivity of the *'ulama*, particularly in light of their role as custodians of Islamic law or in their capacity as a legitimizing agent for policies. In keeping with the

¹²⁷ Perkins, *A History of Modern Tunisia*, pp. 135-138.

¹²⁸ Charrad, *States and Women's Rights*, p. 219.

¹²⁹ Perkins, *A History of Modern Tunisia*, p. 137.

¹³⁰ Charrad, *States and Women's Rights*, p. 223.

¹³¹ Charrad, *States and Women's Rights*, pp. 223-224.

theory of *'ulama* of the center and periphery, it would seem that *'ulama* groupings of the periphery would engage in religiopolitical activism in reaction to the radical reformation of traditional Islamic law. Perhaps the political opportunity structure of the newly independent state can shed light on the failure of the *'ulama* to counter the Tunisian Code of Personal Status.

In terms of McAdam's first dimension, the relative openness or closure of the institutionalized political system, it seems that the electoral process was structured by Bourguiba to serve his party and consolidate his authority.¹³² The Bourguiba faction blackmailed the *bey* shortly before a constitutional assembly election in March 1956. Bourguiba threatened to go public with the *bey*'s support of the Ben Youssef faction, unless the *bey* agreed to make the assembly election one of party lists, which all but assured Bourguiba's Neo-*Destour* party would control the assembly. It is important to note that McAdam's conceptualization of this dimension presupposed analyzing the *institutionalized* facets of the political system, not the openness or closeness of the informal body *politic*. This distinction is particularly important, because the majority of Bourguiba's actions to consolidate political authority had larger effects on the informal political system. Insofar as this is true, it would seem that McAdam's first dimension would suggest that newly independent Tunisia was relatively open. The results of the election emphasized the electoral reforms Bourguiba emphasized: Bourguiba was elected President, running unopposed, in June 1959, 1964 and 1969.¹³³

McAdam's second dimension, the stability or instability of elite, also supports the claim that the political opportunity structure was not favorable to *'ulama* religiopolitical

¹³² Perkins, *A History of Modern Tunisia*, pp. 132-133.

¹³³ Brace, *Morocco, Algeria, Tunisia*, p. 140.

activism. The Neo-*Destour*, though composed of a wide range of ideologies, was united by the strong pragmatic personality of Habib Bourguiba. Party members were disciplined and organized excellently—evidenced by their parliamentary triumph of March 1956 when the party won all 98 parliamentary seats.¹³⁴

The third dimension of McAdam's typology illustrates further the difficulty faced by the *'ulama*. Salah Ben Youssef worked diligently in support of Islam to appeal for the party's leadership. He appealed directly to the conservative elements of Tunisian society—notably the *'ulama*. After France declared Tunisia independent, Ben Youssef fled to Cairo to escape imprisonment, and without their chief ally in the party, the *'ulama* could not gain equivalent access to the political process, and were thus incapable of thwarting westernizing family law reform.¹³⁵

McAdam's fourth dimension does not support the contention that the political opportunity structure forestalled *'ulama* activism. The Tunisian military relied on the French military to assist them in fighting Youssefist guerillas. The popularity of Ben Youssef posed a serious problem to the national unification of which Bourguiba commonly spoke. Youssef organized a leftist opposition party with a small guerilla faction. With French help, the exhausted Tunisian military force of merely 3,000 troops finally overwhelmed the opposition movement in 1957.¹³⁶

The state began its cooptation of the *'ulama* by reforming the *shari'a* courts. The political opportunity structure for *'ulama* groups of both the center and the periphery were abated with each additional reform. The reforms were not aimed exclusively at the

¹³⁴ Perkins, *A History of Modern Tunisia*, p. 131.

¹³⁵ Charrad, *States and Women's Rights*, p. 210.

¹³⁶ "Historical Setting," in Harold D. Nelson ed., *Tunisia: A Country Study* (Washington, D.C.: The American University Press, 1988), pp. 50-51.

'*ulama* or tenets of Islamic law. Charrad explains that the reforms may have been to eliminate the patrilineal tenets of the family structure that epitomized tribal society. The resulting preponderance of the nuclear family alignment resulted in further reduction in the influence traditionally afforded to religious scholars.¹³⁷ In Tunisia, appeals to conservative interpretations of Islam would no longer suffice to mobilize political dissenters.

An examination of the primary Islamist political actor during Bourguiba era sheds some light on difficulty of promoting traditional Islamism. Rashid al-Ghannoushi became the instigator of Islamist renaissance. He advocated a much politicized brand of Islam, one that portends to safeguard women—preserving their ability to be educated, and to have some protections from traditional customary code. However, he explained that new interpretations of Islam would protect women from their biggest threat: the superficial enticements that western conceptions of nudity and sexuality proposed.¹³⁸ Ghannoushi's position constitutes an unorthodox understanding because of the implicit admission that certain western conceptions of gender equality, particularly in terms of education and law, complement the ideas of Islam.

Al-Ghannoushi's background reflected a certain softness to western political thought. He was educated at the University of Damascus in political philosophy and taught that subject in secondary school while living in Tunisia.¹³⁹ Prior to that, al-Ghannoushi joined the Society for the Preservation of the Qur'an in the early 1970s to

¹³⁷ Charrad, *States and Women's Rights*, p. 215.

¹³⁸ Rashid al-Ghannoushi, "Deficiencies in the Islamic Movement," translated by Linda G. Jones, *Middle East Report*, No. 153 (July-August 1988), p. 24.

¹³⁹ Geyer, *Tunisia: A Journey*, pp. 90-91.

protest the subjugation of Islam into the private sphere only.¹⁴⁰ He then created the Islamic Tendency Movement (MTI) which he co-lead, advocating that citizens ought to lead lives more in line with Islam's moral and ethical principles. The movement was, however, decidedly political. It called for the President to repeal his economic policies and to allow for greater openness in the political system, yet greater political participation would not be seen until the latter portion of Bourguiba's Presidential tenure.¹⁴¹

In 1981 Bourguiba began to push the country away from autocratic control. Political organizations were free to fill in party lists for consideration in the 1981 parliamentary election. The Islamist movement, encompassed in the MTI of al-Ghannoushi, was barred from entering the political process. The allowance of political pluralism hardly constituted a political determinant, however, because the President's PSD party (*Parti Socialiste Dsturien*) did not lose a single seat until 1992—eleven years after the allowance of political participation.¹⁴²

In terms of McAdam's typology of political opportunity structure, the institutionalized closure of the Tunisian political system explains the failure of Islamist organizations to mobilize. Perhaps representative of the larger problems of autocratic suppression, Islamist parties, even with enough political support are continuously refused by the autocrat at the top.¹⁴³ In terms of analyzing 'ulama of the center and those of the periphery in Tunisia, I find that the 'ulama cannot effectively support any Islamist opposition groups, for fear of detention and political repression. McAdam's fourth

¹⁴⁰ "The Society and its Environment," in Harold D. Nelson ed., *Tunisia: A Country Study*, p. 123.

¹⁴¹ Perkins, *A History of Modern Tunisia*, p. 166.

¹⁴² François Burgat and William Dowell, *The Islamic Movement in North Africa* (Austin, TX: the Center for Middle Eastern Studies: 1993), p. 146

¹⁴³ Perkins, *A History of Modern Tunisia*, pp. 209-210.

dimension of political opportunity structure, the state's capacity and propensity for repression increased as the government of Bourguiba maintained a grip on the institutions of governance. The turbulent period of the 1980s demonstrates the willingness of Bourguiba to repress opposition movements.

From Bourguiba to Ben Ali: a new political opportunity structure?

The period before the bread riots of 1984 are exemplary of the political repression that supporters of Islamists face. Bourguiba ordered the imprisonment of 60 MTI members in June because they were accused of orchestrating an attack on a resort and attempting to replace an imam.¹⁴⁴ The Tunisian government was faced with a necessity to balance its shaky budget deficit. To do so, Bourguiba's economic team cut the government subsidies that kept bread prices low, the result was a price hike on the staple from \$.08 to \$.18 and the resulting riot had to be violently suppressed by Bourguiba—50 protesters lay dead in the aftermath.¹⁴⁵ Bourguiba continued to express concern over the MTI, but in August 1984 the seventeen MTI leaders, including al-Ghannoushi were pardoned.¹⁴⁶

On 7 November 1987 Habib Bourguiba was impeached by Zine al Abidine Ben Ali the Prime Minister of only 36 days.¹⁴⁷ The popular Ben Ali was widely regarded as a reformist and someone that would deliberately disadvantage his party in order to promote

¹⁴⁴ Michael Collins Dunn, "The Al-Nahda Movement in Tunisia: From Renaissance to Revolution," in John Ruedy ed., *Islamism and Secularism in North Africa* (New York, NY: St. Martin's Press, 1994), p. 154.

¹⁴⁵ "Bourguiba Lets Them Eat Bread," *Time*, <http://www.time.com/time/magazine/article/0,9171,921495-1,00.html>, 16 January 1984.

¹⁴⁶ "Government and Politics," in Harold D. Nelson ed., *Tunisia: A Country Study*, p. 241.

¹⁴⁷ Larbi Sadiki, "Bin Ali's Tunisia: Democratic by Non-Democratic Means," *British Journal of Middle Eastern Studies*, vol. 29, No. 1 (May, 2002), p. 58.

political pluralism. Ben Ali categorized his ascent as a “Historic Change;” wherein political dissidents would be free to express dissatisfaction, and political exiles would flood back in.¹⁴⁸ Certain secular reforms, all be them symbolic, were repealed: Sadiqi College had its name changed back to Zaytuna and the *hijra* (Muslim year) was placed on official government documents.¹⁴⁹

Political opportunity, at least in terms of hindsight, was opening up with the Presidency of Ben Ali. Though, an evaluation of McAdam’s four dimensions may prove this to be unfounded. Particularly, the relative openness or closeness of the political system did not change significantly, especially when considering the Islamists and *‘ulama* groupings in Tunisia. Political parties were legally banned from expressing an ideology rooted in religions. As a result, Islamist parties, those with which the *‘ulama* could identify with, were still without legal ground to enter the political arena.¹⁵⁰

Ben Ali became the unanimous pick of his party, which he renamed the *Rassamblément Constitutionnel Démocratique* (RCD) to dissociate it from Bourguiba.¹⁵¹ The party control that Ben Ali was granted suggests that McAdam’s second dimension of the political opportunity structure, the stability or instability of elite arrangements, did not change during the transition from Bourguiba to Ben Ali. The reason may be primarily medical. Bourguiba was impeached because he was deemed mentally unfit; therefore the ascent of Ben Ali did not fractionalize the party—creating an unstable elite arrangement—most conducive to successful mobilization.

¹⁴⁸ Perkins, *A History of Modern Tunisia*, pp. 185-186.

¹⁴⁹ Dunn, “The Al-Nahda Movement in Tunisia,” p. 154.

¹⁵⁰ Ibid.

¹⁵¹ Perkins, *A History of Modern Tunisia*, pp. 185-186.

The MTI became the *Nahda* party in order to follow Ben Ali's proclamation that political parties could not reference religion in their name. They were still denied access to the parliament, on 8 June 1989 the *Nahda* was deprived of political access because its members were still under sentence from the State Security Court when they were arrested during the Bourguiba presidency.¹⁵² In addition, the *Nahda* Party suffered from infighting that hindered their Islamist message; the "Neo-Muslims" began to resent the "few names 'of the old school.'" Prominent *'ulama*, including Sheikh Laroui, resented this fractionalization.¹⁵³ McAdam's third dimension, the presence or absence of elite allies is implicated in this discussion. Suffice it so say that widely regarded pious *'ulama* dissociated from the *Nahda* party divorcing from the peripheral *'ulama*. Because of this, *'ulama* capability for activism dwindled. In light of the secularist government, and a split with the Islamist party, the *'ulama* faced a deficit in political actors capable of supporting their traditionalist ideology.

The deficit facing the *'ulama* was epitomized by the 1993 family law reform policy. The Ben Ali-era of Tunisia seemed, at least upon first glance, to incorporate larger swathes of ideology, particularly those Islamist ideologies that had been systematically excluded throughout the era of Bourguibism. However, the 1993 reform of the Tunisian Code of Personal Status went even further toward mandating equality between the sexes. The reforms suggested that men and women were *equally* necessary to the survival of the family and to the care provided to children. Article 23 was

¹⁵² Burgat and Dowell, *The Islamic Movement in North Africa*, p. 237.

¹⁵³ *Ibid.* p. 237.

overhauled to incorporate these tenets of marriage equality. In all actuality, the new reforms seem to mirror Article 213 of the French Civil Code.¹⁵⁴

Examining Tunisia's opportunity structure from 1956 until 1993, I note a strong centralization of authority in the executive, notably in Habib Bourguiba from 1957 until 1987 and in Zine al Abidine Ben Ali from 1987 until the present day. The election reforms of the later years of Bourguiba's administration and those of Ben Ali constitute a gradual opening of the institutionalized political system. In addition, my findings suggest that *'ulama* religiopolitical activism did not increase due to a perceived instability in the elite alignment. Tunisia does not fit into the *'ulama* theories of Zaman, insofar as the *'ulama* of the center have nothing of significant value left to protect by allowing cooptation.

¹⁵⁴ Ann Elizabeth Mayer, "Reform of Personal Status Laws in North Africa: A Problem of Islamic or Mediterranean Laws?" WLUML Occasional Paper No. 8 (July, 1996), p. 14.

Chapter V

Conclusion: The Utility of Political Opportunity Structure and Ambivalence Theory in the Muslim World

In the concluding chapter on his writings of contemporary *'ulama* groups, *The 'ulama in Contemporary Islam*, Muhammad Qasim Zaman explains that the modernization of society has had both positive and negative effects on the mobilization of *'ulama* in contemporary Islam. In his argument, the ambivalence of the *'ulama* toward the state defines their informal relationship patterns—sometimes aligning with the state in opposition to Islamist movements, and sometimes aligning with Islamist movements in opposition to the state.¹⁵⁵

Zeghal's theory of peripheral *'ulama* is a concept worth further evaluation in this context. While political opportunity structure appears to be an inadequate indicator of the conditions for religiopolitical activism in non-democratic states like Morocco and Tunisia, the theory of *'ulama* on the periphery remains pertinent. The Moroccan case suggests that peripheral *'ulama* are capable of rallying Islamists, only insofar as the ruling regime allowed. Popular opposition movements by Islamists, contradicting the government, did little to challenge the ruling legitimacy of the monarch. If they did, in the case of Sheikh Yassine, the *'ulama* of the periphery were quickly silenced by the monarch. In Tunisia, the *'ulama* were similarly detained under suspect pretenses. The research I have conducted suggests that the peripheral *'ulama* hypothesis, while still theoretically legitimate, should be reconsidered in countries where the leader can claim to be the fundamental source of religious piety in that country. In addition, the theory must account for the Tunisian model, where the *'ulama* have no traditionally Islamic customs

¹⁵⁵Zaman, *'Ulama in Contemporary Islam*, p. 147.

or legal practices left to protect, due to the combination of French protectorate reforms and Bourguibism. Moreover, the capacity for repression in Morocco, while still less than other authoritarian regimes, coupled with the King's status of commander of the faithful promulgates a political environment in which active opposition movements instigated by *'ulama* groups cannot be effectively undertaken.

As for political opportunity structure, this study suggests that political opportunity structure is an inappropriate evaluator of *'ulama* religiopolitical activism in the Muslim world. There is no correlation to the amount or intensity of activism and any of the four dimensions of political opportunity structure, except for one. Figure 2 shows that only strong state capacity and propensity for repression always correlated to low amounts of *'ulama* activism. Further research is necessary to prove that this is anything more than coincidence. Empirically, threats of a strong executive were of little concern to the *'ulama*. As religious gatekeepers of pre-modern Muslim society, the caliph relied on the scholarly class, the *'ulama* in particular, for religious legitimacy. Case studies of Morocco and Tunisia represent two different situations wherein the political authority need not rely on religious legitimacy, thus making the threat of repression more valid.

The Tunisian government is predicated on a strict departure from religion. The policies of the Bourguibism called for secularism and a detachment from traditionally Islamic methods of legitimacy. Moreover, Tunisian Presidents have a history of intervening in the religious sphere by reforming Islamic education. This evidence indicates a willingness to repress *'ulama* religiopolitical activism on the part of the state. Essentially, the secularism of the Tunisian state precludes the utility of *'ulama*

ambivalence theory, because the state does not rely on the legitimacy they can garner from the *'ulama*.

Figure 2: McAdam's POS dimensions and *'ulama* religiopolitical activism

POS and Activism	<i>'ulama</i> activism?	Openness or Closure of the IPS	Elite Stability	Presence of Elite allies	Capacity and propensity of repression
Morocco					
Muhammad V	Low	Open	Instability	Presence	Weak
Hassan II	Low	Closed	Stability	Absence	Strong
Muhammad VI	High	Open	Stability	Presence	Moderate
Tunisia					
Bourguiba	Low	Closed	Stability	Absence	Strong
Ben Ali	Low	More Open	Stability	Absence	Strong

Ambivalence theory still has utility in majority-Muslim countries that recognize Islam as the state religion. Morocco is far from a secular state. Islam is still listed as the official religion and the King still holds the title of *amir al-muminin*. The Moroccan state is more susceptible to religiopolitical activism, particularly when the government reforms something, such as family law, that is thought to be in the religious sphere.

Secularization of the political sphere degrades the amount and efficacy of religiopolitical activism. Moreover, the more the government involves itself in the religious sphere, the greater the capacity for religiopolitical activism. Figure 3 presents a typology of the ambivalence theory. The more involved the ruling authority becomes in the religious sphere traditionally inhabited by the *'ulama*, the more significant the religiopolitical activism becomes. Low levels of involvement in the religious sphere, comparable to the Tunisian state, coupled with a proposal of family law reform breeds passive compliance

amongst *'ulama* groupings. These low levels of involvement can also breed coexistence with the state. The *'ulama*, fearing violent repression, choose to disengage from the political realm entirely; instead focusing on religious education, scholarship, and other endeavors.

Figure 3: State Creation of *'ulama* Activism

<i>'ulama</i> response to political involvement in the religious sphere		Proposal of family law reform	
		Yes	No
Leader's Involvement in the Religious Sphere	Low	Passive Compliance and limited activism -Tunisia shortly after independence	Coexistence with the state -Tunisia since the CPS
	High	Promulgation of radical ties and activism directed at reform -Morocco in 2003	Radical ties and dissidence in writing, university, and etc. -Morocco since independence

If the leader of a majority-Muslim country is highly involved in the religious sphere and he/she proposes to reform family law then the *'ulama* tend to forge ties with radical Islamists and to actively oppose the reform. If there is an absence of family law reform, then high levels of involvement by the political authority necessitate the *'ulama* to create radical ties with Islamists and to spend the bulk of their time focusing on the religious sphere by temporarily ignoring the religious sphere, waiting for a chance to breed opposition to an “attack” on Islam.

Morocco and Tunisia are examples of majority-Muslim countries that have slowly moved away from traditional family law. Perhaps it is a sign of the times and something that leaders, citizens, and scholars of the Muslim world ought to consider. The *'ulama* of other countries would do well to take these case studies into account. Religious authority

can often become intertwined with political authority—if this is the case, *'ulama* can expect difficulty preserving the status quo should the ruler decide to reform family law. If the *'ulama* are co-opted, it seems that little can be done to protect traditional family law. Moreover, the case of Tunisia suggests that radical secularization does not necessarily incite an Islamist backlash. Rather, a secularizing leader can slowly contract the religious identities of the body politic. The majority-Muslim world will continue to face the challenges of modernization and secularization, the amplitude of which seems to be decided wholly by the political authority. Unfortunately for the *'ulama*, little can be done to defend their Islamic traditions.

Glossary of Arabic Terminology

Alouites: Dynastic rulers of Morocco from approximately 1666 to the present day. The Alouites claim to be of prophetic descent.

amir al-muminin: Lit. commander of the faithful. The title comes from the Alouite dynasties descent from the Prophet through his daughter Fatima.

bay'a: The basis of the ruler's authority in sultanate Morocco.

dahir: Moroccan sultanate decree.

fatwa: Juristic opinion of a scholar in response to an issue not addressed by the Qur'an, the *hadith*, or the *sunna*.

hadith: The Prophetic and twelve imams commentary on the Qur'an, and one of the four sources of Islamic jurisprudence.

hijra: the name for the Islamic calendar, which corresponds to Muhammad's emigration from Medina in 622AD.

istiqlal: Lit. independence, the term can often refer to a popular independence era party in Morocco.

madrasa: Muslim institution of learning, where Islamic scholars teach Qur'anic and legal principles, though some teach non-religious topics as well.

Maghreb: Lit. the west, the term usually references the majority-Berber areas of North Africa: Tunisia, Morocco, Algeria, and some suggest Libya.

makhzan: A word typically used to denote the Moroccan government, but the term can also be used as a pejorative aimed at the elite Moroccan families thought to unfairly used government for their own benefit.

mudawana: The name for the Moroccan personal status code originally implemented in 1957.

Maliki: The predominant school of jurisprudence in North Africa.

shari'a: Lit. path to the water source, the term is used in Islamic jurisprudence to reference the ideal Islamic conception of personal and public obligations. The term can encompass religious and legal obligations.

sunna: Lit. the path, but in Islamic jurisprudence it refers to the experiences of the prophet.

Takhayyur: Term describing the jurisprudential practice of selecting particular aspects of different schools of Islamic jurisprudence to formulate decisions.

'ulama: Islamic scholarly grouping, usually associated with a nation's *madrasas*, that have earned considerable religious influence for their piety.

'umma: Lit. community, often used in academia to speak of the larger Muslim world.

'urf: Cultural customs of pre-Islamic Arabian society.

Usul al-fiqh: The sources of Islamic law. In practice, it refers to the methodology for identifying and analyzing those sources.

wahhabism: A conservative form of Islamic jurisprudence with an emphasis on the first three centuries of Islam, before the practice of personal interpretation. Practiced primarily in Saudi Arabia, but scholars all over the Muslim world identify with the school.

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