



# THE HISTORICAL ROLE OF RELIGION AND NATIONALISM IN THE CONSTITUTIONS AND LAWS OF SYRIA, LEBANON AND TUNISIA

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## ABSTRACT

People knew the laws and provisions with the arrival of the first human gathering to the stage of civilized society, which requires the formulation of provisions and laws to regulate various aspects of life and the formulation of rights, duties and penalties when committing violations and crimes. One of these laws is the Law of Eshnunna, which preceded the Code of Hammurabi over the years. The latter regulated various aspects of life and included provisions and laws developed by the rulers at that time and considered them to represent the will of the gods and obligated the people to implement them, making this law the first positive law.<sup>1</sup> Religion has had a great and important place since the formulation of the first legal status by the rulers of ancient Iraq, and from here, we find the strength and historical relationship between law, religion, and nationalism, which has continued to this day.

1 Al-Rubai'e, P. D. R. M. M. (2014). Eshnunna law – The first Sami law before Hammurabi law – (The legal study). Journal of Juridical and Political Science, 3(1). p. 8. <https://doi.org/10.55716/jjps.2014.3.1.2>

## INTRODUCTION

Based on time and historical factors, we find that societies continued to develop and witnessed new canons other than positivism by the rulers, which are known as “the high canons”. Constitutions and laws of many countries became closely associated with religion, and the “canons of the heavenly religions”, and the provisions they contain became the basis of legislation and jurisprudence. The status of religion and its relationship with the law is not new. Yet, it is an old relationship based on harmony in content and principles, and this is what we find today in many constitutions of Arab and non-Arab countries, which stipulate the status of religion and take Sharia as the basis for legislation in several areas. The relationship between religion, nationalism and law is clearly manifested in the countries of the Near East, specifically the Arab countries. This relationship is embedded in several areas, for example, but not limited to marriage, divorce, determining the state religion, the religion of the president of the Republic, the source of legislation and many others. Moreover, the historical factor is considered important in making the status of religion strong and prominent in several Arab and Middle Eastern countries, and there has always been a reason for the strength and status of religion in drafting the laws and repealing them.

### 1. THE HISTORY OF THE ROLE OF RELIGION AND NATIONALISM IN THE SYRIAN LEGAL AND CONSTITUTIONAL MODELS

Greater Syria was subjected to Ottoman rule for many decades. During this time, many laws and provisions were introduced, and religion played a pivotal role in forming the Sultanate and legislation. The relationship between religion and legislation was confirmed that the Ottoman sovereigns represent the sovereignty of the Islamic creativity. Article (4) of the same Constitution also emphasized that the Sultan protects the Islamic religion.<sup>2</sup> Furthermore, Article (8) stipulates

2 The Ottoman Constitution (23 December 1876). (n.d.). <https://iow.eui.eu/wpcontent/uploads/sites/18/2014/05/Brown-01-Ottoman-Constitution.pdf>

that all subjects of the Sultanate are Ottomans. In the same vein, Article (11) stipulates that Islam is the religion of the state, emphasizing the freedom of other religions to practice their rituals.<sup>3</sup> It is worth noting that in the Levant, many ethnic groups also exist in Turkey due to geography and proximity. For instance, we find Syriacs, Assyrians, Kurds, Circassians and other groups who were, in fact, Ottomans, hence applying Article (8) of the Ottoman Constitution of 1876.<sup>4</sup> The Ottomans’ exit from the Levant in 1919 marked the beginning of a new stage. Arab nationalism and religion became strongly present in politics, as a provisional government was formed in Damascus, and King Faisal bin Hussein, the leader of the Arab Revolution, announced on October 5, 1918, the formation of an independent constitutional Arab government for all of Syria (Syria, Lebanon, Palestine, Jordan).<sup>5</sup> The first Constitution of Syria was ratified on July 13, 1920, when Syria was a kingdom under the rule of King Faisal bin Hussein. This Constitution stipulated that Islam is the religion of the king in Article (1) and that the Arabic language is the official language in Article (3).<sup>6</sup>

In 1922, the League of Nations officially approved the French Mandate over Syria and Lebanon, and a new era began when France deliberately divided Syria into states on a sectarian basis, namely the state of Damascus, the state of Aleppo, the state of Alawites, and the Druze state. The French language was also imposed in schools, and special educational curricula were adopted in teaching, in addition to the activity of the missionary movement and systematically working to bring about changes in Syria and turn it into a French colony. France has also made changes in the judiciary, introduced non-religious legislation, and

[Last accessed: 29.03.2023].

- 3 Yavuz, M. A. (2021). Evolutionary secularization of the Ottoman law in the nineteenth century: Roots and implications. *Eskiyeni*, (44), p. 398.
- 4 Zhantiev, D. R. (2021). Religious policy of Sultan Abdul-Hamid II in the Syrian vilayets of the Ottoman Empire (1876-1909): methods and symbols. *RUDN Journal of World History*, 13(4), p. 349.
- 5 Watenpugh, K. D. (2006). Being modern in the Middle East: revolution, nationalism, colonialism, and the Arab middle class. Princeton University Press, pp. 125-129.
- 6 Thompson, E. F. (2015). Rashid Rida and the 1920 Syrian-Arab Constitution: How the French Mandate Undermined Islamic Liberalism. In *The Routledge Handbook of the History of the Middle East Mandates* (p. 249).

subjected the Islamic endowments to its direct authority and management.<sup>7</sup>

As for the Constitution of 1930, which was drafted under the French Mandate over Syria, we find that Syria has become known as the Syrian Republic and that the religion of the president is Islam and Arabic is the official language, and we find the transformation of Syria from a kingdom to a republic and the recognition of other languages besides Arabic, such as Kurdish in the North, Turkish, Syriac, Armenian and also French, in addition to guaranteeing the rights of religious and ethnic minorities.<sup>8</sup>

In comparing the Constitution of Syria of 1920 and 1930, we find several differences, not only pertaining to the transformation of Syria from a kingdom to a republic but also regarding religion and Arab nationalism. The Islamic religion was mentioned only three times when talking about the religion of the president of the Republic and the Islamic endowments, and the focus on the Syrian identity is more than the Arab identity, and this is clear from the term of the Syrian Republic without mentioning the character of Arabism.<sup>9</sup>

The policy of the mandate played a role in the emergence of differences between the Constitution of 1930 and the Constitution of 1920, and this is what we noticed in the absence of Islamic jurisprudence as a source of legislation and the recognition of other languages besides Arabic as the official language.

The issue of language and its connection with religion is also very important. The Islamic religion is an Arab religion, and the Holy Quran is an Arabic book. The topic of Arab nationalism and the Arabic language and its connection with the Islamic religion cannot be separated. Therefore, we note the absence of mention of Arabism and

Arab Nationalism in the Constitution of 1930 because of the French mandate policy, which divided Syria into sectarian states, rejected the Syrian constitution, and emphasized the unity of the Syrian territory.<sup>10</sup> The French mandate ended with the exit of its forces from Syria and gained independence. Later in 1950, the new Syrian constitution was ratified, and defined the features of the state and its goals. This period of Syria's political history witnessed a conflict of ideas and trends between Syrian parties in Parliament, such as the People's Party, the Communist Party, the National Party, and the Muslim Brotherhood party. The inclusion of the Syrian constitution of clear, detailed Articles has given importance and status to Arab nationalism, the Islamic religion and respect for other religions and beliefs, in contrast to the Constitution of 1930, which witnessed a decline in the issue of nationalism and religion. Although the Republic is referred to simply as the "Syrian Republic", the following articles explicitly state the Arab – Islamic identity of Syria. The first article stated the following: 1) Syria is a fully sovereign representative democratic Arab Republic, 2) it is an indivisible political unit and part of its territory may not be given up, 3) the Syrian people are part of the Arab nation. With regard to the role of religion, the third article stipulated the following: 1) the religion of the president of the Republic is Islam, 2) Islamic jurisprudence is the main source of legislation, 3) Freedom of belief is inviolable, and the State respects all monotheistic religions and guarantees freedom to perform all their rituals provided that this does not disturb public order, 4) the personal status of religious communities is inviolable and respected. Finally, the fourth article stated that: "Arabic is the official language".<sup>11</sup> In 1958, Syria entered a union with Egypt, and Syria and Egypt became known as the United Arab Republic. The Union collapsed in 1961. The Baath Party, with an Arab and nation-

7 Zawijah, W. (2021). The development of the Syrian national movement under the mandate the Frenchman 1919-1947. University-Adrar. Faculty of Humanities, Social Sciences and Islamic sciences. p. 108.

8 Al-Zoabi, Z. National identity in Syrian Constitutions-the circumstances of the emergence and its reflections in the Syrian Constitutions. Qalamoun: Syrian Journal of Humanities, V29. p. 701.

9 The Syrian Constitution of 1930 (Proposed by the Constituent assembly in 1928) chs 2, Section 1,2,3,4; The Syrian Constitution of 1950 Art 1, 3, 114 <<https://picryl.com/media/constitution-of-the-syrian-republic-14-may-1930-88546b>> [Last accessed: 29.03.2023].

10 Akseneno, A. Prospects of Post-War Syria: Constitution and Governance <<https://russiancouncil.ru/en/analitics-and-comments/analytcs/prospects-of-post-war-syria-constitution-and-governance/>> [Last accessed: 29.03.2023].

11 Ghadhban, N. (2019). the constitutional issue in Syria: a political approach. Omran Center for Scientific Studies. Istanbul, p. 17 <<http://www.omrandirasat.org/A9.htm>> [Last accessed: 10.05.2023].

alist orientation, came to power in 1964, During this time, Syria witnessed the issuance of the Constitution of unity with Egypt and several other constitutions after the Baath Party came to power.<sup>12</sup> This is also included in the Constitution of Syria of 1973, where Article (1) it emphasizes the Arabism of Syria and that it is part of the Arab nation, and in Article (8) on the leadership of the Baath Party for the State and society, in addition to mentioning the religion of the head of State, which is Islam in Article (3).<sup>13</sup> The Constitution of Syria of 2012 also emphasized in the preamble of the Constitution the Arabism of Syria and that it is part of the Arab nation, while Article (8) was amended, which states that the political system is based on the principle of pluralism and power is exercised democratically through voting. Article (3), prescribed that the religion of the president of the Republic is Islam and that Islamic jurisprudence is a source of legislation and affirmation of respect for all religions and beliefs.<sup>14</sup>

## 2. LEBANON AND THE ROLE OF RELIGION AND NATIONALISM IN ITS LAWS AND LEGISLATION

With the subjection of Greater Syria to Ottoman rule, Ottoman regulations and constitutions were applied in Lebanon and Syria. Later, Lebanon and Syria were subjected to the French mandate. During this period, Lebanon was part of Syria up until General Henri Gouraud proclaimed the creation and independence of the state of Greater Lebanon in September 1920.<sup>15</sup> The Lebanese constitution was issued on May 23, 1926, and stated that Lebanon is an Arab country and emphasized

the freedom of belief and respect for all religions, but the religion of the president of the Republic was not mentioned.<sup>16</sup> Lebanon has a unique religious and ethnic composition, and this is due to its geographical location, in addition to many nationalities that settled in the Levant and found refuge in the region from wars and persecution, such as Kurds, Armenians and Circassians. The Lebanese constitution recognizes 18 different sects in Lebanon, and religion plays a significant role in constitutional and political life. These sects include Christians, Maronites, Orthodox, evangelicals and Protestants, Sunni Muslims, Shiites, Alawites, as well as monotheistic Druze.<sup>17</sup> When Lebanon gained its independence in 1943, it agreed to manage government affairs according to the national charter formula, an unwritten agreement between Christians and Muslims in Lebanon. While the representative of Christians in this agreement was Bishara Al-Khoury, Muslims were represented by Riad al-Solh, the first head of government following independence. The charter stipulates that Lebanon should be considered an independent country if Muslims renounce the demand for return and unity with Syria, in return, Christians renounce the claim to French protection and Lebanon should be considered an independent country, and the president should be a Maronite Christian, the prime minister a Sunni Muslim, and the speaker of Parliament a Shiite Muslim.<sup>18</sup> There are Lebanese Christian parties such as the Lebanese Phalange Party and the Lebanese Forces Party, Muslim parties such as the Shiite Hezbollah and the Sunni Future Movement, Druze parties such as the Progressive Socialist Party and many others<sup>19</sup>. On April 13, 1975, Lebanon

12 Adamczyk, A., & Jomma, F. (2023). Arab Nationalism in Syria. *Polish Political Science Yearbook*, (1(52)), 10.15804/ppsy202251, pp. 62-63.

13 Constitution [Syrian Arab Republic], 13 March 1973, available at: <<http://www.unhcr.org/refworld/docid/44d8a4e84.html>> [Last accessed: 10.05. 2023].

14 Porras-Gómez, A. (2022). The Syrian Constitution at the end of the civil war: Is there a constitutional way to democratization? *Italian Political Science Review / Rivista Italiana Di Scienza Politica*, 52(3), pp. 362-377. doi:10.1017/ipo.2021.53.

15 Bahout, J. (2016). *The unraveling of Lebanon's Taif Agreement: Limits of sect-based power sharing* (Vol. 16). Washington, DC: Carnegie Endowment for International Peace, p. 4.

16 The Lebanese Constitution. 23 May 1926 <<http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>> [Last accessed: 01.05.2023].

17 Gadzhimuradova, G., & Rabat, L. (2020). Influence of Religious Identity on Lebanon's Political System. *Vostok. Afro-Aziatskie obshchestva: istoriia i sovremennost*, (5), pp. 132-134.

18 Zawad, H., & Shlouk, F. (2016) *The Taif Agreement of 1989 and the end of the Lebanese Civil War* (Doctoral dissertation). Faculty of Human and Social Sciences (FSHS). p. 20 <<http://archives.univ-biskra.dz/handle/123456789/8876>> [Last accessed: 1 May 2023].

19 Zawad, H., & Shlouk, F. (2016) *The Taif Agreement of 1989 and the end of the Lebanese Civil War* (Doctoral dissertation). Faculty of Human and Social Sciences (FSHS). pp. 21-23 <<http://archives.univ-biskra.dz/han>

witnessed the most violent civil war in its history, and the country is still suffering from the effects of this war up until today. With the signing of the Taif agreement, the Lebanese civil war ended. The agreement affirmed the Arabism of Lebanon and defined the powers and tasks of the president of the Republic, the House of Representatives and the ministers, stressed the Lebanese state's sovereignty on all its territories, and worked to restore the Lebanese territories occupied by Israel. The agreement also stressed Lebanon and Syria's distinctive and historical relationship, which calls for permanent cooperation for the region's stability.<sup>20</sup> We can say that the role of religion and nationalism is clearly shown in Lebanese life, both at the political and educational levels. Moreover, today, there are discussions within Lebanese society on the origins of the Lebanese people and the Arabization of Lebanon.

### 3. THE ROLE OF RELIGION AND SECULARISM IN TUNISIAN CONSTITUTIONS AND REGIMES

Throughout the history of Tunisia, there are similarities with the history of Syria and Lebanon. Tunisia came under the Ottoman rule in 1590, and the Ottoman Sultan appointed a governor named Pasha in addition to assistants from officers and military.<sup>21</sup> After the revolution of 1951 in Tunisia against the Ottomans, Tunisian figures came to power, and the position of the Ottoman "Pasha" became an honorary position without any powers, but the manifestations of Ottoman dependence on Tunisia remained during the rule of the Tunisian leaders and these manifestations were present through several conditions, such as the legitimacy of the rule in Tunisia after the issuance of a decree from the Ottoman Sultan that the country was governed according to Islamic law and the flag associated with the Ottoman state was retained and

the minting of money as well.<sup>22</sup> There is religious and sectarian diversity in Tunisia, as is the case in Syria and Lebanon. Islam is the majority religion in Tunisia, which 97% of the population follows. A significant part of the Muslim population follows the Maliki ash'ari madhhab. In addition, there are adherents of other Muslim sects, including Shia, Ibadi, Hanafi, Hanbali, and Ahmadiyya. As for the other religions, it is estimated that there are about 1,500 Tunisian Jews, most of whom live on the island of Djerba, and there are about 5,000 Tunisian Christians in the country, most of whom belong to evangelical churches. Moreover, there are hundreds of adherents of the Baha'i religion.<sup>23</sup> The Tunisian society brings together a mixture of ethnicities, including Arabs and Amazigh, in addition to Jews and European and African immigrants. The Amazigh, whose number is estimated at 500 thousand in Tunisia, while we find a larger concentration of them in Tunisia and Algeria.<sup>24</sup> In the midst of the ongoing conflict over the nationalism of Tunisia, we find from the first Constitution issued in Tunisia in 1875 until the last Constitution in 2022, which emphasized in the fifth and sixth chapters on the freedom of Tunisia and the work to achieve the purposes of the Islamic religion and the affirmation that the Arabic language is the official language of the country.<sup>25</sup> Following the collapse of the Ottoman Empire, French troops entered Tunisia in 1881 pursuant to the terms of the Berlin agreement, which granted France the occupation of Tunisia with British approval and the French forces led by the French foreign minister Jules Ferry arrived and presented to the Tunisian governor

[dte/123456789/8876](https://www.un.int/lebanon/sites/www.un.int/files/Lebanon/the_tauf_agreement_english_version_.pdf) [Last accessed: 01.05.2023].

20 The Taif Agreement, [https://www.un.int/lebanon/sites/www.un.int/files/Lebanon/the\\_tauf\\_agreement\\_english\\_version\\_.pdf](https://www.un.int/lebanon/sites/www.un.int/files/Lebanon/the_tauf_agreement_english_version_.pdf). [Last accessed: 22.05.2023].

21 Muhammad Al-Saeed A. & Muhammad Al-Eid Q. (2019). The Tunisian province and the Ottoman Sultanate... manifestations of dependency and manifestations of separation. *Al Maaref Journal for Historical Research and Studies*, 5(1), p. 164. <https://www.asjp.cerist.dz/en/article/134727> [Last accessed: 02.08.2023].

22 Muhammad Al-Saeed A., & Muhammad Al-Eid Q. (2019). The Tunisian province and the Ottoman Sultanate... manifestations of dependency and manifestations of separation. *Al Maaref Journal for Historical Research and Studies*, 5(1), p. 164-167 <https://www.asjp.cerist.dz/en/article/134727> [Last accessed: 02.08.2023].

23 Hafnaoui. R. M, (2022). Implications of the Role of Religion in Tunisia's New Constitution for Non-Muslims. Washington. Religious Freedom Institute. N323. p. 3. <https://www.religiousfreedominstitute.org> [Last accessed: 2 August 2023].

24 Ghanemi. M. Tunisian Amazigh engage in politics despite obstacles <https://www.alarabiya.net/north-africa/2019/05/07/> [Last accessed: 02.08.2023].

25 la legislation du secteur de la securite en tunisie //efaid-nbmnnnibpcajpcglclefindmkaj. [https://menarights.org/sites/default/files/2016-11/TUN\\_Constitution2014\\_FR.pdf](https://menarights.org/sites/default/files/2016-11/TUN_Constitution2014_FR.pdf) [Last accessed: 02.08. 2023].

“Bey” two copies of a French-Tunisian treaty prepared in advance and given five hours to approve or reject was finally signed and included several items, the temporary presence of French troops in the Sajjal and border areas until the Tunisian administration could maintain security and order, in addition to the inability of the Tunisian ruler “Bey” to sign any agreement or custom with a foreign country without the consent of France in exchange for protecting him and his family and this treaty was called the Bardo treaty.<sup>26</sup>

Later, a second treaty was signed that granted France absolute protection over Tunisia, and this treaty was known as the Marsa agreement in 1883, which granted France the exercise of financial and administrative competencies that it deems beneficial to Tunisia, the treaty was signed despite the opposition of the French parliament, which contradicts the Bardo treaty, which provides for the retention of the Tunisian entity and unity.<sup>27</sup> The authority to enact Tunisian laws and legislations was subordinated to the French courts, and the French penetrated into all administrative, military and educational functions.<sup>28</sup> With regard to the issue of nationalism and language, France has tried to spread the French language and culture by establishing French schools and formulating educational curricula in French, but these measures were met with great popular rejection, and Tunisians stressed the need for education in Arabic in Tunisian schools.<sup>29</sup> In 1959, Tunisia achieved independence from France, and a new constitution was drafted for the country and the Constitution of 1959 in the first chapter, provided for the independence of Tunisia as an independent free State and declared Islam as the official religion of the state,

and Arabic as the official language. This has also been included in the 2014 constitution issued after the outbreak of the Tunisian revolution on December 17 of the same year.<sup>30</sup>

Tunisia has taken a step ahead of Syria and Lebanon in the field of personal status. Comparing the three countries, we find that they are Arab countries, and religion has a great place in legislation and personal status issues; however, after Tunisia’s independence from France in 1959, Tunisian President Habib Bourekiba carried out reforms in matters of personal status, adopting the civil marriage law and prohibiting polygamy, and the Tunisian constitution in 1959 included in Article (2) that a civil state should be forgotten and in Article (21) that citizens are equal in rights and duties before the law and an adult woman has the right to marry herself without a guardian.<sup>31</sup>

By comparing and studying the status of religion and nationalism among three Arab countries, we can say that Tunisia has achieved an advanced step in the field of personal status, which is the separation of religion from the state, while many Arab countries still take religion as a key element in their constitutions and laws.

## CONCLUSION

This study allowed drawing the following conclusions:

- Religion and nationalism are two contributing elements in the drafting of constitutions and laws in the Middle Eastern countries in general and the Arab countries in particular, and this appears in the constitutions of all Arab countries, not only in Syria but in Lebanon and Tunisia.
- The place of religion in legislation dates to the origin of the Islamic religion in the Arabian Peninsula and the association of Islam with Arab nationalism since the emergence of the Islamic religion, which explains the place of the Islamic religion and Islamic

26 Farhan Al-Khafaji A. C. A., & Hadi Akkar Azim M. (2020). French policy towards Tunisia (1881-1914). *Al-Ustaz Journal for Humanities and Social Sciences*, 214(1). p. 256 <<https://doi.org/10.36473/ujhss.v214i1.1453>> [Last accessed: 02.08.2023].

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30 Constitution, 1959 (as of 2004) <<https://ihl-databases.icrc.org/en/national-practice/constitution-1959-2004>> [Last accessed: 4 August 2023].

31 Civil marriage law in the Arab world. Between rejection and acceptance <<https://al-vefagh.net/56834/>> [Last accessed: 04.08.2023].

jurisprudence in legislation.

- The political conditions experienced by each country have an important role in legislation, and this is shown in Lebanon, where the Constitution is a special case in terms of the distribution of powers in the country on a religious and sectarian basis. The Lebanese Constitution, which was issued after France declared the establishment of the state of Greater Lebanon in 1926, made the president a Maronite Christian, the prime minister a Sunni Muslim and the speaker of Parliament a Shi'ite Muslim, This also applies to Syria in its 1930 Constitution, where Arab nationalism had a weak influence as Syria was under the French mandate. The situation continued in the 1950 Constitution, which was drafted as the constitutions of European countries are drafted, but the large number of political parties in that period, including the Muslim Brotherhood party and other parties with a national and religious orientation, contributed to emphasizing the place of Arab nationalism and the Islamic religion in the legislation. Then, the prominent role of nationalism appeared when the Arab Baath Party reached the country's leadership in 1963.
- The arrival of Tunisia as an Arab and Muslim country to the separation of religion from the state greatly puts the role of the historical factor and the political conditions of each country in the drafting of the Constitution and legislation. The French protection of Tunisia continued with the existence of the Bardo Treaty of 1881 for 75 years, and Tunisia was influenced by French culture in the field of legislation and education. We can see this influence in all aspects of life in Tunisia up until today.
- The change in the system of government of a particular state needs a long time of amendment in legislation and laws, slowly and thoughtfully, because every country has a historical context, its customs and traditions embodied in the form of laws and provisions that express the culture of this country. For instance, a Muslim religious country that uses Islamic law as a source of legislation and law-making cannot become a secular country within a month or two without entering civil war and bloodshed.

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