

# Gender and Citizenship in the Middle East

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First Edition 2000

02 03 04 05 6 5 4 3 2

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American National Standard for Information Sciences—Permanence of  
Paper for Printed Library Materials, ANSI Z39.48-1984.

Library of Congress Cataloging-in-Publication Data

Gender and citizenship in the Middle East / edited by Suad Joseph ; with a foreword by  
Deniz Kandiyoti. — 1st ed.

p. cm. — (Contemporary issues in the Middle East)

Includes bibliographical references and index.

ISBN 0-8156-2864-1 (cloth : alk. paper) — ISBN 0-8156-2865-X (paperback : alk. paper)

1. Citizenship—Middle East. 2. Sex role—Middle East. I. Joseph, Suad. II. Series.

1Q1758.A92 G45 2000

323.6'0956—dc21 00-057015

*Manufactured in the United States of America*

rights before the law in Tunisia than in Morocco. A key feature of social organization that has affected citizenship rights in Morocco and Tunisia has been the place of kin-based formations in the social structure and politics. The history of Morocco and Tunisia has been characterized by the centrality of the extended patrilineal family and its extension referred to as lineages, clans, kin groupings, or tribes. The relative role of kin-based formations in the political history of each country has been critical to developments in citizenship.

Although the Middle East is often seen as unique because of Islam, I suggest that treating Maghribi countries (and other parts of the Middle East) historically as *kin-based societies* sheds much light on the development of the state and the course taken by citizenship. Issues of citizenship have received much scholarly attention in the context of predominantly class-based Western societies where social class has historically been considered the major divide (Marshall 1964; Lipset 1963; Bendix 1964; Tilly 1996; Shafir 1998; Sommers 1993). Much remains to be understood, however, about citizenship in those societies where kinship has served as a fundamental mechanism of social integration and a basis for social conflict. If one is to develop a "culturally specific gendered analysis of citizenship in Middle Eastern states," (see chap. 1) one must pay close attention to the fact that Middle Eastern societies have been kin-based during most of their history.

Kin-based formations extending from the patrilineage have influenced the historical development of the nation-state in Morocco and Tunisia and the formulation of its laws and policies (Charrad in press, 1997, 1996, 1990). Lineages continue to occupy a central place in social relationships today. Kin-based patriarchy, by which I mean specifically the primacy of the kin group coupled with the power of male kin over women, has pervaded the history of the Maghrib and the Middle East. The extent to which it is codified in the law is a major determinant of the status of women as citizens.

I argue that citizenship took on different forms and became gendered in different ways in part as a result of the different place of kin-based formations in the development of the sovereign nation-state in Tunisia and Morocco. The theory proposed is that, in societies where lineages and kin-based social formations have remained central elements of the social structure and anchors for political power, the individual citizenship rights of women have suffered. They have been subordinated to the continuing privileges of men and of patrilineages.

Whereas in Morocco the legal discourse tends to enshrine kin privileges, in Tunisia the law provides considerably more space to a construct of self as an individual and, consequently, more rights to women. In Morocco, tribes

# A

## Becoming a Citizen

### *Lineage Versus Individual in Tunisia and Morocco*

MOUNIRA M. CHARRAD

CITIZENSHIP INVOLVES at its heart the mode of incorporation of individuals within the framework of a social and political community.<sup>1</sup> As such, it is a historical concept, and the form it takes varies widely from one society to another. The concept of citizenship as understood today took shape with the formation of formally autonomous nation-states. The starting point of contemporary debates in most of the world remains the liberal view of citizenship that involves a concept of the ideal society as a partnership of free and equal citizens within a political community.<sup>2</sup> In principle, citizenship applies to individuals who all have the same individual rights as defined by law within a nation-state. In actuality, access to individual rights within any particular nation-state is often differentiated by many dimensions, such as gender, level of education, socioeconomic status, religious affiliation, ethnicity, or language (Joseph 1996b, chap. 1, this volume; Orloff 1993; Soysal 1994; Young 1989; Shafir 1998; Walby 1994; Tilly 1996).

In this chapter I compare citizenship and its relation to gender in two countries: Tunisia and Morocco. Even though these two countries share many similarities in culture, language, and religion, citizenship rights for women have taken different paths: women as citizens have more individual

1. I thank Mary Freifeld and John Markoff for valuable comments on earlier drafts.

2. Rawls (1971) presents a contemporary formulation of the liberal view of citizenship. This view has been criticized from a variety of perspectives, several of which are discussed in Shafir 1998.

and lineages have retained more prominence in politics than in Tunisia where they have become weaker. Morocco offers an example of how women's citizenship rights have been curtailed in favor of the power of male-dominated patrilineages. By contrast, in Tunisia, where kin-based formations have exerted much less social and political influence in the modern period, women have gained significant individual rights, even though many aspects of gender inequality persist. As kin-based formations have lost power in Tunisia and remained strong in Morocco, the legal discourse has offered a different balance between the universalism of individual rights and the particularism of male or lineage privileges.

Durkheim (1964), Weber (1978), Collins (1986), Toennies (1957), and Parsons (1971) have conceptualized the emergence of modern states as a social process that threatens and sometimes eradicates particularistic ties of village, local community, lineage, kin grouping, or tribe.<sup>3</sup> When discussing the development of the ideal of citizenship, Pocock (1998) underscores the transcending of tribal loyalties as a central dimension. The development of a modern state certainly entails the integration of the particularistic ties of village as in Western Europe (Tilly 1975) or tribe as in the Maghrib within a broader political entity. It does not, however, inevitably cause such particularistic ties to lose their political relevance within the nation-state.

There are many paths to state formation with different kinds of relationships between the central state and particularistic communities. Tunisia, Algeria, and Morocco alone have exhibited several paths and several relationships between state and tribe in the development of sovereign nation-states (Charrad in press, 1996, 1990). One path involves the persistence of particularistic communities such as tribal kin groupings under the umbrella authority of the state as in Morocco. Another path entails opposition between state and tribe as in Tunisia. The particular mode of integration of particularistic ties within the broader political community of the nation-state shapes the degree to which particularism remains central to the relationship between state and society and, therefore, to the forms taken by citizenship.

The greater weight of particularism in Morocco reflects the relationship between society and state as it emerged in the era of national sovereignty at the end of French colonial rule in the 1950s. In Morocco the sovereign state headed by the monarchy developed as the supra-authority under which particularistic allegiances were permitted and sometimes encouraged whether anchored in lineages or religion. In contrast, the Tunisian state developed in autonomy from such allegiances and once in power engaged in policies that

3. Although they have converged about the nature of the process, social theorists have disagreed on whether its consequences for social life were positive or negative.

minimized or eradicated them. Accordingly, many policies in Tunisia aimed at transferring loyalties from particularistic communities to the entity of the sovereign nation-state. These key differences in the relationship of state to society shaped the overall policy orientations as they were set in each country after the emergence of the sovereign state in the mid-1950s. They molded the framework for how issues of women's citizenship rights would be settled in Morocco and Tunisia.

Citizenship is best conceptualized as involving several related yet analytically separate arenas. T. H. Marshall (1964) advanced the discussion on citizenship in the West by distinguishing among what I call "arenas of rights," such as civil, political, and social rights.<sup>4</sup> Contrary to Marshall's expectation, the different arenas of individual rights do not necessarily evolve together and rights in every arena are reversible. The distinction is analytically useful nevertheless. In the same vein as Marshall's distinctions, citizenship rights in relation to gender in Tunisia and Morocco are best examined as part of related but distinct arenas.

One arena concerns the citizenship rights that make a person formally the citizen of a country as symbolized, for example, in the possession of a passport. I refer to that arena specifically as "nationality rights" to distinguish it from other arenas. A central issue concerns the respective ability of men and women to transmit citizenship rights to their children or foreign spouses. Another critical arena is that of basic personal rights as defined in family and personal status laws. This is one of the most contested arenas of citizenship rights for women in the Maghrib and the Middle East. It covers laws regulating issues such as marriage, divorce, and guardianship of children. A third arena concerns some of the rights enumerated in the constitutions of Morocco and Tunisia as applying universally to all citizens. These include among others the right of individuals to vote and to be eligible to hold public office.

A key question to examine is the extent to which the laws of Tunisia and Morocco give women individual rights and responsibilities or, on the contrary, protect the privileges of patrilineages as collectivities. At issue is kin-based patriarchy and the privileges of men as members of the patrilineage versus individual rights for all citizens including women. This chapter is organized in three parts: In the first part I examine nationality rights. In the second part I focus on basic personal rights in family and personal status

4. Civil rights include free speech, protection from the state, and equal access to the legal system. Political rights refer to the right to vote, to run for election, and, more generally, to participate in the exercise of political power. Social rights concern entitlements such as minimum income, Social Security, unemployment benefits, and health benefits.

laws. In the third part I consider universalistically stated rights enumerated in the constitution with respect to voting and holding office.

### Nationality: Right of Blood and Right of Soil

A consideration of nationality rights raises the question of the conditions for membership in the community of citizens. At stake in particular in the Maghrib is the primacy of patrilineality, or paternal descent, in the transmission of nationality from one generation to another. Whether nationality by descent or right of blood devolves only from fathers or also from mothers is a central issue. For women to become equal citizens in the nation-state, "blood" should no longer mean only the blood of the paternal lineage but should include the blood of the mother. Gender differentiation enters into the formulation of nationality in both Morocco and Tunisia, but it is greater in Morocco than in Tunisia where mother's blood counts for more.

The concept of nationality as discussed in this section historically was absent in the Islamic tradition. What came closest to it was defined in religious terms and took a highly unequal form for men and women. Religion was a determining factor.<sup>5</sup> A Muslim man could marry a non-Muslim woman while retaining his membership in the community of Muslims. A woman, however, would automatically lose her status as part of the Muslim community if she married a non-Muslim.

In Morocco and Tunisia a *Code de Nationalité* delineates the conditions for membership in the community of citizens within the nation-state. Both countries combine elements of *jus sanguinis*, the right of blood, and elements of *jus soli*, the right of soil, in the attribution of nationality rights. *Jus sanguinis* confers nationality through blood descent, whereas *jus soli* means that people born on the national territory are nationals. In both countries *jus sanguinis* through fathers is unconditional and automatic. By contrast, the transmission of nationality through mothers occurs only under limited and restricted conditions, carefully enumerated in each code.

In Morocco, the *Code de Nationalité* was promulgated in 1958 and has remained unchanged since. In Tunisia, the *Code de Nationalité* was first promulgated in 1957, revised in 1963, and revised again in 1993 when the conditions for *jus sanguinis* through mothers were expanded. In both countries, women as a source of nationality rights are at a disadvantage compared to men, but Tunisian mothers have greater rights than do Moroccan

5. All Muslims were represented by the imperial state or its representative in Tunisia (which was part of the Ottoman empire before French colonization) and by the sultan in Morocco.

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mothers. In both countries, the patrilineage has primacy as a determinant of nationality in that membership in the political community of the nation-state flows directly from male descent or patrilineality. The Moroccan code states: "Is Moroccan the child born to a Moroccan father?" (Kingdom of Morocco 1958, art. no. 6). The Tunisian code makes the equivalent statement: "Is Tunisian the child born to a Tunisian father?" (République Tunisienne 1998a, art. no. 6).

In Morocco, *jus sanguinis* through mothers operates only when combined with *jus soli*, except when the father is unknown. A Moroccan mother may pass nationality to her child under the following specific circumstances: the child of a Moroccan mother and unknown father is Moroccan (art. no. 6, para 2) as is a child born in Morocco to a Moroccan mother and a stateless father (art. no. 7, para. 1). A child born in Morocco to a foreign father may obtain the Moroccan nationality under the following conditions: the child must reside permanently in Morocco and declare the intention to become Moroccan two years before reaching majority. Based on *jus soli*, the provision applies only to children born in Morocco. Moroccan women married to non-Moroccans and giving birth abroad, therefore, are unable to pass nationality to their children. As Moulay Rehid (1991, 76) remarks, a mother may pass Moroccan nationality to her child only under restricted circumstances.

In Tunisia the gendering of citizenship rights also permeates the provisions for the passing of nationality to children although women have gained an important right in the reforms of 1993. Because paternal filiation serves in all cases as a source of nationality rights, fathers have a definite advantage. A Tunisian father automatically passes nationality to his children regardless of whether the children were born on Tunisian national territory or abroad (art. no. 6). A child whose father and grandfather were born in Tunisia also is Tunisian (art. no. 7).

Before the reforms of 1993, *jus sanguinis* through mothers operated in Tunisia only in combination with *jus soli* or under restricted conditions similar to those in effect in Morocco: if her child was born on the Tunisian territory from a foreign father, if her child's father was unknown, if the father had no nationality or if his nationality was unknown (art. no. 6). Before 1993, *jus sanguinis* through mothers alone thus was not sufficient to confer nationality to a child born abroad to a Tunisian mother and a foreign father. Such a child could obtain Tunisian nationality only if the child made the request one year before majority, if no one raised opposition for a period of two years, and by special decree from the president of the Republic. These restrictions were in contrast to the automatic effect of *jus sanguinis* through fathers.

Tunisia took time to change the nationality provisions for children born abroad to a Tunisian mother and a foreign father. The Convention of Copenhagen of 1979, the Elimination of All Forms of Discrimination Against Women, stated: "States will grant women and men equal rights with respect to the nationality of their children" (quoted in Chamari 1991, 118). This convention reiterated the New York Convention of 20 February 1957 on women's nationality rights. Although Tunisia signed the New York Convention of 1957, the Tunisian government criticized the Copenhagen Convention of 1979 in the following terms: "The government of the Republic of Tunisia expresses reservations with respect to the dispositions of paragraph 2 of article no. 9 of the present Convention, as they would go against the dispositions of article no. 6 of the Tunisian *Code de Nationalité*" (quoted in Chamari 1991, 118).

Despite the reservations expressed about the 1979 convention, the Tunisian government nevertheless revised the *Code de Nationalité* in 1993. The reforms of 1993 introduced a significant change toward greater gender equality in that they expanded women's rights in regard to the attribution of nationality to children. Examined elsewhere, the complex reasons for the change in the four-year period involved a changing political climate, a regime open to change, and the role of women's rights advocates who were active in Tunisia in the early 1990s (Charad 1997, 1998).

The important reform of 1993 concerned mothers as the source of *jus sanguinis* irrespective of *jus soli*. Addressing the issue of children born outside the Tunisian territory, the reform allowed a Tunisian woman married to a foreign man to pass nationality to children born abroad. Article no. 12 of the revised code states: "Becomes Tunisian, if he or she makes the request within one year before reaching the age of majority, a child born abroad from a Tunisian mother and a foreign father" (République Tunisienne 1998a, art. no. 12). This is a major innovation. The provision in effect introduced a new dimension in nationality rights: mothers are now a source of nationality rights in and by themselves. They become a source of *jus sanguinis* as much as fathers and independently of *jus soli*. The reform is also a major step when seen in the context of the cultural taboo against Muslim women marrying non-Muslims (such women often became outcasts in the Islamic tradition). For the first time, a Tunisian mother living abroad and married to a non-Tunisian man, even a non-Muslim, may pass the Tunisian nationality to her children born abroad.

Although the two countries differ in regard to the transmission of nationality to children, they are fairly similar with respect to the transmission of nationality to a foreign spouse. In both countries the procedure for a man to pass nationality to his foreign wife is not automatic as it is with children,

but it is simple and straightforward. The Moroccan code only requires that the married couple should have established a permanent and regular residence in Morocco for at least two years. Article no. 10 (Kingdom of Morocco 1958), entitled "Acquisition of the Moroccan Nationality Through Marriage," reads as follows: "A foreign woman who has married a Moroccan man may, after the couple has established a permanent and regular residence in Morocco for at least two years, make a request to the Minister of Justice so as to obtain the Moroccan nationality." Foreign men married to Moroccan women cannot obtain nationality so easily. That issue is addressed in the sections of the code entitled "Exceptional Dispositions" and "Naturalization." The "Exceptional Dispositions" (art. no. 45) apply to anyone who is originally from a country where the language of the majority of the population is Arabic and its religion Islam. The dispositions concern only a person who belongs to that majority.

This means that a Moroccan woman may only transmit Moroccan nationality to her foreign husband if he comes from an Islamic and Arabic-speaking country. Article no. 45 reads as follows: "Every person who is originally from a country where the majority of the population consists in a community that has Arabic as its language and Islam as its religion and who belongs to that community may opt for the Moroccan nationality [in case of] . . . a marriage, never dissolved, with a Moroccan woman and a residence in Morocco for at least one year" (Kingdom of Morocco 1958, art. no. 45). The acquisition of nationality by a foreign man because of marriage to a Moroccan woman is treated as a case among others that fall under exceptional circumstances. The Moroccan code states that a man who is originally from a predominantly Muslim and Arabic-speaking country and who himself is Muslim and speaks Arabic may obtain the Moroccan nationality under any of the following conditions: (1) having had his permanent residence in Morocco for at least fifteen years; (2) having held a public office in the Moroccan civil service for at least ten years; and (3) because of a marriage, never dissolved, with a Moroccan woman in combination with a permanent residence in Morocco for at least one year (art. no. 45).

If they neither are Muslim nor speak Arabic, foreign husbands of Moroccan women can only become Moroccan by following the rules of "naturalization" that apply to foreigners in general (art. no. 11). The rules in this case are not much different from rules in many other countries in the world in that they involve such criteria as having resided in Morocco for at least five years, knowing the language, having adequate means of financial support, and so forth. In the case of naturalization of a foreign man from a non-Arabic speaking and non-Muslim country, marriage to a Moroccan woman is left out of the frame of reference. The Moroccan code deals with

such a foreign man independently from his marriage to a Moroccan citizen. Marriage in and of itself thus serves as a basis for the spouse to acquire nationality in the case of a Moroccan man married with a foreign woman. Marriage also serves as a source of nationality rights among many other "exceptional" sources in the case of Muslim and Arabic-speaking husbands. It does not at all serve as such a basis for other categories of foreign husbands.

In Tunisia the implications of marriage for acquiring nationality have remained unequal for men and women. The provisions, promulgated in the code in 1957 and 1963 and still valid today, enable Tunisian men easily to pass nationality to their foreign wives, something that the law appears to encourage. If the wife of a Tunisian man has lost her nationality of origin because of her marriage, she automatically becomes Tunisian (art. no. 13 of the code). As in Morocco, a foreign wife who still has her nationality of origin may become Tunisian by making a request to the relevant authorities in the Ministry of Justice as long as the couple has resided in Tunisia for a minimum of two years (art. no. 14).

Like the Moroccan Code, the Tunisian Code also treats as "naturalization" the process by which a foreign man married to a Tunisian woman becomes Tunisian. In contrast to the Moroccan Code, however, the Tunisian code only requires that the husband know Arabic and the couple reside in Tunisia at the time of the request. Article no. 21 of the Tunisian code states: "May be naturalized the foreign man married to a Tunisian woman if the couple resides in Tunisia at the time the request is made" (République Tunisienne 1998a, 9). Requiring a knowledge of Arabic in all cases of naturalization, article no. 23 reads as follows: "No one may be naturalized . . . if he does not show a sufficient knowledge, appropriate to his condition, of the Arabic language" (République Tunisienne 1998a, 10).

In imposing the knowledge of Arabic and the general criteria of naturalization to foreign husbands but not to foreign wives, the *Code de Nationalité* treats male and female Tunisian citizens differently. In making no mention of religion or national origin, the Tunisian code is, nevertheless, more lenient than the Moroccan code. Presumably, anyone who can learn Arabic qualifies for naturalization.

Religion was introduced in an indirect way, however, by a government decree in 1973. The decree addressed the issue of a marriage between a Muslim woman and a non-Muslim man. It ordered public authorities to refrain from performing and registering such a marriage (Chamari 1991, 43). The objective stated by the government was the protection of Tunisian identity from Western cultural influences. The taboo about a Muslim woman marrying a non-Muslim man persists in Tunisia as it does in Morocco. The marriage contract of a Tunisian woman who marries a foreign

non-Muslim man abroad, thus, is not recognized in Tunisia, and such a Tunisian woman cannot pass nationality to her foreign husband. One way this is usually handled in practice is through a conversion of the foreign husband to Islam before the marriage contract.

There are noteworthy differences between the two countries in regard to the marriage of a Muslim woman with a non-Muslim man, however. The taboo is expressed in one of the fundamental texts of the country in Morocco, whereas it appears only in a decree in Tunisia. In the official ranking of legislative texts, a decree has less weight and can more easily be revoked than an article in a *Code de Nationalité*. Second, a foreign husband's origin in an Arabic-speaking and Muslim country, which matters in Morocco, does not in Tunisia. Regardless of his origins, the non-Muslim foreign husband of a Tunisian woman always has the option of converting to Islam as a legal solution to the recognition of the marriage and the acquisition of Tunisian nationality. Nevertheless, the issue of a marriage between a Muslim woman and a non-Muslim man remains a highly contested point caught in contradictions between different legislative texts in Tunisia.

Although the two countries have fairly similar regulations on the transmission of nationality to foreign spouses, they differ considerably on the transmission of nationality to children. Moroccan women living abroad and married to a non-Muslim lack the legal capacity to pass Moroccan nationality to their children born abroad. In contrast, Tunisian women in the same situation can confer nationality to their children. The Tunisian provision of 1993 represents a major change with respect to women as a source of *jus sanguinis* in the attribution of nationality to children. Whereas in the past matrilineal descent could combine with *jus soli* to confer nationality rights to a child, it now stands in and of itself.

Widely applauded in Tunisia and elsewhere as a major gain for women, the 1993 provision has granted a critically important citizenship right to women. In introducing matrilineal descent as a legitimate and sufficient reason for *jus sanguinis* regardless of *jus soli*, the provision of 1993 challenges the special status of patrilineality as the source of membership in the political community. Calling into question the privileges of the patrilineage, the provision is an important step toward allowing women to become equal citizens in the nation-state.

### Codes of Personal Status: Power of Kin or Basic Personal Rights

If one accepts Rawls's concept of citizenship as involving "equal basic rights and liberties" (quoted in Shafir 1998, 19), then one must include in these rights and liberties in today's world the right to choose one's spouse,

the right to divorce, the right to have custody of one's children, and the right to inherit property from relatives. If women are to become equal citizens in the political community of the nation-state, as defined in the liberal tradition, then they are entitled to these rights as much as are men. The analysis that follows centers on marriage, divorce, and custody of children. In the context of this chapter, rights in these areas are referred to as basic personal rights and are treated as an essential arena of citizenship.

Family law as presented in texts called *Codes of Personal Status* in the Maghrib includes a construct of self. By construct of self in the context of the Middle East, I mean whether the person is defined primarily as an autonomous individual or as a member of a patrilineage. The codes regulate family relationships (Charrad in press, 1996, 1994). As the title suggests, they also define the status of persons in the social environment, which is the aspect emphasized here. The codes indicate how men and women are constituted as citizens: equal before the law or as two different classes of citizens with respect to family and personal life. They show whether women are recognized as equal citizens in the nation-state or are treated as subordinate to men in their roles as daughters, wives, mothers, siblings, nieces, or aunts.

Codes of Personal Status present a different dominant construct of self in Morocco and Tunisia. Called the *Mudawwana* (Chafi 1996), the Moroccan code offers a construct of self as rooted in lineages. It sanctions the extended patrilineal kin group, which it identifies as the major locus of social solidarity. By the same token, it differentiates personal rights by gender and gives power over women to men as husbands and to men as kin. Presenting a different dominant construct, the Tunisian Code of Personal Status, called the *Majalla* (République Tunisienne 1997), underplays the ties within the extended patrilineal kinship network. It defines the individual as the focus of rights and obligations. The Tunisian Code of Personal Status offers a construct of self as having greater autonomy from kin-based formations and grants women more basic personal rights than does its Moroccan counterpart. The different constructs apply to both men and women. The contrast between Tunisian and Moroccan law is sharper for women than for men, however, because women face more restrictions as a result of the form of kin-based patriarchy that permeates the social organization of patrilineages.

Family law has gone through phases in Morocco and Tunisia since both countries achieved sovereignty from French colonial rule in 1956. The first and most important phase, which occurred shortly after the formation of the newly sovereign state, set the stage for all developments since. Morocco promulgated the *Mudawwana* in several installments in 1957-58, and Tunisia enacted the *Majalla* on 13 August 1956. The next most significant phase occurred in 1993 when both countries reformed their family law. The

1993 reforms respected the overall thrust of the law in existence in each country. In contrast to the actions of the 1950s, which occurred in the absence of feminist demands, the reforms of 1993 involved in both countries place pressures on the political system from women's associations and women's rights advocates who demanded greater rights in family law (Charrad 1997). The changes were substantial in Tunisia and satisfied in large part the concerns of women's rights advocates. In Morocco the changes came considerably short of what women's rights advocates wanted.

The first and major step of the 1950s started on divergent paths in Tunisia and Morocco. Tunisia made drastic legal reforms that had the consequence of changing the legal status of women in substantial ways and of expanding their individual rights with respect to family life and personal status. In contrast, Morocco preserved the *status quo* by reiterating the principles of the *shari'a* while presenting them in a more concise and formally organized code. In this process the basic personal rights of women were not recognized. Instead, the power of lineages and the privileges of men were preserved.

Following the *shari'a*, the Moroccan *Mudawwana* enacted in 1957-58 retained the role of the matrimonial guardian as the person representing the bride in the marriage contract. The matrimonial guardian, who had to be a man (usually the father or a surrogate chosen by relatives), was to express his consent to the marriage on behalf of the bride. In principle he had no legal right to force the woman into marriage. The law opened a loophole, however, in making the following exception: the power of the matrimonial guardian was restored if the woman had engaged in "bad conduct" with a man, in which case her matrimonial guardian could coerce her to marry. These provisions meant that a woman did not possess the individual right as a citizen to give her consent directly to her own marriage. She also lacked the right to marry a person not approved of by the guardian.

The *Mudawwana* also retained repudiation, or the husband's privilege to terminate the marriage at will without a court decision. The repudiation simply had to be recorded by two witnesses. Polygamy was maintained, and a man could thus have as many as four wives. By enacting the above provisions the newly sovereign state of Morocco in the 1950s gave men and women highly unequal citizenship rights with respect to both entering and terminating marriage.

The Moroccan reforms of 1993 made only minor changes. They brought a slight modification to polygamy and repudiation, both of which continued to be legal. With respect to polygamy, the reforms introduced the stipulation that the notaries in charge of writing the marriage contract should receive a written statement from a judge who would authorize a polyga-



mous marriage only after having considered fairness to all the women involved. The 1993 reforms maintained repudiation and thus the unilateral right of the husband to end the marriage at will. The revised law now required, however, that a man repudiate his wife in the presence of a judge and after arbitration.

Although marriage continued to require the presence of a matrimonial guardian, the Moroccan reforms of 1993 reduced his power a little. The matrimonial guardian (the father or a surrogate), in effect is the voice of the patrilineage and the symbol of its power over women. The 1993 reforms kept the provision according to which a woman could not enter into marriage without being represented by a matrimonial guardian who would consent to the marriage on her behalf. Article no. 12 as modified by the reforms of 1993 indicated, however, that the matrimonial guardian could agree to the marriage only with the woman's consent (Chafi 1996, 30). Expressing the view that the Moroccan reforms of 1993 did little to improve women's citizenship rights with respect to family and personal status, Najat Razi, the president of the Association Marocaine des Droits des Femmes (Moroccan Association of Women's Rights) declared that, "[d]iscrimination [was] maintained and the *Mudawwana* [was] still in part contrary to international conventions" (*Le Monde* 1993). Even after the reforms of 1993, Moroccan law continued to sanction the supremacy of the patrilineage. The codification of kin-based patriarchy remained and so did the limitations placed on women's basic personal rights.

By contrast to Moroccan law, the Tunisian *Majalla* of 1956 shifted to a considerable degree the construct of self from a member of a lineage to an autonomous individual with basic personal rights. In one of the most dramatic provisions in the Islamic Middle East, the *Majalla* of 1956 outlawed polygamy. This meant that men and women had equal citizenship rights to contract a marriage. The *Majalla* also abolished repudiation and matrimonial guardianship altogether. A divorce could now only occur in court, and the law allowed women to file for divorce on the same grounds as men. The Tunisian reform has increased women's ability to terminate marriages in practice (Charrad 1994; Chater 1992, 235).

By suppressing matrimonial guardianship, the *Majalla* redefined marriage and placed the woman in charge of her own marriage contract. The right to marry thus was shifted from the patrilineage to the individual as a basic personal right. The abolition of the matrimonial guardian's prerogative undermined the legal control that men used to have over their female relatives and defined compulsory marriages as illegal. In ending the unilateral privilege of the husband to terminate the marriage by repudiation, the *Majalla* offered women some protection from the whims of their husbands in regard

to the dissolution of marriage. Tunisia law thus reduced the power of men over women and increased women's citizenship rights with respect to entering and terminating marriage.

The amendments that appeared in Tunisia over the years after the critical step of 1956 modified particular points of the code and brought clarification. A significant amendment appeared in 1981 in regard to divorce and guardianship of children. It made it possible for a woman to receive lifelong alimony after divorce instead of the lump sum that was previously the rule. The law of 1981 made the mother automatically the guardian of a child in case of the father's death, something that had not been true earlier. Guardianship in this context is different from custody, which refers to day-to-day care. The former consists of legal responsibilities for the child, such as signing school papers or authorizing a passport. Before 1981, if the father died, the mother usually had custody but not guardianship. The law previously in effect required the judge to select a guardian among a wide range of relatives. Judges usually chose a male relative to serve as the child's guardian. The law of 1981 brought custody and guardianship together in case of the father's death and made the mother the recipient of both. It challenged the supremacy of the paternal line and, thus, of the patrilineage.

The next important phase in Tunisia, represented by the reforms of 1993, answered in part demands by women's associations and women's rights advocates. The amended Tunisian Code of Personal Status of 1993 dropped an earlier offensive clause according to which a wife had to obey her husband. The reforms of 1993 also increased a mother's chance to obtain guardianship once she had been granted custody after divorce. Previously, the father had guardianship (or legal power over the child) after divorce, even when the mother had custody (or day-to-day care). Now, a mother could obtain guardianship if she could show to a judge that the father did not respect the best interest of the child or that he misused his guardianship privileges. This gave a divorced mother a legal recourse in case of serious conflicts with her former husband, who no longer automatically obtained guardianship. The reform called into question the power of the patrilineage over children.

Some of the Tunisian reforms have in common that they lessen the power of men as members of patrilineages at the same time as they increase the rights of women as individuals. Beyond the specific provisions, and considered from a broader perspective, the two bodies of legislation offer very different constructs of self. Moroccan law locates the self essentially in the patrilineage, whereas Tunisian law gives greater space to individuals with their own rights and responsibilities. In accordance with these different constructs of self, the law continues to legitimate kin-based patriarchy and the



power of lineages in Morocco, whereas it challenges them in Tunisia. As a result, women have greater basic personal rights in Tunisia.

#### Rights in the Constitution: Voting and Public Office

I now turn to a third arena of citizenship represented by voting and eligibility to public office. In both countries the constitution adopts universalistic values in declaring equal rights before the law for all citizens including women. The respective constitutions of Morocco and Tunisia gave women the right to vote in 1959. The two countries were part of a general worldwide trend in which the discourse on universal rights increasingly included women as inclusive models of citizenship came to predominate. An earlier historical pattern that prevailed in Western Europe, the United States, and many countries in Asia and Latin America involved separate steps, with national independence occurring first, then male suffrage, then female suffrage.

In the mid-twentieth century, however, postcolonial nation-states tended to establish male and female suffrage at the same time. Ramirez, Soysal, and Shanahan (1997) suggest that these developments are attributable to world models, international standards, and transnational influences rather than to local or national forces. They write that "[t]he franchise has become institutionalized worldwide as a taken-for-granted feature of national citizenship and an integral component of nation-state identity" (Ramirez, Soysal, and Shanahan 1997, 735).

The Moroccan Constitution currently in effect, revised and approved by national referendum on 13 September 1996, gives equal rights to men and women with respect to the franchise. It also states the obligation for all Moroccans to defend the kingdom. The text reads as follows: "All Moroccans shall be equal before the law [art. no. 6]. . . . Men and women shall enjoy equal political rights. Any citizen of age enjoying his or her civil and political rights shall be eligible to vote [art. no. 8]. All citizens shall contribute to the defense of the Country" (Kingdom of Morocco 1996, art. no. 16, 6-9). Moroccan women also have the right of eligibility as article no. 13 indicates that "[o]pportunities for . . . public offices shall be uniformly open to all citizens."

In the same vein the Tunisian Constitution, amended on 12 July 1988, makes the following provision in article no. 20: "Every citizen who has had the Tunisian nationality for at least five years and who has attained twenty years of age has the right to vote" (République Tunisienne 1998b, 10-11). Tunisian women also are eligible for public office. Similar to the phrasing of

the Moroccan Constitution, the Tunisian Constitution (art. no. 6) states: "All citizens have the same rights and the same duties. They are equal before the law" (quoted in Chamari 1991, 114).

One indicator of the extent to which some of the citizenship rights abstractly granted in the Constitution are implemented in practice is women's access to public office. Such access reflects women's participation in decision-making positions within the state apparatus. The more women there are in public life and in government positions, the more there is a possibility for women's issues to receive attention in circles of power. The presence of women in parliament, in decision-making positions in government ministries, and in top-level managerial posts also helps forge an image of women as holding authority. It contributes to undermining prevailing notions of female identity as anchored only in family and kinship.

On this dimension, too, Tunisia does better than Morocco, and the difference is considerable. Data are available for both countries in 1994 (United Nations 1995, 172-73, 183-84). Women occupied 7 percent of parliamentary seats in Tunisia against 1 percent in Morocco. The difference between the two countries is even greater with respect to ministerial and subministerial level positions. The publication of the United Nations that I use as a source for this information defines ministerial level positions as ministers or equivalent and subministerial level positions as including deputy or assistant ministers, secretaries of state or permanent secretaries, deputies of state or directors of government. The same source indicates that women held 3.6 percent of twenty-eight ministerial posts in 1994 and 14 percent of thirty-six subministerial positions in Tunisia. By contrast, Morocco had no women in either a ministerial or subministerial post. Among high-level administrators and managers, a category that includes legislators, senior officials, and corporate managers, women represented 9 percent in Tunisia in 1992. No equivalent information is available for Morocco on this particular point in the United Nations source.

I compared Morocco and Tunisia in three major arenas of citizenship. In all three the evidence suggests that women have greater individual rights in Tunisia than in Morocco, even though differences between men and women persist in Tunisia. With respect to conditions for membership in the political community of the nation-state, patrilineality, or male descent, occupies a more prominent place in Morocco than in Tunisia where mothers can much more readily pass nationality to their children. Waves find themselves in a slightly better position to pass nationality to their foreign husbands in Tunisia than in Morocco. In the arena of basic personal rights as

defined in family and personal status law, the differences between the two countries are even more dramatic. In Morocco the law continues to sanction kin-based patriarchy in that it legitimates the power of lineages and curtails women's basic personal rights to marry, divorce, and have guardianship of children. Tunisian law, in contrast, challenges the power of lineages and establishes individual rights and obligations for all, including women, in several aspects of the law. In the third arena, voting and eligibility for public office, women in both countries have the same formally granted rights as declared in the Constitution. In actuality, however, women have greater access to public office in Tunisia than in Morocco.

The divergent forms taken by citizenship are the outcome of a different relationship between the state and political forces anchored in kin-based formations. The latter continue to occupy a significant place in Moroccan society and politics, whereas they lost ground in Tunisia during the period when the sovereign national state developed at the end of colonization. As the site where issues of citizenship are played out, the nation-state defines the forms taken by citizenship in each country.

Differences in forms of citizenship between Tunisia and Morocco emerged with key policy orientations implemented when each newly formed state equipped the country with a national body of legislation after the achievement of national sovereignty in the mid-1950s. Once the basic policies were in place, the die was cast for the following decades. In Tunisia, the newly formed sovereign state had an interest in transferring the allegiance of the population from particularistic loyalties to itself, and attempted to undermine traditional kin-based groups. In Morocco, the state maintained particularistic loyalties by placing them under a supra-authority (Charrad in press, 1996, 1990).

The society where lineages historically have played a greater political role and where patrilineality occupies a more prominent place in the law is the one where women have more limited citizenship rights. When the law codifies patrilineality and kin-based patriarchy, as most of it does in Morocco, women's citizenship rights are restricted. When the law challenges patrilineality and kin-based patriarchy, as most of it does in Tunisia, there is a greater chance for the enfranchisement of women as citizens in the nation-state. Becoming a citizen as understood in today's world involves the acquisition of individual rights. Patrilineality and kin-based patriarchy reinforce each other to prevent women from becoming full citizens and from gaining individual rights.

The cutting edge of debates on citizenship in different regions of the world reflects the key issues involved in the future of each region. Currently in the West, issues of equal rights and liberties for all are central to debates

that consider citizenship in relation to social class, ethnic diversity, welfare, multiculturalism, multilingualism, and immigration (Young 1989; Orloff 1993; Tilly 1996; Shafir 1998; Soysal 1994). These issues are at the heart of the character of Western societies in the future. In the Maghrib and most of the Middle East, some of the sharpest debates center on gender and the incorporation of women into the body politic. The future character of Middle Eastern societies and states in effect is being contested when women's full integration into the political community is debated. Issues of women's rights in that region unavoidably involve questions about the fundamental place of kinship ties in the social fabric and the role of kin-based social formations in politics. These issues call into question what has been at the very heart of social organization in the Maghrib and the Middle East.