

## HISTORICAL DETERMINISM AND WOMEN'S RIGHTS IN SHARIA LAW

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*Although women's rights in many countries reflect Sharia Law, the interpretation of Sharia Law is not uniform across these countries. As a result, not all countries that follow Sharia Law protect women's rights to the same degree. We can hypothesize that the interpretation of Sharia Law in various countries, and therefore the protection of women's rights, is determined by the historical forces that have shaped that country's cultural life. To test this hypothesis, this Note traces the history of three countries in order to explore what led each country to develop vastly different beliefs surrounding the rights of women under Sharia law. Although historical determinism is a tricky concept, I believe the evidence suggests that between the identity of the colonizer, who fills the power vacuum after the colonizer is forced to leave, and the country's desire to westernize have the greatest effects on the rights granted to women.*

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CONTENTS

I. INTRODUCTION .....	350
II. COMPARISON OF RIGHTS AND PUNISHMENTS.....	351
A. <i>RIGHTS IN DIVORCE</i> .....	352
i. <i>Saudi Arabia</i> .....	352
ii. <i>Libya</i> .....	353
iii. <i>Tunisia</i> .....	353
B. <i>RIGHTS IN INHERITANCE</i> .....	355
i. <i>Saudi Arabia</i> .....	355
ii. <i>Libya</i> .....	355
iii. <i>Tunisia</i> .....	356
C. <i>PUNISHMENT FOR ADULTERY</i> .....	356
i. <i>Saudi Arabia</i> .....	356
ii. <i>Libya</i> .....	357
iii. <i>Tunisia</i> .....	358
III. TRACING THE HISTORY .....	358
A. <i>SAUDI ARABIA</i> .....	359
i. <i>Historical Background</i> .....	359
ii. <i>Hypothesizing History's Effects on Today</i> .....	362
B. <i>LIBYA</i> .....	364
i. <i>Historical Background</i> .....	364
ii. <i>Hypothesizing History's Effects on Today</i> .....	369
C. <i>TUNISIA</i> .....	370
i. <i>Historical Background</i> .....	370
iii. <i>Hypothesizing History's Effects on Today</i> .....	375
IV. CONCLUSION .....	376

I. INTRODUCTION

Around the world women's rights seem to be improving, albeit at an uneven pace. As difficult as it is to understand the factors that determine the scope and pace of women's rights, such a determination is even more difficult when the subject is women's rights in Islamic countries. In those countries the role of women is governed in varying degrees by religious Sharia law. Yet even in Islamic countries and more specifically, within their interpretations of Sharia law, they differ in their treatment of women and the laws relating to their rights. These disparities are largely apparent and with enough information we ought to be able to create a hypothesis about what accounts for the differing treatments of women in different countries.

It is therefore worthwhile to consider what factors may account for different attitudes towards women, even in countries that at least nominally share a common culture and religion. This topic is complex because Sharia law has vastly different implementations and interpretations across the numerous Islamic countries. These

differences are visible through not only the distinct laws in place but also in the world human rights arena.

This Note reviews the historical, social, and religious history of three Islamic countries in order to develop workable hypotheses about the factors that influenced the development of women's rights. This paper examines the factors that determined the attitude towards Sharia law with respect to women's rights in three former members of the Ottoman Empire: Tunisia, Libya, and Saudi Arabia. Each of these countries represents a different approach to the role that Sharia law plays in the lives of women. In Section II I discuss deviations in Sharia law interpretation and examine what factors might have led to those differences, by first comparing and contrasting the right along three dimensions: divorce rights, property rights for inheritance, and punishment for adultery. Next, in Section III, I will explore the histories of these three countries in an attempt to trace factors that have played integral roles in each country's development and the rights of women today, while hypothesizing what caused each country to diverge from the others.

## II. COMPARISON OF RIGHTS AND PUNISHMENTS

There are three classifications used to distinguish amongst Islamic countries and the level of influence of Sharia law: Government Under God, Dual Legal System, and Completely Secular.<sup>1</sup> In Government Under God systems, Islam is the official religion and Sharia is the source of all law.<sup>2</sup> The majority of Islamic countries have a variation of a Dual Legal System in which the government remains secular but Muslims may choose to bring certain kinds of disputes to specific Sharia courts.<sup>3</sup> These courts generally have jurisdiction over cases involving marriages, divorces, and inheritances and are not mandatory but rather an option for Muslims within that country.<sup>4</sup> Finally, in a Completely Secular system, the government is considered to be secular in all aspects—Sharia law, however, may influence cultural and local customs.<sup>5</sup> I have identified three countries which represent each of the three classifications: Saudi Arabia (Government Under God), Libya (Dual Legal System), and Tunisia (Completely Secular).

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1. Tony Johnson & Mohammed Aly Sergie, *Islam: Governing Under Sharia*, COUNCIL ON FOREIGN RELATIONS (last updated July 25, 2014), <http://www.cfr.org/religion/islam-governing-under-sharia/p8034> (discussing Sharia's three general ways of being incorporated into political systems) [<https://perma.cc/Q5LX-A9AL>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

In this section, I will compare and contrast women's rights in divorce and inheritance proceedings, including the typical punishments for adultery in Tunisia, Libya, and Saudi Arabia. I have chosen these categories as they are often among the most visible and are among the most important rights in a woman's daily life.<sup>6</sup> Although their attitudes toward women's rights come from a common source and reflect common antecedents, each of the three countries have taken divergent paths.

#### A. RIGHTS IN DIVORCE

##### i. Saudi Arabia

Saudi Arabia has the most restrictive divorce laws amongst these three countries. According to the Prophet Muhammad, there is no worse fate than divorce.<sup>7</sup> Saudi men have unilateral decision making and can divorce a woman without consent from a judge or without legal grounds.<sup>8</sup> Conversely, a woman cannot obtain a divorce without both the consent of the husband and a court.<sup>9</sup> Additionally, the woman must surrender all assets and money given to her throughout their marriage to the man before it can be considered a legal divorce.<sup>10</sup> Even if a woman is able to achieve a divorce, there is still a strong negative social perception and religious stigma towards divorced women.<sup>11</sup> Once divorced, women, if they are fortunate enough to gain custody of their children, can only retain custody until the children reach the age of nine, in which case it reverts back to the husband.<sup>12</sup>

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6. *Women's Human Rights*, GLOBAL FUND FOR WOMEN, <https://www.globalfundforwomen.org/womens-human-rights/#.WsUV3tPwa3U> (discussing women's fundamental rights to include "right to live free from violence, slavery, and discrimination; to be educated; to own property...") [<https://perma.cc/P9SU-Z2JR>].
  7. See Katie Beiter, *Divorce Rates Skyrocket in Saudi Arabia*, THE MEDIA LINE (Sept. 28, 2016), <http://www.themedialine.org/women/divorce-rates-skyrocket-saudi-arabia/> (discussing the Islamic society's hatred of divorce) [<https://perma.cc/BQ48-FNEH>].
  8. See Caroline Mortimer, *Saudi Groom Divorces Bride Two Hours After Wedding for Posting Pictures on Snapchat*, INDEPENDENT (Oct. 26, 2016), <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-man-divorces-wife-snapchat-two-hours-after-wedding-womens-rights-a7379581.html> (discussing Saudi Arabia's divorce requirements for men and women)[<https://perma.cc/CUH8-HJM9>].
  9. *Id.*
  10. Beiter, *supra* note 7.
  11. *Id.*
  12. See *Boxed In: Women And Saudi Arabia's Male Guardianship System*, HUMAN RIGHTS WATCH (July 16, 2016 11:55 PM), <https://www.hrw.org/report/2016/07/16/boxed/women-and-saudi>

It should also be noted that throughout the duration of the divorce, the husband is considered the wife's legal guardian.<sup>13</sup>

ii. *Libya*

In contrast to Tunisia, Libya has a more restrictive divorce law. While men have the right to divorce a woman unilaterally, women lack that same right.<sup>14</sup> In order for a woman to divorce a man, certain conditions must be met.<sup>15</sup> These include, "if the husband is deemed unable to maintain his wife, is absent without justification, or is impotent."<sup>16</sup> Although the wife has the right to divorce the husband, if she "is deemed the cause of the divorce, then not only is she denied any outstanding mahar (dower payment), but in addition, the custody of her children is given to the husband. In some cases, she is also ordered to pay compensation."<sup>17</sup> Even after getting divorced, the woman faces a tremendous amount of social stigma and is often shunned from the community.<sup>18</sup> While the husband is technically required to pay the wife in the case that she receives custody of the children, in reality, the husband can choose not to pay without fear of ramification.<sup>19</sup>

iii. *Tunisia*

Finally, in Tunisia, the Personal Status Code has established distinct rights for women surrounding marriage.<sup>20</sup> Under the Code,

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arabias-male-guardianship-system (discussing divorced Saudi Arabian women's child custody rights) [<https://perma.cc/K5LV-NLXQ>].

13. *Id.*

14. *See Spring Forward for Women Programme: Libya*, UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, <http://spring-forward.unwomen.org/en/countries/libya> (discussing divorce rights in Saudi Arabia) [<https://perma.cc/BN2N-YNSM>].

15. *Id.*

16. *See* Alison Pargeter, *Women's Rights in the Middle East and North Africa - Libya*, FREEDOM HOUSE (Oct. 14, 2005), <http://www.refworld.org/docid/47387b6dc.html> (discussing the circumstances that allow judicial divorce for Libyan women) [<https://perma.cc/FP9X-2ZBS>].

17. *Id.*

18. *Id.*

19. *See Family Laws In Gadhafi's Libya*, ISLAMOPEDIA ONLINE, <http://www.islamopediaonline.org/country-profile/libya/islam-and-legal-system/family-laws-gadhafi%E2%80%99s-libya> [hereinafter *Family Laws in Gadhafi's Libya*] (discussing child custody rights regarding divorce) [<https://perma.cc/KRP7-65YP>].

20. *See* George N. Sfeir, *The Tunisian Code of Personal Status (Majallat Al-Ahw Al Al-Shakhsiy Ah)*, 11 MIDDLE EAST JOURNAL 309, 309 (1957), available at [www.jstor.org/stable/4322925](http://www.jstor.org/stable/4322925) (discussing family laws that

polygamy was made illegal, women were given the right to consent to their marriage, and a wife's duty to obey her husband was abolished.<sup>21</sup> Women now tend to play important roles along with their husbands in their family life.<sup>22</sup> Tunisia recognizes equality for men and women in terms of divorce.<sup>23</sup> Prior to the Personal Status Code, women rarely succeeded in divorcing their husbands due to the extreme laws, conditions, and high standards of evidence required by Islamic law.<sup>24</sup> Men could easily rescind a marriage contract by simply declaring the divorce in front of two notaries.<sup>25</sup> The Personal Status Code leveled the playing field by making divorce more difficult for both men and women in order to promote family stability.<sup>26</sup> There are three kinds of divorce recognized by the Personal Status Code: divorce by mutual consent of both spouses, a request by one of the spouses, and a divorce for prejudice.<sup>27</sup> A judge may choose to grant custody of the children to either parent by determining the interests of the child.<sup>28</sup> Women with custody of the children may receive alimony and child support.<sup>29</sup>

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reduced gender inequality between women and men in Tunisia) [<https://perma.cc/EQ89-7JUT>].

21. See Massan d'Almeida, *Marriage and Divorce in Tunisia: Women's Rights*, ASSOCIATION FOR WOMEN IN DEVELOPMENT (Sept. 10, 2010), <https://www.awid.org/news-and-analysis/marriage-and-divorce-tunisia-womens-rights> (discussing the safeguards in legislation in terms of women's rights and interest within marriage and divorce) [<https://perma.cc/JE2Y-TWHP>].
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. See *Tunisia: A Step Forward for Women's Rights: Free to Travel with Their Children*, HUMAN RIGHTS WATCH (Nov. 12, 2015, 11:55 PM), <https://www.hrw.org/news/2015/11/12/tunisia-step-forward-womens-rights> (recognizing that women are equal to their male counterparts in making decisions about their children) [<https://perma.cc/K7Z3-KWFF>].
29. See *Tunisia: MENA Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, UNICEF, (Oct. 2011) <https://www.unicef.org/gender/files/Tunisia-Gender-Eqaulity-Profile-2011.pdf> [hereinafter *Gender Equality Profile*] (discussing divorce rights in Tunisia) [<https://perma.cc/R337-B7DM>].

B. RIGHTS IN INHERITANCE

i. *Saudi Arabia*

Saudi Arabia has the most restrictive inheritance laws in comparison to Tunisia and Libya. Although the original Islamic laws state that women are entitled to at least a portion of the inheritance,

[m]isinterpretations of . . . laws are preventing Saudi women from benefiting from their legal inheritance. Many women today are robbed of their endowment rights because of cultural norms and tribal customs that go against the teachings of the Holy Qur'an. Sadly, there are many cases today of women living in poverty after their fathers die because only the men in the family enjoy inheritance and endowment rights.<sup>30</sup>

When a husband dies, the wife can only receive up to 50% (if she has children) and only 25% of the total inheritance. If the husband has a descendant, she only receives 12.5%.<sup>31</sup>

ii. *Libya*

When it comes to land rights and inheritance in Libya, the law is written more equally for men and women.<sup>32</sup> Although this is the case and, " . . . civil law mandates equal rights in inheritance, women often received less due to interpretations of Sharia that favor males."<sup>33</sup> As is the case in most other Islamic countries, like Tunisia and Saudi Arabia, women receive roughly half of the inheritance as their brothers.<sup>34</sup> Although there is a law that was written to prevent this and enforce a penalty against those that withhold inheritance from women, it is rarely legally enforced.<sup>35</sup>

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30. Samar Fatany Alarabiya, *Saudi Arabia: An Inheritance of Injustice for Women*, THE MUSLIM TIMES, (Jun. 17, 2013) <https://themuslimtimes.info/2013/06/17/saudi-arabia-an-inheritance-of-injustice-for-women/> [<https://perma.cc/XJ6B-UDCU>].

31. See *The Rules of Succession and the Related Rules of International Private Law in the Kingdom of Saudi Arabia*, MEYER-REUMANN & PARTNERS, <http://lexarabiae.meyer-reumann.com/issues/2012-2/vol-xvi-issue-3-jul-2012-articles/the-rules-of-succession-and-the-related-rules-of-international-private-law-in-the-kingdom-of-saudi-arabia/> (discussing the rules of succession in Saudi Arabia regarding marriage) [<https://perma.cc/WWR3-YWK2>].

32. *Libya*, USAID, <https://www.land-links.org/country-profile/libya/> (last updated June 2013) [<https://perma.cc/69VX-P5ZB>].

33. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Libya 2015 Human Rights Report 25-26* (2015), available at <https://www.state.gov/documents/organization/253149.pdf> [<https://perma.cc/XH4E-NQXV>].

34. Family Laws in Gadhafi's Libya, *supra* note 19.

35. *Id.*

iii. *Tunisia*

The current inheritance law in Tunisia, under the Personal Status Code, remains discriminatory against women.<sup>36</sup> Tunisian inheritance laws are still largely based in Sharia law. A woman's share of an inheritance is generally smaller than that of her male counterparts, women are entitled to only half of what their male relative inherits.<sup>37</sup> However, in the absence of a male heir, a woman may receive the full inheritance.<sup>38</sup> A female Tunisian lawmaker stated that the 2014 revision of the Constitution did not make an effort to equalize inheritance laws, as there is a passage in the Quran which distinctly provides for inheritances.<sup>39</sup>

C. PUNISHMENT FOR ADULTERY

i. *Saudi Arabia*

Women in Saudi Arabia face a much stricter set of laws facing the charge of adultery than women in Tunisia and Libya. Adultery is punished severely both socially and legally. Traditionally, the punishment for adultery is death by stoning.<sup>40</sup> It is still practiced today, and Saudi Arabian judges are free to interpret the Sharia as they wish. Some of the punishments or a prosecution include: fines, arbitrary detention, imprisonment, flogging and in extreme cases, the death penalty.<sup>41</sup> In December of 2015, a newspaper reported on,

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36. Gender Equality Profile, *supra* note 29.

37. *Id.*

38. *Id.*

39. See Asma Ghribi, *Will Tunisian Women Finally Inherit What They Deserve?*, TRANSITIONS (Feb. 14, 2014, 10:25 PM), <http://foreignpolicy.com/2014/02/07/will-tunisian-women-finally-inherit-what-they-deserve/> (Fattoum Lassoued, a member of the Ennahdha Party, stated changes in Tunisian law will not include the inheritance issue) [<https://perma.cc/GQ2S-LFEV>].

40. See *Death Penalty Database*, CORNELL LAW SCHOOL CENTER ON THE DEATH PENALTY WORLDWIDE, (last updated Apr. 4, 2011), <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=saudi+arabia> (providing that stoning is a method of execution for individuals convicted of adultery) [<https://perma.cc/8V6A-FZ2C>].

41. See Wang Zhao, *Adultery Laws: Where is Cheating Still Legal?* THE WEEK (Feb. 27, 2015), <http://www.theweek.co.uk/62723/adultery-laws-where-is-cheating-still-illegal> (discussing the various punishments for adultery in Islamic countries, including Saudi Arabia, Pakistan, and Somalia) [<https://perma.cc/W5ZY-RK3U>].



[a] married woman . . . sentenced to death by stoning in Saudi Arabia after admitting to adultery . . . while the man she had sex with has escaped with a punishment of 100 lashes.<sup>42</sup>

Similar to Libya, rape victims are often accused and charged with adultery, as the Islamic law favors men in nearly every social and legal setting.

ii. *Libya*

In regards to adultery in Libya, as opposed to Tunisia and Saudi Arabia, not only do social constraints and norms favor men, so does the law.<sup>43</sup> If a woman is suspected of adultery, not only can she be criminally charged, but she can also be sent to a social rehabilitation facility.<sup>44</sup> Unfortunately, adultery is often intertwined with rape and sexual assault.<sup>45</sup> If woman who is a victim of rape chooses to pursue charges, she is often accused of adultery or fornication.<sup>46</sup> Additionally, the level of evidence necessary for a rape conviction is so high that women are socially and legally encouraged to choose not to charge their offender.<sup>47</sup> In some cases, Libyan judges may suggest that a rape victim and her offender marry as a “social remedy”.<sup>48</sup>

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42. See Sophie Jane Evans, *Saudi Arabia Sentences Maid to Death by Stoning for Adultery-But the Man She Slept With Will Escape With 100 Lashes*, DAILY MAIL (Last Updated Nov. 28, 2015), <http://www.dailymail.co.uk/news/article-3337297/Saudi-Arabia-sentences-married-maid-death-stoning-adultery-man-slept-escape-100-lashes.html> (discussing how women who commit adultery are more likely than comparable males to receive a harsher sentencing) [<https://perma.cc/9AWG-78LL>].

43. See *Libya: A Threat to Society?: The Arbitrary Detention of Women and Girls for “Social Rehabilitation”*, HUMAN RIGHTS WATCH (Feb. 27 2006), available at [https://books.google.com/books?id=c7DTB733dxEC&pg=PA2&lpg=PA2&dq=libya+social+adultery+norms&source=bl&ots=BgYz36Bxor&sig=Ti95b6Bnm81fnPDLmhFqQrCXTb0&hl=en&sa=X&sqi=2&ved=0ahUKEwj\\_wNyOq83RAhWD6SYKHV5YAHEQ6AEIITAB#v=onepage&q=libya%20social%20adultery%20norms&f=false](https://books.google.com/books?id=c7DTB733dxEC&pg=PA2&lpg=PA2&dq=libya+social+adultery+norms&source=bl&ots=BgYz36Bxor&sig=Ti95b6Bnm81fnPDLmhFqQrCXTb0&hl=en&sa=X&sqi=2&ved=0ahUKEwj_wNyOq83RAhWD6SYKHV5YAHEQ6AEIITAB#v=onepage&q=libya%20social%20adultery%20norms&f=false) (discussing the social and legal stigma a woman faces regarding adultery) [<https://perma.cc/EU8M-SVAH>].

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

iii. *Tunisia*

Prior to 1968, women could be punished for adultery in Tunisia while their male counterparts could escape unscathed.<sup>49</sup> Tunisia assuaged this inequality by criminalizing adultery for both men and women, however, it is rarely enforced.<sup>50</sup> While the fact that adultery remains a crime in Tunisia can be off-putting to some, male adultery as a crime is a rarity amongst Islamic countries and should be considered a step forward in gender equality for women in Tunisia.

Examining the laws and cultures that surround these three areas helps to show the different variations in understanding of Sharia law across numerous Muslim countries. Tunisia tends to have the most western approach to women's rights while Saudi Arabia is the strictest concerning what women are and are not allowed to do.<sup>51</sup> After analyzing the visible effects of the different ways the countries handle these aspects of a woman's life, I will explore the history of each of the three countries to attempt to hypothesize what differences and similarities in their development led to the current situation for women's rights.

### III. TRACING THE HISTORY

In this section, I trace the historical development of the social culture in each of the three countries I am studying in order to identify the likely determinants of the divergent approach to the rights of women. As we will see, I identify three possible determinants: the identity of the colonizer, who fills the power vacuum after the colonizer is forced to leave, and the country's desire (or lack thereof) to westernize.

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49. ENCYCLOPEDIA OF WOMEN AND ISLAMIC CULTURES: FAMILY, LAW AND POLITICS (Suad Joseph & Afsana Nagmabadi, eds., 2003) available at <https://books.google.com/books?id=4Uyypm6T7ZsC&pg=PA403&lpg=PA403&dq=tunisia+adultery+law&source=bl&ots=2N5h1vVWmM&sig=ZV600qJBjxMweWiLRkwpujGzzAM&hl=en&sa=X&ved=0ahUKEwj5oqRvsjRAhXI5oMKHUy0Ak0Q6AEIKTAC#v=onepage&q=tunisia%20adultery%20law&f=false>
50. *See Tunisia: Rapist Given A Way Out While Their Victims Are Blamed and Punished*, AMNESTY INTERNATIONAL, (Nov. 25, 2015), <https://www.amnesty.org/en/press-releases/2015/11/tunisia-rapists-given-a-way-out-while-their-victims-are-blamed-and-punished/> (noting the disparate impact Tunisia's adultery law has on women and its incentive for them to keep silent on reporting adultery) [<http://perma.cc/CN2K-JQAK>].
51. Zvi Bar'el, *Tunisia Leads Again: This Time, in Womens Rights*, HAARETZ (Aug. 24, 2017 1:20 P.M.), <https://www.haaretz.com/middle-east-news/tunisia-leads-again-this-time-in-womens-rights-1.5443900> [<http://perma.cc/N3ZS-P89W>].

A. SAUDI ARABIA

i. *Historical Background*

According to the Encyclopaedia Britannica, Islam first appears in the 6<sup>th</sup> century C.E. with the birth of Muhammad in Mecca.<sup>52</sup> At the time, Mecca was controlled by the Quraysh. The Quraysh had previously negotiated a series of agreements amongst tribes to the north and south to open the transportation routes for commerce.<sup>53</sup> This agreement established the Quraysh as a significant power on the Arabian Peninsula.<sup>54</sup> From Mecca, Quraysh oversaw numerous other tribes and formed a sort of loose rule over much of the region.<sup>55</sup> Muhammad and his teachings were initially rejected by the Quraysh rulers so he began traveling in an attempt to another tribe with which he could affiliate himself.<sup>56</sup> He was unsuccessful until he created a pact with the Medina tribal chiefs, which positioned him as the head of their tribal confederation.<sup>57</sup> There Muhammad had support to move against the Quraysh, in the process removing three Jewish tribes from the region.<sup>58</sup> Eventually, Muhammad was able to win the allegiance of the Quraysh after a battle over Mecca.<sup>59</sup> Following his success, tribes across the peninsula came to Muhammad to enter into varying degrees of agreements for protection in return for their acceptance of Islam.<sup>60</sup> The uptick in the power of the tribes that accepted Islam happened to occur as the Byzantine and Persian empires were weakening.<sup>61</sup> This resulted in the expansion of the Islamic tribes across the peninsula.<sup>62</sup>

Following the death of Muhammad, his successor was Abu Bakr.<sup>63</sup> Under his rule, the Islamic state would quell an Arab rebellion and

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52. *History of Saudi Arabia*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Saudi-Arabia/Daily-life-and-social-customs#toc214601> (last visited Feb. 19, 2017) [<http://perma.cc/JM72-7DDJ>].

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

attack the Byzantine empire.<sup>64</sup> Under Bakr and the three rulers that followed, the Muslim controlled territory expanded greatly, controlled by Mecca.<sup>65</sup> In only decades, the Muslim troops had defeated and taken over both the Byzantine and Persian empires.<sup>66</sup> However, this unity was not to last, after much of the conquests in present day Saudi Arabia, the traditional tribes returned to power.<sup>67</sup>

Beginning in 1517, the Ottoman Empire would come to power in Arabia after defeating Egypt and proclaiming Mecca and its surrounding area as part of the Ottoman domain.<sup>68</sup> The Ottoman's allowed the ruler's of Mecca internal autonomy, subject to rule by the Ottoman Sultan.<sup>69</sup> For the next few centuries the autonomous rulers would share power with the Ottoman governors, while Mecca remained important throughout the Muslim world.<sup>70</sup> However, disputes arose in the 17<sup>th</sup> and 18<sup>th</sup> centuries among the tribal leaders and the Ottoman governors as to the meaning of their autonomies.<sup>71</sup> It is also during this time that the first Saudi state was established, controlling much of present day Saudi Arabia.<sup>72</sup> Muhammad ibn Saud, the first of the Saudi dynasty and a tribal ruler, joined with a religious leader Muhammad ibn Ahd-al-Wahhab, who founded the Wahhabi movement.<sup>73</sup> This union would slowly conquer parts of central and eastern Arabia under the Wahhabi rule.<sup>74</sup> Realizing this growing threat, the Ottoman sultan sent an army to reconquer the areas the Wahhabi's had won.<sup>75</sup> The Wahhabi movement was essentially quelled as most local leaders were executed and the Saud family was sent to Egypt.<sup>76</sup>

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64. *Abu Bakr*, ENCYLOPAEDIA BRITANNICA, <https://www.britannica.com/biography/Abu-Bakr> [<https://perma.cc/S6NT-6ABV>] (last visited Feb. 19, 2017).

65. *History of Saudi Arabia*, *supra* note 52.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *The Wahhabi Movement*, ENCYLOPAEDIA BRITANNICA <https://www.britannica.com/place/Saudi-Arabia/The-Wahhabi-movement> [<https://perma.cc/MDT2-7K77>] (last visited Feb. 19, 2017).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

The Saud family however, managed to restore the dynasty in 1824, when a descendent, named Turki, succeeded in capturing the town of Riyadh.<sup>77</sup> Turki was able to maintain Riyadh as the capital of the Saudi state by maintaining close ties with the Ottoman governor, accepting Ottoman sovereignty.<sup>78</sup> Again, the Saud dynasty was to be short lived as they fought for control of the interior of the peninsula against the Rashidis.<sup>79</sup> In 1891, the Saud family was defeated and exiled to Kuwait.<sup>80</sup>

In 1902, returning from exile, the leader of the Saudi's returned to Riyadh and seized power from the Rashidi's.<sup>81</sup> He then struggled to reclaim the vast empire that had once been under their control in the 18<sup>th</sup> century.<sup>82</sup> He faced numerous obstacles including the remaining Rashidi's and the Ottomans, before finally winning control over central Arabia in 1921.<sup>83</sup> The Saud dynasty began to move across Arabia annexing all of northern Arabia, before turning his eye to Mecca and its surrounding areas which were under the control of king.<sup>84</sup> Hostilities between the leaders of Iraq, Transjordan, Mecca, and other territories caused Britain (watching out for its own interests) to call them to a conference in Kuwait in 1923.<sup>85</sup> This conference resulted in a compete disagreement and, in 1924, the Saudis attacked Mecca and other surrounding kingdoms, conquering them, 1927 and consolidating them under the Saudi King by 1927.<sup>86</sup>

The King would reintroduce the conservative Wahhabi culture as the new social order in a united Kingdom of Saudi Arabia in 1932.<sup>87</sup> The king established himself as the supreme authority with his son as heir.<sup>88</sup> The kingdom of Saudi Arabia was acknowledged by the

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77. *Id.*

78. *Id.*

79. *Death of Faysal*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Saudi-Arabia/Death-of-Faysa> [<https://perma.cc/WQ87-9CBH>] (last visited Feb. 19, 2017).

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *The Kingdom of Saudi Arabia*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Saudi-Arabia/The-Kingdom-of-Saudi-Arabia> [<https://perma.cc/6GUH-J785>] (last visited Feb. 19, 2017).

international community as in independent state in 1932.<sup>89</sup> As in Libya, Saudi Arabia's fortunes would be greatly changed by the discovery of oil in 1939.<sup>90</sup> The sudden influx of wealth allowed cultural life to expand, but it also created a large migration of outsiders to the country.<sup>91</sup> After the king died, his two sons took over the throne, Saud and Faysal. Saud would represent a return to classical Wahhabi and Faysal supported modernization.<sup>92</sup> There would be a constant dispute between the two brothers before Faysal was proclaimed king in 1964.<sup>93</sup> Faysal had not only developed the ministries of government but also established Saudi Arabia's first efficiently working bureaucracy. In 1975, King Faysal was assassinated and his brother Prince Khalid took over.<sup>94</sup> King Khalid instituted rapid economic and social development completely transforming the infrastructure and educational system. His death in 1982, led to Prince Fahd taking control and maintaining the prior King's trajectory of changes and advancement.<sup>95</sup> However, following the Persian Gulf War, Saudi Arabia experienced mass changes. Citizens of Saudi Arabia broke into separate factions: Islamist, liberal, and modernist.<sup>96</sup> As the Islamist opposition grew, more terror attacks and acts of violence began to spread along with the movement away from westernization and the decadence that had been a part of Saudi Arabia's evolution.<sup>97</sup> The royal family responded to the increased attacks by enforcing a stricter observance of Islam and returning to more traditional cultural norms that is still in place today.<sup>98</sup>

ii. Hypothesizing History's Effects on Today

The first factor I will consider as an explanation for Saudi Arabia's vastly different view on women's rights is its location. Known as the cradle of Islam, Saudi Arabia was not colonized by

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89. *Id.*

90. *See id.* (referring to new wealth from increased production of oil).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *The Persian Gulf War and its Aftermath*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Saudi-Arabia/The-Persian-Gulf-War-and-its-aftermath> [<https://perma.cc/NSV2-GJAT>] (last visited Feb. 19, 2017).

97. *See id.* (explaining the terrorist attacks occurring in Saudi Arabia).

98. *See id.* (explaining Saudi Arabia's move away from pro-western policies).

Muslims as were Tunisia and Libya.<sup>99</sup> Given that it was the birthplace of Islam, Islam was deeply ingrained in the Saudi Culture at a much earlier stage and at a much deeper level.<sup>100</sup> Therefore, Saudi Arabia's interpretation of Sharia law might be characterized as the "purest" interpretation in line with the teachings of the early prophets of Islam.

Another factor worth considering is the lack of Western colonization in Saudi Arabia, which is clearly visible in Tunisia and Libya. While there were power struggles, it was mainly contained within the Arab culture and religion of Islam.<sup>101</sup> The interactions with the rest of the world did not have the depth of comingling that led to different results for Tunisia and Libya.<sup>102</sup> These are not the mass cultural inculcations by invaders that are present in the history of Northern Africa.<sup>103</sup> The absence of Western influence that brought with it a different view of the rights of women and the role that they should have in every day life, seems to have had the desired effect in Tunisia and Libya that is not present in Saudi Arabia.

Finally, I hypothesize that Saudi Arabia's independence from the international community, due to its domestic oil wealth, has limited the need to introduce reforms in the realm of human rights that other countries, such as Tunisia, are forced to implement in order to benefit from economic and trade relations with the West. In the case of

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99. See Lisa Reynolds Wolfe, *History of Colonization in the Middle East and North Africa (Mena): Precursor to Cold War Conflict*, COLD WAR STUDIES (Jan. 11, 2013), <https://coldwarstudies.com/2013/01/11/history-of-colonization-in-the-middle-east-and-north-africa-mena-precursor-to-cold-war-conflict/> [<https://perma.cc/WP2V-ZZZN>] (explaining Saudi Arabia's establishment as a British colony).
100. *Religion*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Saudi-Arabia/Religion> [<https://perma.cc/ZV26-A3ZQ>] (last visited Feb. 8, 2018).
101. See NAILAH AYUB ET AL., *TRANSCULTURAL MARKETING FOR INCREMENTAL AND RADICAL INNOVATION* 297 (2014) (recognizing Saudi Arabia's resistance to westernization).
102. See *Libya*, AFRICA.COM, <https://www.africa.com/countries/libya/afripedia/> [<https://perma.cc/FWZ2-SFQ9>] (last visited Feb. 7, 2018) (describing Libya's Italian colonization); see Ray Moseley, *Ousted President Leaves Tunisia With Legacy Of Westernization*, CHICAGO TRIBUNE (Nov. 11, 1987), [http://articles.chicagotribune.com/1987-11-11/news/8703240890\\_1\\_habib-bourguiba-islamic-tendency-movement-tunisia](http://articles.chicagotribune.com/1987-11-11/news/8703240890_1_habib-bourguiba-islamic-tendency-movement-tunisia) [<https://perma.cc/BD3A-6GUR>] (describing Tunisia as a country that modeled itself on the West).
103. See *European Expansion Since 1763*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/colonialism/European-expansion-since-1763> [<https://perma.cc/7Q75-ST6H>] (last visited Feb. 7, 2018) (describing the European invasions throughout North Africa).

Saudi Arabia, however, there is no need to chase these relations as the Western economies are heavily reliant on Saudi oil productions.

B. LIBYA

i. *Historical Background*

Because Tunisia and Libya are neighbors, their early histories are largely the same. Both are characterized by early colonization by the Phoenicians, and later—the Greeks and Romans.<sup>104</sup>

At the beginning of the 7<sup>th</sup> century, Libya was invaded by Arab horsemen with little to no resistance.<sup>105</sup> By 663 C.E., the Arabian army had definitively conquered the remainder of Libya against the Berber resistance.<sup>106</sup> The introduction of Arab rule was not greatly challenged. The rural communities appreciated the stability that the Arab caliphs brought to the region along with restoring the former prosperity that the people had not experienced since the Romans.<sup>107</sup> Many Berbers accepted Islam as their religion. Throughout the next nine centuries, Libya thrived under numerous Islamic dynasties.<sup>108</sup> Trade flourished as goods from southern Africa were brought to the coasts and sent to Italy and beyond.<sup>109</sup> The Hafsids previously mentioned in Tunisia, would gain control over Libya as well and encountered similar struggles to those they faced in Tunisia like power struggles between Spain and the Ottoman Empire.<sup>110</sup> The Ottoman Empire would take control of Libya in 1551.<sup>111</sup>

As in Tunisia, there were distinct Ottoman rulers put in place by the Ottoman Empire.<sup>112</sup> These rulers, known as pashas, controlled a group of military commanders who eventually would gain power until the pasha was a leader in name only.<sup>113</sup> Mutinies and military coups would become a frequent occurrence over the next one hundred years along with a rapid introduction of outside cultures into Libya.<sup>114</sup> The

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104. Tim Lambert, *A Short History of Libya*, <http://www.localhistories.org/libya.html> [<https://perma.cc/EJC3-ELGJ>] (last visited Feb. 19, 2017).

105. *Libya*, *supra* note 102.

106. *Id.*

107. *Id.*

108. *See Libya*, *supra* note 102 (describing the prosperity of Libya because of the slave and gold trade with European cities).

109. *Id.*

110. *Id.*

111. Lisa Anderson, *Nineteenth-Century Reform in Ottoman Libya*, 16 INT'L J. OF MIDDLE EAST STUDIES 325, 327 (1984).

112. *Libya*, *supra* note 102.

113. *Id.*

114. *Id.*



period of coups concluded in 1711 when a Turkish officer named Ahmed Qaramanli murdered the pasha of Tripolitania and seized the throne.<sup>115</sup> Qaramanli agreed to pay a tribute to the Ottoman Empire and in return Libya would behave as an independent kingdom.<sup>116</sup> His descendants remained on the throne until 1835.<sup>117</sup>

The 19<sup>th</sup> century also brought outside war to Libya, in the First and Second Barbary wars between the United States and Tripolitania.<sup>118</sup> The next few decades while, attempting to revitalize the economy, Yusuf Qaramanli would borrow money from many different European countries.<sup>119</sup> However, the years of poor management could not be so easily reversed.<sup>120</sup> In 1830, the French sent troops to Libya to collect debts and two years later England did the same.<sup>121</sup> In 1832, Yusuf Qaramanli's heirs could not agree who would succeed to the throne and Libya was thrown into a civil war with Britain and France supporting opposing sides.<sup>122</sup> In 1834, the Ottoman Empire sent an emissary to Libya to assess the crumbling province.<sup>123</sup> The Ottoman's "decided that only their direct action would prevent the province from falling to a foreign power."<sup>124</sup> In 1835, the Ottoman troops entered Libya, ending the civil war and instituting the troop's commander as the governor.<sup>125</sup> This time the Ottoman Empire would remain in control for the next seventy-six years, until the European Scramble for Africa began.<sup>126</sup>

The Ottoman's would assume control of a greatly divided people, not only spatially across the country, but culturally and ethnically as well.<sup>127</sup> Nomadic tribes, cities, and villages were spread across the country, but as Ottoman control continued, those tribes would be driven to other parts of Africa.<sup>128</sup> The Ottoman rulers also faced great

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115. *Id.*

116. *Id.*

117. Anderson, *supra* note 111.

118. *Libya*, *supra* note 102.

119. Anderson, *supra* note 111, at 326.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 327.

125. *Id.*

126. *Id.*

127. *Id.* (explaining the widespread nature of the people of the Ottoman Empire).

128. *Id.* at 328.

opposition from the Libyan people, and had to quash numerous rebellions throughout their rule with the help of the British.<sup>129</sup> Ottoman rule was characterized by an urbanization and the introduction of a new administrative system, which the Ottoman's hoped would be able to withstand European expansion.<sup>130</sup> By the 1880's the Ottoman's had largely returned balance to Libya, with the new administration focusing on trade and education.<sup>131</sup> However, European expansion was a constant threat and with the French occupation of neighboring Tunisia, Italy began to show interest in occupying Libya.<sup>132</sup> Over the next decade, the Ottoman's in Libya would seek support against Italy from Britain, France, and the sultan in Turkey, however, it was to no avail.<sup>133</sup> In 1911, Italy would invade Libya brutally.<sup>134</sup>

Italy would reign over a country that had a great lack of development compared to its neighbors. "With one short length of railroad in Benghazi and no paved roads outside the cities, the material development of the province was indeed no comparable to that of Tunisia, for example, after thirty years of French rule."<sup>135</sup> Although the Ottoman's had attempted to introduce widespread change, other than the capital city, a European visitor to Libya in 1907, noted that Libya was "the most primitive and most backward North African country."<sup>136</sup>

Italy faced great resistance and had trouble in attempting to subdue the population. Throughout World War I, there were rebellions and uprisings against the Italian occupation.<sup>137</sup> Following the War, Italy entered negotiations with nationalist forces only for the talks to crumble and, with the arrival of a strong fascist governor in 1922, colonization would begin in earnest throughout the entirety of the country.<sup>138</sup>

Through the 1920's and 30's, the Italians would attempt to develop much of Libya—building towns, roads and attempting to introduce Italian culture by settling over 150,000 Italians across the

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129. *Id.* at 328-29.

130. *Id.* at 329.

131. *Id.* at 335.

132. *Id.* at 337.

133. *Id.* at 337.

134. Lambert, *supra* note 104.

135. Anderson, *supra* note 111, at 344.

136. *Id.*

137. *Libya*, ENCYLOPAEDIA BRITANNICA, <https://perma.cc/FT72-PBJW> (last visited Mar. 24, 2018) [hereinafter *Libya - Britannica*].

138. *Id.*

country.<sup>139</sup> Between the World Wars, the resistance was led Sīdī Muḥammad Idrīs al-Mahdī al-Sanūsī, (later King Idris I).<sup>140</sup> The Italian response would result in the death of nearly 50,000 Bedouin people.<sup>141</sup> During World War II, Libya was under the control of Britain and France; under the 1947 peace treaty, Italy finally relinquished any claim to Libya.<sup>142</sup>

In November of 1949, the United Nations voted to establish Libya as an independent kingdom.<sup>143</sup> Idris was chosen by a national assembly as the first king of Libya, in 1950.<sup>144</sup> King Idris had pro-British leanings and for the first eight years of his reign, the Libyan government had a pro-western position throughout their international dealings.<sup>145</sup> However, with the discovery of oil in 1959, and the removal of the dependency on international aid, Libya now was in a much different position internationally.<sup>146</sup>

In 1969, a group of military officers led by Muammar al-Qaddafi, staged a coup and overthrew King Idris.<sup>147</sup> The regime disagreed with the King's failure to condemn Israel's actions against the Palestinians in 1967.<sup>148</sup> The regime had strong ties to the Pan-Arab movement, and upon gaining power cut all ties with Britain and the United States, which the monarchy had formed.<sup>149</sup> Qaddafi was a strong supporter of not only Arab unity but also the Palestinian cause, even going so far as to support it and other guerilla and rebel organizations across Africa and the Middle East.<sup>150</sup> The political moves greatly alienated the West and even a few Arab states. After a hostility with

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139. *Id.*

140. *Id.*

141. See Alexis Kunsak, *Journalist who the Libyans still refer to as King Knud, 70 years after his death*, CPH POST ONLINE, (June 5th, 2016 7:00 pm), <https://perma.cc/5QGP-DXUA>, ("Another estimate by the Italian historian Emilio Gentile sets the number of victims [of the Italian war of subjugation against Libya] at about 50,000.").

142. *Libya Profile-Timeline*, BBC WORLD NEWS, <http://www.bbc.com/news/world-africa-13755445> (24 January 2018) [<https://perma.cc/MB4D-7TRN>] [hereinafter *Libya-Profile*]; *The United Nations and Libya*, <http://countrystudies.us/libya/26.htm>, (last visited Mar. 24, 2018) [<https://perma.cc/58HL-DFBJ>].

143. *Libya-Britannica*, *supra* note 137.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Libya-Profile*, *supra* note 142.

148. *Libya-Britannica*, *supra* note 137.

149. *Id.*

150. *Id.*

Egypt and Libya expelled all Egyptians from the country, Libya had few relations with other Arab countries remaining.<sup>151</sup>

Throughout the 1970's and 80's Qaddafi would introduce political changes attempting to expand Libya's role in the international arena, however, with the drop of oil prices that role began to falter.<sup>152</sup> Opposition movements took the opportunity to attack Qaddafi and his supporters, but they were quickly struck down, arrested, and executed. Libya's relations with the United States would fester and in 1986, the United States bombed the cities of Tripoli and Benghazi.<sup>153</sup> Until the mid-1990's, Libya would have near constant skirmishes with France, the United States, and other African countries.<sup>154</sup> In 1992, the UN and the United States introduced economic sanctions against Libya, intending to punish Libya for being involved in the destruction of a civilian plane.<sup>155</sup> Libya would later turn over the alleged perpetrators in an attempt to improve its relations with the international community. In 2003, the sanctions were lifted.<sup>156</sup> In 2006, the United States also removed most of its sanctions.<sup>157</sup> In the following years, one of Qaddafi's sons would become the face of reform and lead Libya to changing its domestic and foreign policy in an attempt to bring in Western business and draw tourists to the country.<sup>158</sup>

This was short-lived due to the 2011 revolt.<sup>159</sup> The government's use of force against anti-government protesters garnered much attention from the international community.<sup>160</sup> Qaddafi's continued support of the use of force on the rebellion led to pressure for Qaddafi to step down.<sup>161</sup> In February of 2011, the UN, the United States, the European Union, along with numerous other countries all imposed sanctions against the Qaddafi regime.<sup>162</sup> The conflict between the rebellion and Qaddafi's forces would continue to draw in international

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151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Libya-Profile*, *supra* note 142.

156. *Libya-Britannica*, *supra* note 137; *Libya-Profile*, *supra* note 142.

157. *Id.*

158. *Libya-Britannica*, *supra* note 137.

159. *Libya-Britannica*, *supra* note 137; *Libya-Profile*, *supra* note 142.

160. *Libya-Britannica*, *supra* note 137.

161. *Id.*

162. *Id.*

interference to enforce the sanctions and UN decisions.<sup>163</sup> The International Criminal Court announced it was opening an investigation into war crimes committed by Qaddafi and his son, intensifying the pressure for Qaddafi to step down. Qaddafi went into hiding and was later captured and killed on October 20, 2011 by rebels.<sup>164</sup>

The rebellion assumed power and struggled to assert its authority. In 2012 an election was held, to vote on who would fill the 200 seats of a new General National Congress.<sup>165</sup> A secular party led by Mahmoud Jibril won the majority of the seats. However, the unrest that had plagued Libya for decades would not be assuaged while rebellions, kidnappings, air-strikes, and terrorist attacks still plague the country.<sup>166</sup> 2014 saw the rise of an anti-Islamic movement that attempted and failed to seize the parliament building.<sup>167</sup> A new national assembly was elected that year, with the majority comprised of liberal and secular candidates.<sup>168</sup> However, the anti-Islamic movement begin to seriously clash with Islamists and the Second Civil War began in 2014 and continues to this day.<sup>169</sup>

ii. *Hypothesizing History's Effects on Today*

Using the first factor that I hypothesized with Saudi Arabia, the long period of colonization having an effect on women's freedoms, I believe that it did play a role in allowing women more freedom. However, as neighbors, it is worth noting that both Tunisia and Libya underwent centuries of Islamic control yet, in terms of women's rights, Libya's right are far less progressive than that of Tunisia, which leads into the second factor I proposed: Who takes power after colonization?

A major difference between Libya and Tunisia regarding the second factor, is who regained power following decolonization. First and foremost, a secular prime minister took over in Tunisia whereas Libya became a kingdom under an Islamic king and later under a strong, Pan-Arab leader.<sup>170</sup> This difference alone could have drastically

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163. *Id.*

164. *Libya-Britannica*, *supra* note 137; *Libya-Profile*, *supra* note 142.

165. *Libya-Britannica*, *supra* note 137.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Compare Libya - Britannica*, *supra* note 137 (King Idris I becomes sovereign king of Libya in 1950 to Qaddafi regime) *with Tunisia - The Protectorate (1881-1956)*, *ENCYCLOPAEDIA BRITANNICA*, <https://www.britannica.com/place/tunisia/the-protectorate-1881-1956>,

changed the role of women within society in later years. For instance, Libya's King originally attempted to revolutionize and westernize as Tunisia had done but the discovery of oil and then the military coup by a Pan-Arab leader completely set Libya and Tunisia on different paths. In comparison with Bourguiba, Qaddafi was militantly strong about the need to unify all Arabs and did not value the Western influence in the way that Bourguiba encouraged it. The lack of integration of Western culture would have precluded any attempt to equalize women's rights. It is arguable that during Libya's period of reconstruction strong opposition to Western political influence in the Arab world in combination with the discovery of major oil fields, lack of modernization, and strict adherence to Sharia law are some of the main reasons Libyan women experience different rights than their Tunisian counterparts.

Another factor to consider that is not present in Tunisia, is the great periods of unrest that Libya has been privy to. Libya has endured numerous domestic uprising, which culminated into civil wars fueled by detrimental Western intervention, all of which are just not present to that extent in Tunisia.<sup>171</sup> In sum, political instability and the general absence of the rule of law in Libya have created an environment that is simply not conducive to developing basic constitutional reforms let alone the advancement of women's rights.

### C. TUNISIA

#### i. *Historical Background*

In 647 C.E. the first Islamic conquerors would take control of the region now known as Tunisia.<sup>172</sup> These Islamic conquerors would unify Northern Africa while simultaneously converting en masse the population to Islam. By 1230 C.E. the Hafsids had established a separate Tunisian dynasty declaring their independence from the Arab Empire.<sup>173</sup> The Muslim Hafsids would rule over the Tunisian Empire for three centuries, growing commerce with Christian Europe and becoming increasingly involved between the growing power

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(last visited Mar. 24, 2018) [<https://perma.cc/65AM-X7VQ>] (After decolonization in 1956, Tunisia gains a prime minister and a republic is declared) [hereinafter *Tunisia-Protectorate*].

171. *Compare Libya - Britannica*, *supra* note 137 (describing constant unrest and violent regime changes in Libya since independence) with *Tunisia-Protectorate*, *supra* note 170 (Moved to reformed quickly after independence, while regime changes came from political process).

172. *The History of Tunisia*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Tunisia/History>, (last visited Mar. 24, 2018) [<https://perma.cc/TZW4-7SVE>] [hereinafter *History of Tunisia*].

173. *Id.*

struggles of Europe and the Ottoman Empire. In 1534 C.E. the Ottomans would conquer Tunis for the first time, only for the Hafsid ruler to be restored to his throne by the Holy Roman Emperor a year later.<sup>174</sup> The Ottomans would regain and lose control two more times before permanently gaining control of the region in 1574 C.E.<sup>175</sup>

Under the Ottomans', Tunisia would see an influx of Turkish culture and a struggle between the Arabic culture of the past centuries and the introduction of Turkish would begin.<sup>176</sup> In 1705, the Husaynid Beys came into power under Husayn ibn Ali.<sup>177</sup> This dynasty would rule over Tunisia until 1881 when France established Tunisia as a colony.<sup>178</sup> However, under French control, the Husaynid's retained a largely ceremonial role as rulers of Tunisia until the formation of the republic in 1957.<sup>179</sup>

In 1881 France invaded Tunisia under the pretext of protecting their nearby colony Algeria.<sup>180</sup> France forced the Bey to hand over control of Tunisia making it a French protectorate.<sup>181</sup> France would then slowly assume control of all Tunisian government, making progressive changes to their judicial, financial, and administrative systems.<sup>182</sup> France encouraged French settlers to move to Tunisia growing the French population to 144,000 by 1945.<sup>183</sup> France established a judicial system for these Europeans while leaving in place the Sharia courts for the legal problems of the Tunisians.<sup>184</sup> The Tunisian government structure was preserved and the Tunisian people continued to be subjects of the bey. France helped to stabilize Tunisia's finances and established modern communications.<sup>185</sup> A group of French- educated Tunisians began to push for more modernizing

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174. *Id.*

175. Tim Lambert, *A Short History of Tunisia*, A WORLD HIST. ENCYCLOPEDIA, <http://www.localhistories.org/tunisia.html> (last updated 2017) [perma.cc/T4W4-6QRP] [hereinafter Lambert-Tunisia].

176. *History of Tunisia*, *supra* note 172.

177. Lambert-Tunisia, *supra* note 175.

178. *Id.*

179. *Tunisia-Protectorate*, *supra* note 170.

180. *History of Tunisia*, *supra* note 172.

181. Lambert-Tunisia, *supra* note 175.

182. *Tunisia-Protectorate*, *supra* note 170; *History of Tunisia*, *supra* note 172.

183. *Tunisia*, NEW WORLD ENCYCLOPEDIA, <http://www.newworldencyclopedia.org/entry/Tunisia> (last updated Feb. 10, 2015) [perma.cc/TH7T-4QCL] [hereinafter Tunisia-New World].

184. *Id.*

185. *Tunisia-Protectorate*, *supra* note 170.

reforms by 1890, based on a European model and asking for a greater participation by Tunisians in their own government.<sup>186</sup> This movement however, was greatly repressed by the French during World War I.<sup>187</sup>

After World War I, Tunisia saw an emergence of these nationalist leanings, including the Destour Party, which presented the bey and the French government with a demand for a Constitutional form of government that would grant Tunisians the same rights as Europeans.<sup>188</sup> The leader of this group was immediately arrested. Two years after, the bey requested that the Constitutional reforms the group had suggested be adopted or else he would abdicate.<sup>189</sup> France stormed the bey's palace with troops and the bey withdrew his request.<sup>190</sup> The nationalist movement would be weakened for several years until the Neo-Destour Party emerged, established and led by Habib Bourguiba in 1934.<sup>191</sup> This party would gain power and influence across the country until it was later banned and dissolved by the French authorities in 1938.<sup>192</sup> As World War II began in 1939, many of the leaders of Neo-Destour were deported to France but released by the Nazis to the fascist government in Rome in 1942.<sup>193</sup> Here, Bourguiba refused to cooperate and in 1943, the leaders were allowed to return to Tunisia, where the bey formed a ministry of Neo-Destour sympathizers.<sup>194</sup>

Following World War II, the French regained control of Tunisia, effectively removing the bey and attempting to imprison Bourguiba who escaped by fleeing to Egypt in 1945.<sup>195</sup> However, as more eastern-Arab states including neighboring Libya were emancipated, France agreed to make concessions to the Tunisian people.<sup>196</sup> In 1951, France allowed Bourguiba to return to Tunisia and a government with nationalist sympathies to take office.<sup>197</sup> However, when this government attempted to implement a Tunisian parliament, France

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186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*



exiled Bourguiba and put the Tunisian government officials under arrest.<sup>198</sup> This resulted in the emergence of nationalist guerillas and acts of terrorism. In 1954, the French premier decided to grant complete autonomy to Tunisia subject to a negotiated agreement.<sup>199</sup> Bourguiba returned to Tunisia to supervise the negotiations without participating. In 1955, with a signed agreement, a mainly Neo-Destour ministry was formed, though it raced strict restrictions in foreign policy, education, defense, and finance.<sup>200</sup> In 1956, France granted Tunisia full independence and Bourguiba was chosen as prime minister.<sup>201</sup> In 1957 the rule of beys were abolished, Tunisia was established as a republic with Bourguiba as president.<sup>202</sup>

Under Bourguiba, Tunisia quickly instituted multiple reforms in the areas of education, women's rights, and the legal system. In 1957 the Tunisian Code of Personal Status came into effect.<sup>203</sup> The Code was meant to apply to Muslim Tunisians only and aimed at equalizing the rights of men and women.<sup>204</sup> The Code required consent from both spouses to validate the marriage and minimum ages for marriage, the first laws of their kind amongst the Muslim world.<sup>205</sup>

In 1975, Bourguiba was named as the president for life.<sup>206</sup> However, the aging Bourguiba began to develop more autocratic tendencies, fueling grievances amongst many Tunisians.<sup>207</sup> In 1987 while Islamist support grew amongst widespread unrest, Bourguiba was removed from office as he was deemed mentally unfit to rule.<sup>208</sup> Bourguiba's successor was General Zine-al-Abidine Ben Ali, who had been appointed prime minister a month earlier.<sup>209</sup> Ben Ali desired to move Tunisia towards democracy and political liberalization by legalizing numerous political parties. In the 1989 election, amid charges of election fraud, Ben Ali won an overwhelming mandate to remain in power.<sup>210</sup> At the same time, Ben Ali's goals were

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198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. Sfeir, *supra* note 20, at 309.

204. *Id.*

205. *Id.*

206. *Tunisia-Protectorate*, *supra* note 170.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

subsequently transmuted as his regime became increasingly more authoritarian over the next few decades.<sup>211</sup> After years of rigged elections, in 2005, Tunisia took a promised step towards political liberalization when they instituted a bicameral legislature.<sup>212</sup> Nevertheless, political unrest continued to fester throughout Tunisia with, on one side, Islamist supporters unhappy with the secular nature of Tunisia and on the other, regular Tunisians unhappy with government corruption.<sup>213</sup>

In 2011, Ben Ali was forced out of power following a national uprising referred to as the Jasmine Revolution.<sup>214</sup> Over the next eight months, numerous men would step into the role of President before Beji Caid Sebti, Bourguiba's former foreign minister, came to power.<sup>215</sup> In the fall of 2011, Tunisians voted for members of the Assembly of the Representatives of the People, Tunisia's legislative branch of government and the moderate Islamist Nahdah Party came away the victor with 40% of the vote and 90 seats.<sup>216</sup> Where Ben Ali's regime had greatly repressed any form of Islamic activity, the tension between secularization and religious groups now greatly expanded into Tunisian life.<sup>217</sup> The new government moved forward with a new Constitution, but faced pressure from numerous Islamic groups to expand the role of Sharia law in the new constitution.<sup>218</sup> Despite this mounting pressure from Islamists, secular groups have recently regained control over many aspects of the government and Tunisia remains largely secularized.<sup>219</sup> As of January 27, 2014, Tunisia has proven their commitment to increasing women's rights by adopting a new Constitution which has included strong protections for women's rights.<sup>220</sup> Article 46 of the Constitution directly addresses women's rights, providing,

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211. *Id.*

212. *Id.*

213. *Id.*

214. *Tunisia - The Jasmine Revolution*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Tunisia/The-Jasmine-Revolution>, (last visited Mar. 25, 2018) [<https://perma.cc/7CZW-PKL3>].

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Tunisia: Landmark Action on Women's Rights*, HUMAN RIGHTS WATCH, <https://www.hrw.org/news/2014/04/30/tunisia-landmark-action-womens-rights> (last visited Mar. 28, 2018)

[t]he state commits to protect women's accrued rights and work to strengthen and develop those rights. The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains. The state works to attain parity between women and men in elected Assemblies. The state shall take all necessary measures in order to eradicate violence against women.<sup>221</sup>

According to Human Rights Watch, the new Constitution makes "Tunisia one of the few countries in the Middle East and North Africa region with a constitutional obligation to work toward gender parity in elected assemblies."<sup>222</sup>

iii. *Hypothesizing History's Effects on Today*

Now understanding Tunisia's long history and the comparatively progressive rights enjoyed by Tunisian women today, I will analyze the factors I believe explain Tunisia's role as most liberal of all Islamic-based countries, especially in terms of women's rights. Considering that Tunisia has experienced centuries of colonization by a multitude of different colonizers, it can be postulated that this extensive period of colonialism resulted in Tunisia's dramatic departure from traditional Islamic views of women's roles. In light of this, it therefore follows that a colonizer's own opinion regarding women's rights exerts a significant degree of influence on the colonized country's opinion towards women. In the case of Tunisia, France, being its most recent colonizer, sought to equalize women's right upon their invasion of Tunisia.<sup>223</sup> In turn, the judicial steps that France took to guarantee gender equality served as a catalyst to ensuring the rights that women in Tunisia have today.

Another factor to consider is post-colonialism leadership. Luckily for women in Tunisia, Bourguiba was the best possible post-colonial leader in that he built on French colonial-era initiatives on women's rights by instituting numerous acts that helped to equalize women's role in Tunisian society.<sup>224</sup> While Bourguiba's motives were not always clear, his actions in the foreign arena demonstrated that he believed

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[<https://perma.cc/8DW3-4W83>] [hereinafter *Landmark Action on Women's Rights*].

221. *Tunisia's Constitution of 2014*, available at [https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf](https://www.constituteproject.org/constitution/Tunisia_2014.pdf) [<https://perma.cc/LG6S-6UWL>]

222. *Landmark Action on Women's Rights*, *supra* note 221.

223. *The Radical Transition*, WOMEN OF TUNISIA <https://womenoftunisia.weebly.com/the-radical-transition.html> (last visited Mar. 18, 2018) [<https://perma.cc/EG4C-9CDD>].

224. *Id.*

that Tunisia needed to maintain a close relationship with the West in order to safeguard his rule. This desire for political stability could have greatly influenced Bourguiba's comparatively progressive stance on human rights, especially those regarding women as they are often the most apparent.

The final factor to consider is Tunisia's economic interests in expanding women's rights. I hypothesize that the leaders of Tunisia, following the period of decolonization, understood that maintaining strong trade ties with the West would be better served by continuing the cultural traditions left behind by France. Tunisia's trading partners, especially those in the West, would be more likely to invest and trade with a culture that stood for equality amongst all of its citizens rather than be associated with a regime known for pervasive human rights abuses. In this aspect, Tunisia was not wrong—it continues to maintain strong trade ties across the globe.

#### IV. CONCLUSION

Legal and social cultures evolve in response to many influences, but I have identified three influences that seem to provide the best explanation of the historical linkages between Sharia Law and the women's rights in the three countries I have studied: the identity of the colonizer, post-colonialism leadership, and the country's desire to westernize. Tunisia, Libya, and Saudi Arabia all have vastly different interpretations of women right's under Sharia law. Admittedly, we cannot discount the possibility of other factors at play, such as population demographics, independent economic wealth, and sectarian cleavages. However, using the three factors that I have identified, it should be possible to hypothesize how other Islamic countries developed into the countries they are today by tracing the history of their development. If they encountered centuries of European colonialism and a desire to maintain close trade ties with the West, they are more likely to have more liberal laws guaranteeing women's rights. However, independently wealthy countries without a colonial history are more likely to retain a more traditional, conservative view of women's rights. Finally, it is also important to consider the effect that political leadership can have on a country. A secular modernizer and a religious traditionalist will disagree greatly on a number of things and as a result, the country that they lead will be pulled in opposite directions. It is for the next leader to decide whether they want to follow in their predecessor's footsteps or blaze their own path but for women around the world, a new leader brings new hope for a chance at equality that a new perspective can bring.

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