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Lawyers mobilizing in the Tunisian uprising: A matter of “generations”?  
 Éric Gobe

On January 14, 2011, the day President Ben Ali fled from Tunisia, images of young Tunisian lawyers protesting in their black robes in front of the Ministry of the Interior were broadcast around the world on television and on the web. These images made people think these young lawyers had played a fundamental role in the protest movements that led to the fall of the authoritarian regime which had ruled the country since Independence. Although one should avoid establishing a causal link, the fact is that during the popular uprising many lawyers came out of courthouses to join the protests against the Ben Ali regime. The “profession” had already shown a higher ability to resist and protest against the strongman than other social groups. For a while after the “despot” fled, lawyers appeared to be the professional group that would be able to symbolically and materially profit from the transition phase. However, they lost their “revolutionary euphoria” after the election of the National Constituent Assembly (NCA) on October 23, 2011. This brief summary of the visible role of Tunisian lawyers during the 2011 revolutionary events leads one to question the possible generational,<sup>1</sup> social and political logic that underlies the collective efforts by a professional group that contested Ben Ali’s authoritarian regime and contributed to its fall.

The research we present here, however, is not the result of an analysis in generational terms. It flows from research work that was carried out mainly between 2006 and 2011 on collective efforts by lawyers from the beginnings of the profession in Tunisia to the overthrow of the Ben Ali regime. Without going into the details of the approach developed by us, the goal of our socio-historical investigation is to propose a critical reading of the exclusive approach assumed by the current research on the sociology of collective action by lawyers. We link it to a neo-Weberian approach within which the issues of professional market control and obtaining a higher social status is at the core of understanding political action by the legal profession in Tunisia.

The main stream of research on “political lawyering” highlights the legal profession’s underlying “liberal” biases, starting in the 18<sup>th</sup> Century. Represented mainly by Terence Halliday and Lucien Karpik (1997), research work within this approach posits that starting in the 18<sup>th</sup> Century, lawyers as “collective actors”<sup>2</sup> got involved in one way or another in defence of fundamental freedoms, the assertion of an “independent civil society” and a “moderate state.” As adherents to a “narrow political liberalism,”<sup>3</sup> lawyers seem to have put in place, unwillingly or willingly, a dual mobilization strategy: within the courthouses, where the legal space can become a political arena during a trial or while on strike; and without, by becoming public spokespersons due to their professional ethos and the autonomy enjoyed by their representative bodies.

The central hypothesis of Lucien Karpik and Terence C. Halliday is that there is an elective affinity between the legal profession and liberalism. This seems to overly “substantialize” the legal profession by seeing it as a homogeneous whole and by focusing on

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<sup>1</sup> Here, I position myself within a perspective that considers generations in terms of belonging to a cohort and its position in the life cycle.

<sup>2</sup> Lucien Karpik means by this concept “any entity that has the means to establish contact among its members and to design and implement outside common action. Specifically, we posit that the collective actor exists around arrangement, it establishes regulations and intervenes by specific actions.” [Our translation] Karpik (1995, 22-23).

<sup>3</sup> Lucien Karpik and Terence Halliday consider that lawyers defend a particular form of political liberalism that is limited to “civil and political individual rights,” promoting also “fundamental freedoms” protecting citizens from arbitrary measures by the State, such as freedom of conscience, freedom of speech, freedom of movement, due process of law, etc.

professional organizations' actions. Without denying the existence of a liberal ethos in the profession, we have tried to show that there are no contradictions between its "civic professionalism,"<sup>4</sup> formalized by American sociologist Terence C. Halliday (1987), and lawyers' promotion of their economic interests, aimed at increasing their professional autonomy thereby legitimizing and imposing a monopoly on a large part of the legal services market. To develop our discussion of the ability of Tunisian lawyers to establish themselves as collective actors, we have also analyzed social segmentations and hierarchies established within the profession, as well as their efforts to define the issues at the core of the profession and the manner in which some members of the legal profession came to rethink their professional activity in terms of political objectives.

To be able to find answers to our questions, we undertook two types of field work between 2005 and 2010, a quantitative and a qualitative survey. The first study surveyed a sample of 626 lawyers (about 10% of the legal profession in 2008, trainees included), representative of large cities in Tunisia where more than 90% of the country's lawyers are concentrated.

The second study, carried out between 2005 and 2009, was a qualitative survey of 85 lawyers in which we asked these members of the legal profession to talk about their family, their training, their professional practice, their perceptions of the profession's situation, and their view on how the justice system worked in Tunisia. The qualitative survey sample included lawyers from different age brackets, various political affiliations, and diverse socio-economic status.

Our analysis regarding the 2010-2011 protest movements, and related to post-Ben Ali Tunisia is based on ongoing research.<sup>5</sup> The interviews carried out so far have been with lawyers in Tunis, including some who were in contact with colleagues in the cities where the uprising against the Ben Ali regime started.

Although we have not used in our research a generational approach, we have been drawn to analyze to what extent age is an explanatory variable for lawyers' attitudes and representations. From this point of view, our approach is similar to that taken by Karen Foster (2013), who used in her work the concept of generation based on its use in the actual discourse by the actors themselves. In other words, according to the Canadian sociologist the important thing is not to ponder beforehand what a generation is or what the characteristics of such and such generation are, but rather to start from what those responding say regarding the concept and how to can we construct a generational identity from their answers.

However, from the qualitative interviews that we did with "young lawyers" there emerged a "generational conscience,"<sup>6</sup> at least in the collective discourse of the legal profession, undergirded by a devalued image of lawyers being harassed by an authoritarian regime accused of wanting to starve (*tajwi'*) the legal profession. If these lawyers did not explicitly use in their interviews the term "generations," they saw themselves under Ben Ali as young lawyers having in common a much lower status than their socio-professional expectations. We postulate here that this representation, together with other variables,

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<sup>4</sup> Lawyers are thus the defenders, "beyond obtaining a market monopoly" (hence the book title) of a "collective interest in building an efficient legal system, institutionalizing legitimate interests, and promoting the intrinsic merits of procedural justice" [Our translation] (Halliday 1987, 369).

<sup>5</sup> The results presented here are thus partial and further investigation will be carried out specifically in the regions where the protest movement started.

<sup>6</sup> This notion refers originally "to the hypothesis of a collective mentality shaped by a founding event" [Our translation] (Tournier 2002, 230). If it is not possible here to mention a "founding event," the interference by the Ben Ali regime in matters of the legal profession, combined with the effects of the large increase in the number of legal professionals, contributed to shaping a common devalued image of the profession among young lawyers.

constituted the strong seed for the “lower-level legal profession” (*bas barreau*)<sup>7</sup> mobilizing during the people’s uprising in December 2010/January 2011 (1<sup>st</sup> part). The collective action by these “lower-level” lawyers was encouraged and supported mainly by politically active opposition lawyers—those most oppositional having been politically socialized as far-left under Bourguiba. Most of the political action took place outside of, even against, professional organizations whose leading instances (Bar Association’s President and Governing Council) took a hesitating, wait-and-see approach during most of the uprising (2<sup>nd</sup> part).

#### Social structures and age in the legal profession under Ben Ali

The key phenomenon that marked the legal profession over the last 20 years was its large increase. From 1991 to 2011, the number of lawyers in Tunisia grew to almost six times its previous size, going from 1,400 members to 7,759 (ONAT 2011), whereas during the same period the total active population grew only 1.6 times. This growth accelerated in the late 2000s, leading to unprecedented rejuvenation of the profession. Thus, between June 2008 and June 2011, 1,500 new lawyers became bar members, such that in 2010 almost 75% of lawyers were younger than 40. Trainees were in 2011 almost 40% of the legal profession and 95% of them were younger than 30 (Gobe 2013a). These young lawyers, trainees or registered with the Court of Appeal, comprised 80% of what I have called the Tunisian “lower-level legal profession.”<sup>8</sup> This large increase in numbers in the legal profession was favoured by the regime, as it masked some of the joblessness among recent graduates.<sup>9</sup>

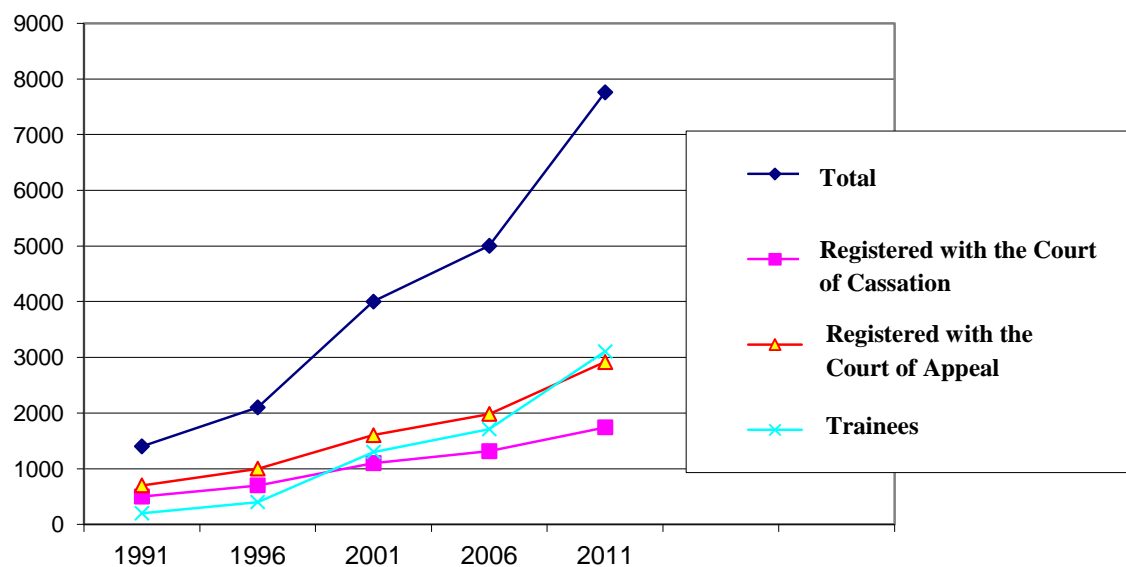
Graph: Number of lawyers registered in Tunisia from 1991 by professional status

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<sup>7</sup> Meaning the majority of the profession and its youngest group (born in the 1980s) dominated both economically and politically. See below.

<sup>8</sup> Generally, the 2000s were a decade during which graduate unemployment grew, as did the difficulties in entering the job market. See the last report by the World Bank on the issue of youth employment in Tunisia. It shows that unemployment affects increasingly more university graduates (Their number has almost doubled in 10 years, as unemployed university graduate numbers rose to 336,000 in 2006-2007 from 121,800 in 1996-1997). Furthermore, it is in the tertiary sector (management, finances, law) that the rate of unemployment is the highest, reaching 68% for Master of Law graduates, 18 months after graduation (République Tunisienne, 2008).

<sup>9</sup> Statistically, someone who is registered with the Bar Association is no longer unemployed, even if he/she is not working.



Source: Reports and tables from the Tunisian National Bar Association.

The large increase in the number of lawyers also contributed to amplify, throughout the 2000s, the classic refrain of the profession's overcrowding and the pressure that young lawyers were putting on the legal services market. The recruitment "democratization" in the legal profession, or at least its large increase in number, is accompanied by a relative reduction of lawyers having inherited wealth, and thus reduced the ability of young lawyers to make a living from their legal fees. If this "career congestion" is in large part a "social fantasy" commonplace in the profession's history across many countries, the fact remains that this "impression of oversupply" in the profession (*image du trop-plein*) as noted by historian Christophe Charles (1994, 22) "extrapolates uncontested morphological and social changes in the legal profession." In fact, Table 1 denotes a cross-generational increase in the number of lawyers whose father belongs to low- and middle-salary strata.

Table 1. Father's profession by lawyer's bar admission date (n=610)

|   | 1945-1979 | 1980-1989 | 1990-1999 | 2000-2009 | Total |
|---|-----------|-----------|-----------|-----------|-------|
| Small farm operator, hired farm worker, employee and labourer | 8         | 20        | 18        | <b>25</b> | 19    |
| Middle and large farm operator                                | <b>16</b> | 12        | 4         | 3         | 6     |
| Skilled tradesman, small business owner, business manager     | 20        | 20        | 18        | 15        | 17    |
| Professional, senior executive                                | <b>31</b> | 23        | 26        | 25        | 27    |
| Middle manager, senior technician, elementary school teacher  | 25        | 25        | 34        | <b>32</b> | 30    |
| Total   | 100       | 100       | 100       | 100       | 100   |

Source: Éric Gobe study 2008-2009 in Gobe (2013a).

Table 2 shows professional differences between fathers of lawyers registered at the Court of Cassation, those registered with the Court of Appeal and unpaid trainees<sup>10</sup>—which mirror a distinction between those longest in the profession and new entrants—but it also brings out the social disparities between different age brackets of lawyers.

<sup>10</sup>Almost 85% of the total number of articling lawyers. Source: Éric Gobe study, 2008-2009.

Table 2. Father's profession by lawyer's professional status (n = 610)

|   | Lawyer at the Court of Cassation (>45 years) | Lawyer at the Court of Appeal (31 to 45 years) | Unpaid Trainees Lawyer (25 to 30 years) | Paid Trainees Lawyer (25 to 30 years) | Total |
|---|--|--|---|---------------------------------------|-------|
| Small farm operator, hired farm worker, employee and labourer | 15   | 16   | <b>30</b>                               | 8                                     | 19    |
| Middle and large farm operator                                | 13   | 4  | 3                                       | 4                                     | 6     |
| Skilled tradesman, small business owner, business manager     | 22   | 20   | 13                                      | 14                                    | 17    |
| Professional, senior executive                                | 26   | 28   | 25                                      | <b>55</b>                             | 27    |
| Middle manager, senior technician, elementary school teacher  | 24   | 32   | <b>29</b>                               | 19                                    | 30    |
| Total   | 100  | 100  | 100                                     | 100                                   | 100   |

Source: Éric Gobe's study 2008-2009, in Gobe (2013a).

The clients of the “lower-level legal profession” were almost exclusively drawn from the working class, often from the same neighbourhoods in which the lawyers themselves grew up in. These legal professionals intervened in the areas of family law (divorces, alimony), real estate law (writing of sales agreement with small amounts involved), petty crimes (mainly misdemeanors) and neighbourhood disputes. Within the profession, they collected the lowest legal fees from a clientele of modest means (Gobe 2013a, 236-241).

Directly confronted with competition from adjoining professions, such as paralegals, in matters in which being a member of the bar is not a requirement,<sup>11</sup> these lawyers often experienced financial difficulties, especially in the first ten years of their professional practice.

In the late 1990s, talk started among lawyers as to the legal profession being a safe haven for the unemployed looking for a job. This phenomenon was particularly difficult for young lawyers, who saw it as something that devalued the legal profession and felt as if there

<sup>11</sup>In matters where the persons in proceedings are not obliged to use the services of a barrister.

was a social downgrading of their professional practice. The overcrowding in the legal profession exacerbated competition and led to illegal practices, such as widespread soliciting of clients.

During the 2000s, in professional organization elections, these lawyers voted in large numbers for Bar Association leaders close to the opposition, such as Béchir Essid, an Arab nationalist who had been imprisoned under Ben Ali, Abdessatar Ben Moussa (a left-winger, close to the Ettajdid movement, a party in the legal political scene under Ben Ali and a successor to the Tunisian Communist Party) or still Abderrazak Kilani, an Arab nationalist close to political Islam (Gobe 2010).

Their main work-related demand (take new professional areas from competing professions<sup>12</sup>) became in fact the leitmotif of speeches by the Bar Association's President and Governing Council. Faced with an influx of newcomers, leaders in the Tunisian National Bar Association led a two-pronged policy. On the one hand, they tried to stop some categories of law graduates from becoming bar members, while on the other hand they demanded the Ministry of Justice implement a reform giving them the means to monitor and force standards onto new entrants in the profession. On both counts, the Bar Association saw its wishes quashed by the Ben Ali regime, which blocked their actions (Gobe 2013a, 258-264).

The professional difficulties experienced by the lower-level legal profession created strong resentment among these lawyers, as legal professionals who were active members of the party in power (RCD—*Rassemblement constitutionnel démocratique*, the Democratic Constitutional Rally) benefited from many privileges. Given patronage by the Ben Ali regime, these politically connected lawyers (around 500, about 7% of the profession) benefited from a virtual monopoly in terms of litigation work from public administration and state-owned companies. In exchange for these financial advantages, the governing elites expected them to watch and counter the collective action by their colleagues (Gobe 2013b, 49-53).

Even so, belonging to the RCD did not necessarily mean one had public institutions as clients, as more than 40% of lawyers who were members of the ruling party had only private individuals and companies in their client portfolio.<sup>13</sup> Some young lawyers, members of the RCD, hoped to eventually have public institutions as clients, but complained that even among party members some had a monopoly on representing the administration and state-owned companies.<sup>14</sup>

The committee in charge of examining the files of lawyers dealing with administrative and public institutions, made up of RCD party bosses, regularly drew up lists of lawyers eligible to represent public institutions. At the same time, this committee listed the so-called “harmful” lawyers that public sector managers were supposed to dismiss. The party hierarchy was thus able to select the lawyers that could benefit from public-funded work. They established categories of lawyers according to their zeal in serving the Ben Ali regime, and differentiated lawyers, RCD members, on the list of strong supporters (*mutahammisin*) from those considered as “ordinary lawyers” (Secrétariat général 2000).

To aspire to this privilege, a lawyer member of the RCD had to have a sufficiently good track record of service. First of all, he had to be an active member, in other words participate in party association activities to prove his allegiance, so as to see a public institution use his services. In fact, RCD members joined non-professional associations in

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<sup>12</sup> “Potential clients involved in cases where recourse to a lawyer is not compulsory may decide to act on their own behalf or call upon the services of members of other paralegal professions (notaries, bailiffs, clerks of the court) or professions whose members have some legal expertise (accountants, legal advisors, financial advisors, public writers). Non-specialist lawyers have been particularly sensitive to competition from other professions accused of poaching on their professional territory.” See Éric Gobe (2013b, 56).

<sup>13</sup> The percentage is even higher if articling lawyers are included (almost 60%).

<sup>14</sup> Interview with BAR, a young lawyer, member of the RCD, and registered with the Court of Appeal, Tunis October 3, 2009.



higher proportions than did lawyers who were members of opposition parties or had no political affiliation. The associations were for the most part RCD satellite organizations. There was ferocious competition among young RCD members who sought to get privileged clients. Those that could be taken under the wing of a senior party figure, or better yet the President of the Republic or his family circle, would see their public client roll grow.

Although lawyers who were active in the RCD conducted counter-mobilization operations during the protest movement in December 2010-January 2011, the younger ones, who had joined the party in the hopes of getting litigation work from public institutions, did not try to thwart their colleagues movement, namely during the profession's general strike on January 6, 2011. This apathy among RCD's young lawyers can be explained mainly by the loss of patronage resources by the party in power (Ayari 2013, 245). Having been unable to give its protégés enough work, those in power were not able to mobilize the young lawyers who were members of the RCD and who had the same sociological profile as their fellow members of the lower-level Tunisian legal profession.<sup>15</sup>

Another segment of the profession did not get mobilized, specifically the specialized lawyers at the top of income hierarchy (less than 10% of lawyers), too busy making money or too worried that the political troubles would affect their income negatively (Gobe 2013a, 225-236).

Between the lower-level legal profession and the business lawyers, there was a generalist lawyer segment that possessed social capital letting them have a mixed clientele, including small businesses, individuals belonging to the higher middle class and the top tier of society. They mainly mobilized against the Ben Ali regime a week before its fall.<sup>16</sup>

Generally speaking, the young general practitioners at the bottom of the income ladder and professional experience whom we met during our survey, were particularly sensitive to the disconnect between their difficult financial situation and their hopes for professional success. Their socioeconomic conditions, regards as an injustice, made them receptive to the activities carried out by the activist lawyers, political opponents to the regime well before the uprising in Sidi Bouzid (Gobe, 2010).

In fact, there is a distinction to be made between two groups of political activist lawyers, according to their age and activist socialization. First, the opponent lawyers born in the 1950s,<sup>17</sup> who carried out highly transgressive activist activity following a political path marked by socialization and activist mobilization previous to Bourguiba's era. These lawyers, concentrated in the capital Tunis, also extended their opposition activities on the far left (Marxist-Leninists and Maoists, sometimes tinted by Arab nationalism) and to a lesser extent their affiliation to political Islam, to their legal practise.

Most of them had experienced varying lengths of prison stays and all of them were arrested and beaten up by police at least once in their life. These prison stays became biographical breaking points, fertile periods that redefined their activist identity and their professional vocation. The activists that experienced a long prison stay (one to various years) mentioned it as a fundamental phase in their life that shaped both their political militancy and their vision of practising law.<sup>18</sup> Their involvement as opposition lawyers was the continuation of their past political involvement. Defending Human Rights and defendants' rights gave a

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<sup>15</sup> Interview with BAR, a young lawyer, member of the RCD, and registered with the Court of Appeal, Tunis April 21, 2013.

<sup>16</sup> Interview with Mohamed Ali Gherib, a lawyer registered with the Court of Appeal, Tunis April 19, 2011.

<sup>17</sup> Very few, about fifteen people, they started their militancy career under Bourguiba and thus were for the most part over 50 years old in 2011 (Gobe 2013a, 242-247).

<sup>18</sup> This incarceration period corresponds to one of the turning points mentioned by Everett C. Hughes (1996). It was a pivotal moment, a trying period which following the discourse of Human Rights became the evident thing to do.

“moral dimension” (Agrikoliansky, 2010)<sup>19</sup> to their previous political activism, as well as to their later professional work.

They constitute a “political generation” to the extent that age is here correlated to “a collective political behaviour” (Braungart and Braungart 1989, 9). Their profession has allowed them to benefit from symbolic resources that contributed to sustain their political involvement within the profession, either through activist groups or directly before the courts or within professional organizations once they were elected into positions therein. Harassed by the state’s repressive machinery (beatings, car tampering, telephone wiretapping, tax inspections, etc.), these lawyers were, like their younger fellow members of the lower-level legal profession, in a difficult financial situation (Gobe 2013a, 242-247).

As for the opposition lawyers from the second group (about sixty people), they were younger professionals, born in the 1970s, involved in less transgressive political activities than their elders, as they were faced with the repressive apparatus that had overcome the Ennahdha Islamist party in the early 1990s. Most often Arab nationalist, members of radical left fringe groups, Islamists or even defenders of Human Rights, they continued their political involvement as lawyers in trials for labour and/or political activists. Furthermore, they mobilized against the lawyers members of the RCD in the Bar Association elections and also in the Tunisian Association of Young Lawyers (*Association tunisienne des Jeunes avocats*—ATJA).

These activist professionals in the second group, who according to their socioeconomic status belong to the lower-level legal profession, became the spokespersons of the young lawyers’ financial demands, while at the same time supporting the values held up by the profession (invoking Human Rights and fundamental freedoms, protecting the right of defence, etc.). By their ethos and their vision, these lawyers demanded both “civic professionalism” and professional independence while supporting the economic agenda of widening the scope of work carried out by lawyers, as expressed by the lower-level legal profession.

The commitment to minorities by the political activist lawyers of both the first and second groups was a “revealing element of the groups’ principles and functioning logic” (Champy and Israël 2009, 14).

All these opponent lawyers acted in concert in the mobilizations that took place throughout the 2000s. They pushed their professional organizations to condemn the repressive policies of the Ben Ali regime and to organize hearing strikes. They also pushed for, set-up and supported the sit-ins organized to protest against the arrest, imprisonment, and conviction in 2005 of their colleague Mohamed Abbou (Gobe 2013a, 290-293).<sup>20</sup>

It became easier to mobilize the low-level lawyers as the gap in the image of lawyers’ professional activity and the reality of their practise deepened during the 1990s-2000s, leading to relative frustration among vulnerable young lawyers faced with financial difficulties at the start of their careers.

Lawyers were one of the few groups that participated in the political challenges to the regime in the 2000s. But until the start of the protest movement that eventually led to President Ben Ali fleeing, their collective action took place within their sector of activity. The

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<sup>19</sup> The reference to human rights ennobled previous political involvement different from the present (for lawyers having been far left movements) and gave more soul to political activity in step with society but considered by adversaries as a contradiction with the values held up by the universality of Human Rights (for Islamist lawyers).

<sup>20</sup> A political activist lawyer, member of the Congress for the Republic (*Congrès pour la République*—CPR), a party not recognized under Ben Ali. He was arrested and jailed in 2005 for having published an Internet article comparing President Ben Ali to Israeli Prime Minister Ariel Sharon, while the World Summit on the Information Society (WSIS) was being held in Tunis, and to which Israel had been invited. He was named Minister in charge of Administrative Reform in the first troika government.

popular uprising in 2010-2011 in fact changed the scale of the lawyers' mobilization that became part of widespread protests against the Ben Ali regime.

Lawyers' mobilizations within the protest movement: "lower-level legal profession" versus organizations?

The entry of the lower-level legal profession in the collective action is not indicative of generational tensions or conflicts between senior lawyers and young members of the profession. Political activist lawyers of all ages got involved to support the large number of lower-level legal professionals who, from the day after the death of Mohamed Tarak Bouazizi, came out onto the streets to denounce the crackdown. The tensions between the camps against and in favour of participating in the uprising became polarized; there was a divide between representatives of the profession reluctant in calling for mobilizing, and the lower-level lawyers with its spokespersons (political activist lawyers) who were pushing for the profession to get involved as an institution.

The collective action of lawyers between December 2010 and January 2011 had its start in the courthouses. Activist lawyers spoke out at these to encourage their young colleagues in the lower-level legal profession to get out of the courthouses and to express their solidarity toward the protesters by participating in demonstration marches, protest meetings and other sit-ins.<sup>21</sup> Defense lawyers joined some public protests by using the local network that first instance courts are. They were able to appear in political protests as a collective body, visible in the public sphere (by wearing lawyers' black robes). The various provincial courthouses, as the one in the capital, symbolic places at the core of urban life (and of protest movements), topographical embodiments of justice (and of the injustice of the Ben Ali regime), became thus the sites where the lawyers mobilization crystallized.

However, the mobilization in December 2010 was not a result of the profession having organizational representation and deciding to act. Inactive for a part of the protest movement, the professional organizations were in fact a brake on mobilization rather than a player in the uprising.

Seen under this angle, action or rather inaction by the profession's spokespersons confirms the thesis developed by law sociologists Kieran McEvoy and Rachel Rebouché (2007, 275), for whom professional organizations representing lawyers tend to take conservative positions in favour of the status quo in the name of the profession's neutrality and independence. Rarely do they use their resources to defend Human Rights and the rule of law or to challenge a political regime.

Although Bar Association President Abderrazak Kilani had a history of political involvement that would naturally make him an opponent to Ben Ali's power,<sup>22</sup> after his election to the position in June 2010 he tried to find a *modus vivendi* with the authorities. He wanted to find a compromise that would satisfy at least some of the professional demands by the low-level legal profession in exchange for control of professional requests perceived by the powers that be as essentially political (defending Human Rights, respecting the rule of

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<sup>21</sup> Interview with Koutheïr Bouallègue, a lawyer and an activist in the second group, April 23, 2013. He considers himself an independent professional, without any specific affiliation. He was in phone contact with activist colleagues in Sidi Bouzid, Regueb and Kasserine during the uprising.

<sup>22</sup> The authorities were critical of him, among other things, for having signed in 1993 a petition in favour of Radhia Nasraoui (an activist lawyer socialized under Bourguiba, wife of the leader of the Tunisian Workers' Communist Party (PCOT)—Hamma Hammami), having published a communiqué denouncing the conditions imposed on his detained clients (1994), having made "murky" relationships with certain Ennahda activists (1995), having signed a petition that mentioned the authorities taking away the passport from some political opponents (2000), having called on lawyers to heed the call for strike on April 28, 2000, etc. See Secrétariat général (2000).

law, protecting public and private freedoms). In this regard, as soon as he was elected to the position on June 30, 2010, Abderrazak Kilani convened a “scientific council” for the purpose of drafting new legislation regarding the profession. Comprised of three former Bar Association Presidents and of 43 fellow members including its Governing Council members, this council’s membership was designed to reflect all political and ideological currents across the profession. Later, over the fall, a select committee was given the task of drafting a final bill.<sup>23</sup>

How the protest momentum played out within the profession revealed this hiatus between the mobilization at the grassroots level and the wait-and-see attitude by the Bar Association leadership. In order to facilitate negotiations, the association President and some members of the Governing Council tried to steer the action by grassroots lawyers. Within the Council, lawyers close to the RCD did not want the leading instances to be associated with the protests, whereas other members were hesitant.<sup>24</sup> Even those who were aligned with a more oppositional line (the majority of Governing Council members were political Islam and Arab nationalism supporters, along with other individuals without a declared political affiliation) attempted to play for time and did not take any public position denouncing the wait-and-see approach by the professional organization’s higher instances.<sup>25</sup>

In some aspects, lawyer mobilization during the phase of popular uprising can be classified as belonging to “cause lawyering” (Sarat and Scheingold 1998). Indeed, it was a specific category of lawyers focused on “a marked political cause” (Israël 2003, 600) already engaged in protest activities and having an activist know-how that mobilized its colleagues. Responding to the protest circumstances, it was the Human Rights defenders and political activists that were instrumental in waking up the profession’s “collective conscience” and in pushing for the leading instances to call for mobilizing against the Ben Ali regime’s repressive action (McEvoy and Rebouché 2007, 277).

Although the lawyers elected for the organization’s higher instances were experienced men (between 45 and 60 years old) that did not fully represent the profession’s age profile, a reading in terms of generations does not seem to help in understanding the reticence by the Bar Association leadership to officially engage the legal profession in the protest movement. Institutional logic makes it possible to understand the timidity by the Bar Association President and its Governing Council. The uncertainty regarding the uprising outcome, as the association leaders prepared to negotiate new legislation with the Ben Ali regime, in large part explains the prudence shown by the association President and Governing Council members, some of whom moreover were close to the powers that be.

In some respects, the Bar Association position vindicates the defenders of organizations’ cast-iron laws, according to whom leaders ought to “focus the strength of numbers into the confined space of meeting rooms,” and thus would be “inclined to find a compromise with the elites at the time to sustain its position” (Pierru 2010, 23).

The first lawyer mobilization took place in Sidi Bouzid on December 18, 2010, the day after the self-immolation suicide of Tarek Mohammed Bouazizi. A first event, a solidarity sit-in, was organized in front of the city’s lower court. On December 19, some lawyers acting on their own behalf, joined militants from the UGTT (*Union générale tunisienne du travail*–Tunisian General Labour Union, then the country’s sole central union) calling for the release of protesters arrested the previous day (Hmed 2012, 38). On December 24, as the social uprising spread throughout the governorate and a first protestor was fatally shot by police in

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<sup>23</sup> Interview with a Court of Cassation lawyer, Mongi Ghribi, Tunis, April 19, 2013. A journalist by training, this lawyer monitored the lawyer protest movement in Tunis.

<sup>24</sup>Ibid.

<sup>25</sup>Ibid.

Menzel Bouzaïane, a group of about thirty lawyers in Sidi Bouzid left the courthouse and started protesting on the city streets.<sup>26</sup>

On the same day, in Kasserine, about forty lawyers including the leaders of the second group of activist lawyers, linked to the radical left fringe groups (Wadat, PCOT) and the PDP,<sup>27</sup> after having harangued their young colleagues within the lower court to go protest, left the courthouse and called on a reticent UGTT local union to protest and show their solidarity with the residents of Sidi Bouzid. On December 27, 28 and 29, the repression of the rioting affecting the cities surrounding Sidi Bouzid, led to sit-ins by lawyers in front of the courthouses in Médenine, Sidi Bouzid and Kasserine.<sup>28</sup> These sit-ins became wider protests joined by other segments of the population, and came on top of nightly clashes organized in neighbourhoods by local residents. In Kasserine, protesting lawyers marched to the working-class neighbourhood of al-Zouhour where they were joined by some young people making the march bigger, whence it returned to the city centre where is located the first instance courthouse. The slogans chanted in the lawyers' march took from the outset a political connotation, and were not very different from the ones used by the working-class young rioters: they denounced the political regime and the predatory behaviour by the in-laws of President Ben Ali (Hmed 2012, 31).

There was a similar phenomenon in Tunis. On December 22, spurred on by opposition lawyers, far-left activist and Arab nationalist lawyers from the first and second category, a first sit-in, by around one hundred lawyers, was organized on the fly in front of the Courthouse and the “Maison de l’avocat” in the city centre. Moreover, supported by dozens of colleagues, activist lawyers carried out a daily siege of the association President’s office to demand he officially stake a position and denounce the repression against residents in Sidi Bouzid and in other urban centres in the west central region. The fact that Abderrazak Kilani organized “coordination and consultation meetings” in the association’s offices with lawyers known to be linked to the RCD raised disapproval among these lawyers, who brought their protest as far as his office door.<sup>29</sup>

It was precisely these same activist lawyers that organized a sit-in the morning of December 28, 2010 in front of the Courthouse: speeches, cheers and applause followed each other for almost two hours, under the watchful eyes of law enforcement forces. This opportunity was seized by Abdenasser Laouini, a “progressive” activist and Arab nationalist lawyer, who spoke to “send a message to the regime, to the President, to his mafia and his family.” He repeated the slogans chanted by protestors in Sidi Bouzid, calling for the right to have a “dignified life” (*hayât karîma*) and against the “gang of thieves” (*‘isâbat al-surrâq*) that governs and pillages the country.<sup>30</sup>

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<sup>26</sup>Information given by Chawki Tabib in a June 7, 2011 email. Most of this lawyer’s political/professional career took place in lawyers’ professional bodies: he was President of the ATJA in late 1990s, member of the Bar Association’s Governing Council in the 2000s, then its interim President from January 2012 to July 2013.

<sup>27</sup> Interview with Koutheïr Bouallègue, The PDP (*Parti démocrate progressiste*—Progressive Democratic Party) was, during the 23 years in power by Ben Ali, the only legal political party to refuse swearing total allegiance to the authoritarian regime. The Wadat (Democratic Patriots’ Movement) was under Ben Ali a political groupuscule mixing Marxism and pan-Arabism. The PCOT is a Marxist-Leninist party stemming from the academic far left.

<sup>28</sup> Information given by Chawki Tabib, There were about 60 lawyers in the sit-in and political march in Médenine out of the 280 that the city had.

<sup>29</sup> “There were young colleagues with us. They were furious with the inaction by the Bar Association President.” Interview with Koutheïr Bouallègue

<sup>30</sup> Interview with Mokhtar Jallali, lawyer accredited at the Court of Cassation, April 24, 2013. Of Arab nationalist allegiance, Mokhtar Jallali was in late 1990s member of the Chamber of Deputies for a co-opted opposition party, the Unionist Democratic Union (UDU—*Union démocratique unioniste*). Married to the intellectual activist in the CPR (under Ben Ali), Naziha Réjiba also known as Om Ziyed, he became increasingly radical in the 2000s, to the point he was jailed for a few weeks in 2008. Originally from Sidi Bouzid, he went

A few hours later, two opponent lawyers socialized under Bourguiba, Abderraouf Ayadi (a former far-left activist, member of the CPR) and Choukri Belaïd (a pan-Arabist radical left supporter) were arrested not far from their homes. The pressure by activist lawyers prompted the Bar Association President to convene a “public information meeting” for December 29. Abderraouf Ayadi and Choukri Belaïd, released during the night, went to the offices of the “Maison de l’avocat” across the Tunis Courthouse, where the “public information meeting” was taking place. Abderraouf Ayadi showed those present at the meeting his clothes ripped to shreds by his kidnapers and denounced the physical abuse he suffered.<sup>31</sup> However, in this first “information meeting,” the Bar Association President remained pusillanimous. Although denouncing the physical mistreatment suffered by the two activist lawyers, he stated that “the Bar Association is not a political party” and that he had to take care of “5,000 lawyers who are starving” (Bouallègue 2011). Despite different proposals being formulated by the lawyers present at the meeting on how to behave in relation to the regime’s coercive policy, they ultimately put the Governing Council in charge of deciding what position to adopt.<sup>32</sup>

The professional organization leading instances, which had not yet officially reacted to the protest movement repression, decided then to issue an official statement expressing their solidarity with the residents in Sidi Bouzid who, according to them, were only demanding to exercise their right to work and to have a decent life. At the same time, the communiqué from the Governing Council denounced “the kidnapping and arrest of colleagues Abderraouf Ayadi and Choukri Belaïd by security officers in clear violation of the law.” To protest against how the security forces had dealt with the protests, the Governing Council called for a day of solidarity by lawyers with the residents of Sidi Bouzid: the black-robed men would wear a red ribbon in all lower courts in Tunisia on December 31, 2010 (ONAT 2010a).

However, the Bar Association President asked that lawyers remain within the courthouses and not protest on the street.<sup>33</sup> On their part, the authorities reacted to this statement by putting in place repressive measures outside and inside the courthouses. The former to forcibly stop lawyers from coming out of courthouses, while the latter, which consisted of deploying security officers inside the court precincts, sought to ban lawyers from wearing the red ribbons and express their solidarity towards the residents of Sidi Bouzid. In Tunis, law enforcement officers closed the Courthouse gates thus preventing lawyers to come out onto the street.<sup>34</sup> Lawyers that refused to abide by the law enforcement directives were manhandled, injured, and had their black robes ripped apart.<sup>35</sup>

This violent action by the security services, within the court precinct itself, led the Governing Council to make a stand in favor of the manhandled colleagues. By denouncing the “savage aggression” (ONAT 2010b) by the security forces on lawyers, the Governing Council called for a general strike on January 6, 2011. But this stand, decided by Bar Association leading instances, is once more indicative of the prudent position taken by its President.

Furthermore, the wording of the call to strike did not make any reference to the riots nor their repression in the west central region of the country, but to the “violence and aggressions against lawyers by security forces within courthouses, offices, the ‘Maison de l’avocat,’ and in front of the Courthouse” (ONAT 2010b).

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shortly after the beginning of the uprising to his birth city, before returning to Tunis on December 27 and witnessing the information public meeting organized by the Bar Association President.

<sup>31</sup> Interview with Mokhtar Jallali.

<sup>32</sup> Information given by Mongi Ghribi in an email on May 12, 2013.

<sup>33</sup> Information given by Mongi Ghribi.

<sup>34</sup> Information given by Mokhtar Jallali and Mongi Ghribi in emails on May 12, 2013.

<sup>35</sup> Interview with Hichem Belhadj Hamida, a Court of Cassation lawyer who is close to Bar Association President Abderrazak Kilani, Tunis, April 20, 2011.

The strike had massive participation, despite lawyers from the RCD attending court hearings and denouncing other lawyers as using the courts as a “political tool.” As for the Bar Association President, he insisted on how responsibly the Association carried out its action. Furthermore, Abderrazak Kilani invited his colleagues to “turn the page, now that the profession expressed its view that bashing lawyers is not allowed” (AFP 2011).

Much more than the success of the strike, it was in fact the momentum of political mobilizations that radicalized the Association’s leading instances in the wake of the UGTT leadership that, although largely subservient to the regime before, realized that Ben Ali’s power was faltering. The crushing of rioting in Thala, and especially in Kasserine, on January 8 and 9, led to a geographical and social widening of the protest movement. The political insurrection spread to all the country’s urban centres, including the capital, and from that point on, the “middle class” alongside the lawyers, fed the protests which had originally mostly consisted of young people from the working-class neighbourhoods.

Even so, Abderrazak Kilani had not come to the end of his hesitation. On January 11, the meeting by the lawyers “select committee,” which had the task to finalize drafting new legislation concerning the profession (see above), could not run its normal course due to the high human cost of the rioting in the country’s central region. One of its members, Mongi Ghribi, proposed to adjourn the discussions concerning that legislation, so as to focus on the events in Kasserine, Thala and Sidi Bouzid. Supported by lawyer Moncef Djerbi, his proposal was endorsed by the other members of the committee present who asked the Bar Association President to report on the profession’s situation in the regions affected by the popular uprising.<sup>36</sup> Abderrazak Kilani mentioned the phone contact he had had the day before with lawyers in Kasserine, who had informed him that security forces had opened fire on people and that they themselves had tried using their bodies as shields to protect the protestors. They had asked him to intervene with Ben Ali on their behalf. The association President then specified that he had spoken with the President of the Republic by phone, and reminded those present that the Minister of Health, Mondher Zeneidi, had contacted him to ask him to bring lawyers in Kasserine to calm and order. In exchange for doing so, Abderrazak Kilani stated having demanded the release of arrested rioters and that the police forces not intervene in the funeral processions of deceased protestors. At the end of the meeting, the members present decided to create two committees, one to follow up issues and the other a defence committee for lawyers so as to track closely how events were unfolding.<sup>37</sup>

In fact, that same day the UGTT national leaders, by deciding under pressure from its rank and file to allow regional unions to organize general strikes across the Tunisian territory starting on January 12, opened an avenue for a clearer engagement by the Bar Association President and its Governing Council alongside the uprising players. This decision by the union federation finally pushed the association’s higher instances to follow the protest movement momentum more strongly. Following a special session which met in the association President’s office on January 12, its Governing Council called for “a lawyers’ general strike across all courts on Friday January 14 in solidarity with the victims, and in support of the demonstrators’ demands.” It also planned to send a delegation to Kasserine on January 13 to monitor the “safety of colleagues” in the martyr city (ONAT 2011).

Whereas in Tunis the general strike was planned by the UGT regional union for January 14, the strike took place on January 12 in Sfax, the country’s second city, and had massive participation. In Médenine, Kasserine and Sidi Bouzid, lawyers wearing their black robes left the courthouses to take position at the head of demonstration marches side by side with union members. Faced with multiplying riots that now affected the capital and “cracks at high levels of the State” (Baduel 2013, 53-56), President Ben Ali was starting to be in a

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<sup>36</sup> Interview with Mongi Ghribi.

<sup>37</sup> Information given by Mongi Ghribi.

precarious position. In the morning of January 14, Prime Minister Mohamed Ghannouchi invited the Bar Association President and a delegation from its Governing Council to meet him to inform him of lawyers' grievances. The association President, accompanied by the Tunis section head (Néjib Ben Youssef, Islamist) and the Governing Council's secretary-general (Mohamed Rached Fray, RCD) accepted to attend the meeting with some of the lawyers present in front of the Courthouse. He refused to lead the march that, stopped in front of the "Maison de l'avocat," was about to go down to Bourguiba Avenue to join up with other protestors.<sup>38</sup> Hundreds of lawyers, including some members of the Bar Association Governing Council (namely Chawki Tabib and Boubaker Bethabet), marched and stopped first in front of the Ministry of Justice to demand independence for the judicial institution. They then went down towards Habib Bourguiba Avenue and the Ministry of the Interior to join the protest. As for the lawyers accompanying the delegation led by the association President, as they did not see it leave the Prime Minister's office, they decided to join the other lawyers on Habib Bourguiba Avenue.<sup>39</sup> Around the Ministry of the Interior, a group of activist lawyers formed a cordon while the crowd, all social classes together, gathered in front and shouted "Ben Ali Get Out."<sup>40</sup>

## Conclusion

If the young lawyers from the lower-level legal profession joined in massive numbers the marches, protests, and sit-ins that fed the protest movement, it was the professionals with experience in political activism that were the organizers of the lower-level lawyers mobilization. From this point of view, political engagement by the lawyers appears as "transgenerational." But their participation in the protest movement was mainly due to its young segment, which followed the large increase in numbers in the legal profession. The feeling of sharing a common socio-economic status and perceiving the Ben Ali authoritarian regime as fundamentally hostile to them, contributed to the creation among most lawyers of a generational conscience and a rejection of the authoritarian status quo. Ultimately, the uprising in December 2010-January 2011 contributed to crystallizing this conscience, or in a more general way, "the interaction between historical resources, the contingency of circumstances, and a social formation" is susceptible to render pertinent a generation as a sociological category (Edmunds and Turner 2002, 7). But in the case of lawyers, the generational reading of the uprising in 2010-2011 must be balanced with the lower-level legal profession identity crisis, itself a consequence of the policies directed by the authoritarian regime towards the profession.

With the fall of the authoritarian regime led by Ben Ali, "young lawyers" exacted their revenge following years of humiliation during his regime. At the same time, the professional organization, although reticent at first to get involved in collective action, was able to capture and profit from the dividends of mobilization by its grassroots and political activist lawyers.

Afterwards, the latter, especially the most senior, leaned heavily on their revolutionary legitimacy to get politically involved: two-thirds of the lawyers from the first category, as well as the most politicized lawyers in the second inserted themselves in the official political scene and became professional political figures. These opposition lawyers, whose politico-professional engagement is anchored in the continuation of a political trajectory marked by their socialization and their previous activist mobilizations in the 1970s and early 1980s, had

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<sup>38</sup>Information given by Chawki Tabib. On the subject, Koutheir Bouallègue (2011) specified that during the phase preceding the fall of President Ben Ali, the Bar Association President did not participate in any march or protest, including on January 14, 2011.

<sup>39</sup> Interview with Mohamed Ali Gherib, lawyer at the Court of Appeal, Tunis, April 19, 2011.

<sup>40</sup>In French "Ben Ali dégage." *Ibid.*



developed under Ben Ali a professional practice in support of union and political activists repressed by the authoritarian regime. In so doing, these lawyers had continued their oppositional practice within the framework of their professional activity. Two fundamental areas in their life, their career and their political engagement, had thus mingled “thanks to their profession” (Willemez 2003, 145). At present, thanks to their protesting political action within the popular uprising of 2010-2011, they have been able to convert the activist and oppositional political resources accumulated since their university days into official political positions and status in post-Ben Ali’s Tunisia.<sup>41</sup>

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<sup>41</sup> With 33 members, lawyers were the second profession in numbers (behind teachers, 77 members) in the National Constituent Assembly elected on October 23, 2011.

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