Building a Democratic State: The Case of Tunisia

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The long Tunisian transition has contributed to clarifying the nature of the revolutionary phenomenon that has gripped the country since December 2010. Social revolt? Democratic revolution? At first, two forces combined to create the conviction that 'the Revolution of liberty and dignity' that had put an end to over twenty years of despotism and corruption was to essentially found the Welfare State and build democracy. This was the revolution's primary aim.

The sudden rise of the Islamist Ennahdha party, with its plans to establish an Islamic State, has raised an issue from another era. Such a project condemns democratic aspirations and, moreover, calls into question the progressive acquis that distinguishes Tunisia and expresses its aspiration to modernity. Ennahdha's intentions have thus triggered a crude battle for choice of society, with progressives aiming to assert the modernist vision, save the acquis and consolidate the democratic objective of the revolution.

For its part, the Ennahdha party dramatically prevailed through an amalgam of populism, violence and overwhelming electoral victories; the October 2011 elections raised it to the rank of leading party (89 parliamentary seats out of 217); it dominated the transition government for two years (2012 and 2013) and caused constant tension in the National Constituent Assembly, where its representatives mobilised as a bloc in an attempt to introduce regressive provisions into the future constitution; it moreover covered up barbarous acts of violence, alien to Tunisian mores. Two political assassinations of Ennahdha adversaries in 2013 remain unpunished. At the appeal of civil society, massive demonstrations were held to protest against said party's actions and initiatives. In August 2013, the protests reached the scale of a true blockade of the institutions, to the point of forcing Ennahdha, just before elections, to relinquish power to a non-partisan government appointed precisely to prepare the forthcoming elections. At the time, the ousting of President Morsi in Egypt (3 July 2013) had already broken its self-assurance: it began to consider the scope of such a precedent. By the same token, the Ennahdha MPs, who were blocking a series of fundamental provisions of the draft constitution, yielded on every point, suddenly converted to the idea of a liberal, democratic and republican constitution. The January 2014 Constitution is a decisive step on the road to a democratic Tunisia.

Ennahdha's spirit had been broken. Its fall should have marginalised it, returning the original focus and purpose to the Revolution. Throughout 2014, this hope animated the progressive electorate, convinced that Ennahdha's decline would sink it and relieve the transition of a parasitic interference. What force would represent a religious, regressive political party that, in addition, failed the test of power and has murky links with political violence? An ephemeral force? An opportunistic or marginal one? The test, at least, led Ennahdha to tone down its demands, change its discourse and endorse the new Constitution, which enshrines fundamental freedoms.

What was the actual response of the electorate? The October 2014 elections simply placed Ennahdha in second place within the new Assembly, giving it nearly a third of the seats (69 out of 217). After the rise of Islamic parties in the region, from Morocco to Egypt, and after the 2014 elections in Tunisia itself, there is no longer room for doubt: it must well be admitted that a respectable portion of the electorate believes in the Islamic project. Hence, the construc-

tion of democracy cannot forgo a 'historic compromise' with the forces professing allegiance to the religious frame of reference. The new order called upon to control the destiny of Tunisia must now reconcile social demands, the democratic imperative and Islamic identity. These components of post-revolutionary Tunisia's social and political reality call for an innovative, unprecedented approach vulnerable to confrontation and instability, but not necessarily to regression. This is certainly the path to the only political progress permitted in Arab societies, until now destined to remain under the vagaries of tutelary authoritarianism, with its good and bad days.

The day after the October 2014 elections, the winning party, Nidaa Tounes (86 of 217 seats), formed a coalition government of the four leading parties, including Ennahdha, which is pursuing the quasi-democratic discourse it adopted over a year earlier. The historic compromise is in the making. By taking the effort to synergise contradictory yet evolving forces, the 2nd Republic is betting on building a democratic Arab State.

Genesis and Imperatives of the Democratic Transition (2011-2014)

The social argument was the primary cause of the Tunisian revolution. It drew its strength from the contrast between the opulence of the relatives and clientele gravitating around the ousted President and the misery in the suburbs; it also drew its strength from the imbalance between coastal Tunisia, where the bulk of economic activity, urban infrastructure and social services are concentrated, and inland Tunisia, deficient in infrastructures and basic services and often beset by idleness and despair as well as trafficking by a sector of youth making its way through delinquency and the parallel economy associated with the cross-border markets of Libya and Algeria. The inland provinces had slipped into the shadow economy. The sundry trafficking undermined state institutions. Mafia rings, taken up by Ben Ali circles, were besieging the entire country, taking with them entire sections of the customs and tax administrations, municipal authorities, and security and state services. The State had been hit.

Two social powder kegs exploded: first in January 2008, the Gafsa mining region, then in August 2010, Ben Guerdane, on the border with Libya. Popular violence and the subsequent police and legal repression were but the prelude to the dramatic events that would lead to the regime's overthrow. The Third Estate was no longer afraid; it was in these areas that the December 2010 revolt broke out, and where popular discontent with all the transition governments and with the first government of the Second Republic has continued to February 2015. This is also where voter turnout has been the lowest.

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The legislative and presidential elections that closed the transition phase in 2014 revealed more than a social divide: the south and the west on the one hand, and the north and east on the other, comprise heterogeneous electoral districts. This dichotomy constitutes a specific test for Tunisian reconstruction. Moreover, the future of nearly a million unemployed people and as many precarious workers, all of whom have gone to primary and secondary school and some to university, is essentially the responsibility of the State. The Welfare State constitutes the fundamental objective of the Second Republic.

The democratic imperative drew its strength from the struggle against Ben Ali's despotic regime. It also drew its strength from the Tunisian society's tradition of reform, progress and modernisation, dating back to the mid-19th century with the emancipation of slaves in 1846, the Fundamental Pact – a genuine Human Rights Charter – in 1857 and the first Tunisian Constitution in 1861. The colonial era (1881-1956) stimulated the will for modernisation and the aspiration to found a parliament, seat of national sovereignty. In the wake of independence, Tunisia undertook in-depth reform that changed society and mindsets. As of 1956, a series of reforms instituted gender equality, the prohibition of polygamy, legal divorce, family planning, the elimination of

tribal continuity and the generalisation of schooling in two languages, Arabic and French, from primary school to higher education. These reforms put an end to the patriarchal family, instilled a sense of individual autonomy and initiated the impetus towards state secularisation.

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Nonetheless, the progress made thanks to planned global development policy as of 1962 and the economic liberalisation effected in the mid-1990s were not accompanied by measures of political liberalisation allowing democracy and the entrenchment of freedoms. Quite to the contrary, the concentration of powers, the all-powerfulness of the police, electoral fraud, state predation, the censorship of the media… these ordinary shortcomings of despotic regimes were carried to grotesque extremes under Ben Ali. The perspective of a sixth presidential term, launched through a media campaign beginning in July 2010, less than a year after his re-election in October 2009 for a fifth term, attested to a suicidal blindness.

These ailments and their very excess matured the demand for democracy. Increasingly urgent demands for political openness were expressed throughout the country and, at the time, recommended by the main Western partners. Among the ranks of the opposition, democracy represented the solution to all the country's ills.

Was there another alternative? Islamist leaders apparently entertained such a hope, but they were condemned to silence. Among opposition parties, only one – the Progressive Democratic Party – deigned to invite them to its meetings; they attended this political circle obliged to maintain complete silence. Besides, who would have believed in a redeeming Islamic project? The parties of the democratic opposition, numbering three, and the active civil society institutions – namely the Tunisian Human Rights League (LTDH) and the Tunisian Association of Democratic Women (ATDF) – were fiercely hostile to the Islamic project. In broader circles of human rights activists, who were mainly recruited from universities and the liberal professions, the Islamic movement was rejected as much as the regime in power. Islamist activists were, however, defended by democrats, not for their political choice, but in principle, and because they were ignominiously persecuted at the least pretext by the all-powerful political police, an institution of epic brutality. The democratic alternative seemed uncontended at the time.

The new opportunities presented by the post-Arab uprising developments in Syria triggered an eagerness in the PKK to exploit those opportunities and strengthen its hand vis-a-vis the AKP government in its negotiations

As soon as Ben Ali disappeared from the political arena on 14 January 2011, the national unity government that took charge of the country's administration hastened to improve the climate: release of political prisoners, lifting of media and social network censorship, legalisation of pending political parties and recognition of new parties, issuance of passports to exiles, who began retuning en masse, lifting of lawsuits against the LTDH – which was then being harassed via some thirty court cases – and the institution of a subsidy for young unemployed degree-holders. At the same time, the dominant party (Democratic Constitutional Rally – RCD), the political police and the Chamber of Deputies were dissolved. And finally, three National Commissions were created – one for political reform, another on corruption and embezzlement, and the third on armed violence and damages registered during the Revolution.[1] In a matter of weeks, a new society asserted itself: one that assumed the country's destiny and planned its future. The Tunisian de-

[1] The Tunisian Revolution officially caused less than 3,000 victims (injuries or deaths). According to the "Report of the National Commission to establish the events relative to abuse and violations registered during the period from 17 December 2010 to the end of its mandate," a document in Arabic published in Tunis in April 2012, the total number of victims was 338 casualties and 2,147 injured. The additional assessment, up to July 2014, revealed a death toll of 61 and 173 injured, in addition to 50 casualties among terrorist ranks.

mocracy began taking shape at this stage, drunk with freedom and hope.

The society was discovering, analysing and questioning itself. Political parties, media and civil society organisations of all persuasions multiplied; debate forums flourished on radio stations and television channels; image-supported field surveys extended to grey areas; interviews began to reveal new faces. For the first time, opinion polls and survey agencies appeared, measuring the political spectrum, its convergences and divergences, and qualifying and categorising them. Tunisia had achieved a pluralist breakthrough. Free and plural debates contributed to asserting the choice of society as liberal and democratic.

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A Radical Change. The national unity government advocated amending the Constitution (of 1 June 1959) and organising legislative and presidential elections on the new basis within six months. This plan was immediately rejected by certain political parties and the national trade union, which, through a strong street protest movement, demanded the abolition of the Constitution and the election of a constituent assembly. It was this radical approach that prevailed.

The following administration, taking office on 28 February, had the mandate of organising elections for the Constituent Assembly. The process expressed the will to do away with a system marked by an authoritarianism and paternalism that demobilised, disempowered and infantilised the citizenry; the constitution in effect was rejected outright: its abolition symbolised a new start. Finally, the marginalisation of inland regions was understood as a consequence of excessive government centralisation: only a new constitution would allow an improved balance of powers and balance among the regions.

On the social order, various demonstrations by youth and the arts world expressed the will to break with the norms of the past. The respective roles of the State and the citizens changed radically in the wake of the Revolution.

The Principle of Exclusion. In the Political Reform Commission, the principle was widely accepted that the social and political order should be a collective construction based on participation, the representativeness of the actors and the free exchange of ideas. Voices were raised, however, to contest the voting or running of members of the former ruling party in the elections for the Constituent Assembly. The principle of exclusion thus posed became the object of debate, insofar as whether the ultimate choice should be left to the voter. The exclusion provision was adopted for the 23 October 2011 elections, affecting 3,000 former government officials, the RCD party leadership and those having publicly supported the plan for a sixth presidential term. The possibility of maintaining this sanction for the duration of five years was discussed in 2014 by the Constituent Assembly but eventually discarded. The principle of limiting the age of candidates for presidential elections, supported by various parties in the Assembly, was likewise discarded. Thenceforth, only the principle of non-exclusion prevailed.

Insofar as the substance, the Constituent Assembly retained the principle of transitional justice; in December 2013 it created an independent Truth and Dignity Commission entrusted with investigating serious human rights violations committed from July 1955 to December 2013. The Commission, which began operating on 10 December 2014, stated it received 6,500 claims in three months.

Outline of the Tunisian Democracy: The Second Republic (2015)

The Tunisian transition dodged none of the difficulties inherent to the democratic option. Far from any interference from the military, it experienced turbulent vicissitudes without ceasing to develop the foundations of a new order based on consensus and a search for excellence, in an endogenous process open to participation by everyone. It resulted in a general agreement accepted by all. The new

regime is the outcome of a consensual approach, even if it remains economically fragile and specially targeted by the terrorist rings assailing the region.
What principles and institutions distinguish the new regime? Seven major principles can be observed at this stage:

1. Individual Security. Political progress begins with the security of the individual. Before the Revolution, no-one was safe from arbitrariness in Tunisia: power was wielded through intimidation and terror. There were sudden attacks against different individuals at different times, who were rendered nearly powerless to make their voices heard, have their rights upheld, or defend their honour, property and person. Until the 21st century, prison, torture and assassination were the government's means.

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The conquest of individual security does not only involve the rights enshrined in the Constitution or in legislation, but extends to the ensemble of institutions forming the architecture of society, institutions that structure the collective defence of freedom and check arbitrariness. The independence of the justice system, the coherence of Institutions, the freedom of the media, and the responsibility of civil society are indivisible: the democratic order is a whole. It is the conjunction of institutions and freedoms that lend a sense of safety, create confidence and eliminate the threat of arbitrary power. The change of political order comes at this price.

2. The Status of Women falls within the logic of the principle of equality, a principle hardly accepted by Arab society, the status of women being the most flagrant case in point. Constraint in marriage *(jabr)*, wearing a veil and restrictions to freedom are erroneously referred to as religious prescriptions; in reality, they are cases of simple negation of the principle of equality, which does not go against Islam. In Tunisia, the equal status of women, passed into law in 1956, and coeducation at schools, institutionalised in 1968, have endured. Thanks to the Revolution, gender parity on electoral lists was introduced in September 2011, then enshrined in the Constitution (Art. 46). The dynamics of the system's evolution constitute a genuine guarantee of progress towards gender equality. The emancipation of women is indicative of a philosophical progression.

3. Freedom of Conscience. Although it is inherent to the freedom of the individual, it is implicitly or explicitly rejected in Arab societies insofar as this principle offers Muslims the right to change religions or give up all religion. Apostasy, unthinkable, is sanctioned in certain countries by capital punishment. Now freedom of conscience is enshrined in the Constitution (Art. 6). This acquis is fundamental: relations with the State are based exclusively on civic rights. The State itself declares that it is "a civil State, based on civic rights, the will of the people and the rule of law" (Art. 2).
Recall a significant fact: at the United Nations General Assembly debate on 10 December 1948 regarding the definitive adoption of the Universal Declaration of Human Rights, the Saudi Arabian delegate expressed reservations pertaining to two articles: the one stating the right to marry with no limitations due to race, nationality or religion (Art. 16), and the one associating the freedom of conscience with the freedom to change one's religion (Art. 18). These reservations, expressed 67 years ago, still limit the freedom of the majority of Arab subjects.

4. Pluralism. The category of uniqueness imbues the Arab mindset. It is rooted in the ascendancy of the father, the imam and the *za'im* (leader). The *pater familias*, the hegemonic party, the historic trade union: these authorities restrict social, political and spiritual aspects of life and ensure compliance with social codes. Doubting, breaking with or asserting other beliefs in the spheres of action, thought and faith expose one to ostracism, exile, and at times even the death sentence.
Pluralism posits the principle of freedom of choice and develops the culture of relativity. Thanks to the Revolution, it has won over the political, trade union and social arenas, breaking out with unprecedented vitality. The revolts did away with taboos, broke codes and overcame self-censorship: in Cairo,

Aliaa Magda El-Mahdy posed nude on Facebook; in Tunis, the Femen activist Amina Sboui posted a semi-nude photograph of herself, as a message regarding the appropriation of her body; in Morocco and Algeria, the '*dé-jeûneurs*' or non-fasters proclaimed the right to eat and drink in public in the daytime in the middle of Ramadan. These rebellions defy resistance in society, where a mindset fixated on a single lifestyle subsists. The offensive has been scathing. Citizens brought up in the family religion are demanding freedom of conscience; and they are no less the citizen for it. The same is true of political, trade union and existential choices. A free society accepts plurality in political, religious and philosophical beliefs and the equal and legitimate participation of those holding such beliefs in the nation's affairs.

5. **Freedom of the Press.** The freedom of expression and information, the lifting of censorship, the right to express one's opinion with complete liberty on social and political events and to connect to information networks in the world constitute the first victory of the Tunisia of 2011. The satirical cartoon as a form of expression has entered the media. On a deeper level, the emancipated press relays the collective defence of freedom and focuses on the foundation of the rule of law, since the plurality of ideas and facts ensures transparency, provides an indication of governance and bolsters individual security.

6. The Right of Future Generations. It is accepted that the growth pattern should be inclusive, allowing all sectors of the population to participate in the growth dynamic, and it should also ensure they benefit from its effects in terms of employment and wellbeing. What all of this implies is not subsidies and aid, necessarily temporary, but the improvement of the aptitude to productively contribute to the economy. Thus perceived, the right of future generations can be summed up in three essential demands:

— A high-quality, modern education open to the future;
— A healthy environment, the basis for all socioeconomic development;
— Sustainable development guaranteeing economic, social and environmental balance.

7. The Principle of Power. In the Arab political order, indecision endures regarding the principle of the legitimacy of power: divine versus popular legitimacy. The evolution experienced in the majority of countries over the course of the 20th century has raised the people to the rank of regulators of power, the absolutism of *Sharia* law being increasingly limited by recourse to popular suffrage and the extension of legislation based on positive law. The 2011 Revolution dealt the decisive blow through the assertion of popular will as the source of legitimacy. Transcendence has been replaced by an immanence reflecting the aspirations of the people in their evolving historic experience. The watchword of the 2011 Revolution was, after all, "the people demand!" (*Ash-shaab yurid!*)

The Institutions. Three innovations distinguish the institutional balance: electoral restructuring, limitation of the executive branch and decentralisation. On the one hand, electoral legitimacy is asserted in all state organisms; and on the other hand, the spheres where citizens exercise free choice are entrusted to independent collegial institutions, free from any interference by the executive branch. The same is true of the judiciary branch, where a judge's free determination is protected against the executive branch's interference. The High Judicial Council and the five independent constitutional authorities dealing with elections, communication, human rights, the struggle against corruption and sustainable development, respectively, are based on the principles of election and the non-interference of the executive branch. And finally, the local judiciary is comprised of three levels of elected councils or courts: the municipal courts, the regional courts and the district courts. These innovations represent a genuine restructuring of the State.

The Second Republic entered into effect in 2015, after the promulgation of the Constitution (27 January 2014), the inauguration of the new Assembly of the Representatives of the People (4 December) and the investitures of President Beji Caid Essebsi (31 December) and Prime Minister Habib Essid and his government (5 February 2015). It must yet see to the establishment of the Constitutional Court, the Supreme Judicial Council and the local authorities.

Tunisia has once again demonstrated its mature, forward-looking nature as a nation. By entering democracy, it is accelerating its pace to modernisation and catching up on much of the time lost vis-à-vis the civilisation of our times.