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Building legitimacy through dialogue within and beyond parliament in a democratic transition: a case study of Tunisia after the Jasmine Revolution

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Abstract

After its Jasmine Revolution of January 2011 that launched the Arab Spring, Tunisia opted to popularly elect a National Constituent Assembly (NCA) charged with drafting a new constitution and acting as the country's provisional parliament. Despite various setbacks and crises, the NCA successfully adopted a new constitution in January 2014. The transition in Tunisia provides an important example of the construction of democratic institutions subsequent to the destitution of an authoritarian regime.

The negotiation and implementation of an inclusive constitutional process inherently presents a substantial challenge where the previous state order has been delegitimised by a popular uprising. The different actors in the removal of the former regime agreed only on removing the former authoritarian and unaccountable leadership, and on the general desirability of constructing a more democratic and accountable system. Beyond that, both the process of constitutional drafting and the fundamental characteristics of the new democratic order were subject to widely different interpretations, particularly in a polity marked by polarisation on the secular or religious references underpinning the functioning of the state.

This paper explores how dialogue took place during the constitutional process, both formally through processes organized by the NCA and informally through processes engaged once disagreements surpassed the Assembly and spilled onto the streets. The paper focuses on the interplay between different forms of legitimacy; elective, popular, associative/corporatist, and numinous. It argues that the success of the Tunisian constitutional process was predicated on the acceptance by legitimacy-holders of the limits of their different kinds of legitimacy. At the same time, however, the operational compromise between different forms of legitimacy in a democratic transition tends to be fragile and conditional.

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Building legitimacy through dialogue within and beyond parliament in a democratic transition: a case study of Tunisia after the Jasmine Revolution

Introduction: The conditions for successful democratic transition

The success of the constitutional process and democratic transfers of power in Tunisia between 2011 and 2014 stands in contrast to other countries elsewhere in the Arab region (Hinnebusch, 2015), and indeed the experience of many other countries that have undergone revolutionary change after a long period of dictatorship. Despite having no significant tradition of democratic governance, in January 2014 Tunisia adopted a new constitution, supported by an overwhelming majority of democratically elected representatives from across the political spectrum, that has been widely recognised as adopting Tunisia's commitments and international best practices in human rights and democratic governance, while also reflecting the values of Tunisian citizens. The successful example of Tunisia's constitutional process – whatever the ultimate outcome of its overall transition in a difficult regional security and global economic environment – warrants careful review in order to understand both the challenges that the process encountered, and also the factors and approaches that enabled the successful result of the constitutional process.

There are numerous interacting reasons why countries emerging from revolutions frequently fail to institutionalise democratic systems. These include difficulty in establishing an 'elite compact' between different dominant factions in society (Higley and Burton, 1989), path dependency derived from an institutionalized legacy of authoritarianism (Mogaddham, 2013), failure to respond to the economic aspirations of citizens (especially in lower income countries) (Ruhl, 1996), and the absence of sufficiently robust countervailing forces to limit the power of particular dominant group(s) (Lipset, 1959). These factors are present in varying degrees in most, if not all, failures to consolidate democratic transition. Whether the failure results in a breakdown of public order, the outbreak of civil war, the re-emergence of an authoritarian regime, or a combination of all three, the common condition is the inability to achieve a new governance order enjoying consensual *legitimacy*; popular acceptance of authority.

The difficulties typically encountered in democratic transitions after a sharp rupture such as the Tunisian Revolution of January 14 2011 are hardly surprising. The very fact that a revolution took place in which the old order was forcibly swept from power demonstrates the former regime's absence of legitimacy. In the new context, legitimacy is again by definition absent at the outset of the transition and must be constructed during that transition. Given the inevitably heterogeneous composition of the different actors that came together to oust the former power, the nature of a new legitimate order is highly contestable. The period during which legitimacy is in the process of development and confirmation is extremely hazardous for a democratic transition because the different actors need to trust each other in a situation where they often have little reason to do so.

Transitions frequently end in some factions attempting to eliminate competitors; if they are successful, an authoritarian regime is installed; if not, a situation of chaos is likely to ensue.

Some circumstances contribute to the potential for the relatively speedy establishment of a legitimate order. For example, the countries of Central and Eastern Europe emerging from the collapse of Soviet domination were acutely aware that they had an opportunity to integrate into the considerably more affluent European Union, but that this would be conditional on establishment of democratic systems consistent with clearly established basic criteria of the EU. In other cases, a dominant opposition movement – itself enjoying considerable implicit legitimacy through support from an oppressed population – may effectively have been planning for a considerable period for the assumption of power, as was the case in South Africa. The end of the former apartheid regime thus led more or less smoothly to a legitimate interim governance structure dominated by the African National Congress, with both internal and international legitimacy to gradually establish a permanent democratic order. In South Africa's case a transitional constitution was in place for the four year period during which a new permanent constitution was under development; a timetable and process that was largely planned from the outset.

Three further broader conditions can facilitate the emergence of legitimate democratic governance. Firstly, countries that had previously been undemocratic 'outliers' in regions where most of the neighbours are democratic are more likely to successfully and smoothly develop democratic systems. For example the fascist regimes of Spain and Portugal had long been seen as anachronistic and out of step with the rest of Western Europe by the time both regimes ended in the 1970s. Secondly, countries that have a history of democratic rule that has been overthrown at some point by an authoritarian order are more likely to succeed in re-entrenching democracy. In these cases there are traditions and practices that provide a moral and practical roadmap to legitimacy. This was the case for example in Chile where the Pinochet dictatorship seized power in 1973 after the country had enjoyed varying periods of democratic rule over the previous century. Although the Chilean polity had endured a number of coup d'états since the initial development of democratic institutions in the nineteenth century, democratic accountability remained the established norm and thus the natural replacement to Pinochet's military regime. Finally, in general, the end of the Cold War limited the opportunity for potential authoritarian rulers to appeal to one superpower or the other for support in return for loyalty in the global geopolitical struggle. The collapse of the Soviet Union therefore led not only directly to the development of democracies in Central and Eastern Europe but also to the de-legitimation of authoritarian rule in former client states of both superpower blocs across the world during the 1990s, thus providing an opening for democratic movements.

Tunisia falls largely outside all of the predisposing conditions for the establishment and legitimisation of democratic rule. The country is not viewed as an imminently eligible candidate for European Union expansion, particularly in the context of European economic

crisis, the country's security challenges underlined by the two terrorist attacks on tourists in the first half of 2015, and growing European cultural isolationism in regard to Muslim populations. Tunisia's neighbours do not provide many inspiring democratic practices for the country to follow.

There was no single dominant and already legitimated opposition movement waiting in the wings to take of power and consensually establish a democratic order, as was the case, for example, with South Africa. Although the Islamist-oriented Ennahdha Party emerged from the October 23 2011 elections with a considerably larger share of the vote than any other political force, it still achieved only 37% of the vote (in comparison with the ANC's 62% of the vote in South Africa's first free elections in 1994), and its legitimacy to represent the Tunisian people as a whole was bitterly contested by substantial parts of the population and particularly by much of the country's traditional and business elites.

Tunisia had no history of democratic rule, having been dominated by the Ottoman empire, followed by French colonialism, and post-independence by authoritarian, personalised, one-party (and later quasi-one party) rule under first Habib Bourguiba and then Zinedine Ben Ali. Finally, the international context for a successful transition in Tunisia was not particularly positive. Although the international community welcomed the onset of the Arab Spring, this enthusiasm was rapidly mitigated with the emergence of instability within the region and realisation that democratic transition in the Arab region would not be straightforward. Further, initial optimism about the potential for Islamist parties to engage in liberal democracy was quickly eroded amongst some key segments of European political society in the face of trenchant criticism from within Arab secularist circles about the real or imagined 'double language' and even complicity in terrorism of the Islamist parties newly arrived in power in several countries including.

Competing legitimacies

The necessity for political and governance systems to enjoy legitimacy in order to permit stability and thus popular well-being has long been viewed as a central issue in political sociology. Weber (1984) identified three forms of legitimacy; traditional legitimacy, charismatic legitimacy, and rational-legal legitimacy. Traditional legitimacy, such as might be represented by a traditional monarch, had not existed in Tunisia at least since the abolition of the Beylical monarchy shortly after independence in 1956. Charismatic legitimacy, which was enjoyed at least for the earlier part of Habib Bourguiba's rule, certainly no longer existed under Ben Ali, and the Tunisian revolution was not led by any particular charismatic leader who could assume the mantle of legitimacy. The Ben Ali regime had depended on a mix of rational-legal legitimacy and authoritarianism drawing from the legitimacy of Bourguiba's post-independence state building. However the increasingly kleptocratic nature of the ruling family undermined the population's assessment of the state system as accountable (Beau and Tuquoi, 1999), leading to a number of worker uprisings and ultimately the development of a broad-based movement of opposition solidified in the

October 18 2005 Movement which had brought together opposition leaders from across the spectrum, from leftists to Islamists (Jourchi, 2013).

One other ground for legitimacy is numinous authority, that is authority emanating from a spiritual, religious or otherwise transcendent source. The rulers of both Saudi Arabia and Iran claim such a legitimacy and thus authority (Skelly, ed., 2009: 166). Tunisia's mainstream Islamists never formally assert their legitimacy on this basis, and indeed the international Muslim Brotherhood with which the Ennahdha party is associated has been frequently critical of the legitimacy of claims of numinous authority posited by the Saudi rulers. Nevertheless there is no doubt that a significant proportion of Ennahdha voters support that party because of its religious orientation and its commitment to incorporate Islamic principles in governance. Conversely, many Tunisian secularists derive their preferred model for the relationship between religion and the state from Bourguiba, Ataturk, and to some extent the French Republic, with religious institutions accountable to the state rather than vice versa, and a legal code largely based on a Napoleonic model. For many secularists, therefore, Ennahdha's politicisation of Islam delegitimizes the party as a normal actor in a democratic system. A major point of disagreement during the constitutional process, for example, surrounded efforts by Ennahdha to include wording defining the Islamic nature of the state, an initiative that was eventually dropped as part of the political accord that permitted the constitutional process to reach fruition². The debate regarding the legitimate role of political Islam within a democracy remains perhaps the most divisive within Tunisia, and indeed the Arab region as a whole (Hamid, 2014).

Despite many secularists' mistrust of Ennahdha's ultimate objectives, the party has formally committed itself to a liberal democratic model since its establishment during the brief 'Ben Ali thaw' of 1987, on the foundations of earlier Islamist groupings. With the far left parties equally having abandoned pretensions to establishing a 'popular democracy' in the Soviet sense³, and the leading acolytes of the former regime excluded from participation in the National Constituent Assembly, there was in principle near unanimity after the revolution that the new constitution would need to be grounded on rational-legal legitimacy grounded in democratic accountability. However, as the constitutional process unfolded, it became clear that the nature of democratic legitimacy needed to be defined, and that the traditional liberal democratic model of accountability through elected representatives was insufficient. This necessity of broadening and deepening representative democracy to include participation is in fact a feature of contemporary politics worldwide, in which citizens expect to be able to engage in a more or less continual dialogue on governance issues, both

² « Ennahda supprime l'article 141 définissant l'Islam comme religion d'Etat », October 31 2013, accessed at <http://www.islametinfo.fr/2013/10/31/tunisie-ennahda-suppression-de-larticle-141-definissant-lislam-comme-religion-d-etat/>. However Islamists were successful in having a phrase included in Article 6 of the Constitution that requires the State to "protect the sacred".

³ In which legitimacy was said to be naturally inherent in the Communist Party's objective representation of the interest of the population and the scientific will of history; opposition to the hegemony of the Party to derive from interests antagonistic to the nation, with their suppression thus justified.

through organised civil society and, especially at times of crisis, through the impact of popular protest. While some civil society leaders have claimed participatory democracy is 'more democratic' than representative democracy (Naidoo, 2003), there is increasing acknowledgment that effective democracy requires *both* representation and participation (Doherty, 2001). Both civil society and street protest played important roles at key moments in the democratic transition in Tunisia, but the representative institution of the National Constituent Assembly remained essential to the successful outcome of the constitutional process, as will be seen in the account presented below.

The immediate post-Revolution situation in Tunisia was characterised by considerable instability and popular contestation. With Ben Ali having fled to Saudi Arabia without having planned a succession, power fell unsolicited but according to the provisions of the then constitution into the hands of his former collaborators, particularly Fouad Mebazaa, the Speaker of the Ben Ali-era lower house of parliament, and Ben Ali's last Prime Minister Mohamed Ghannouchi. Dissatisfied with the possibility that the revolution would merely involve the removal of Ben Ali without a fundamental change in the nature of the regime, Tunisian citizens organized popular demonstrations that continued until Ghannouchi resigned on February 27 2011 (Angrist, 2013). During the same confused post-revolutionary period a Higher Political Reform Commission was established to develop a plan for democratic transition; the Commission eventually was merged with the Committee for the Defence of the Revolution to create, on March 15 2011, the Higher Authority for Realisation of the Objectives of the Revolution, Political Reform and Democratic Transition. This Authority, headed by the noted constitutional expert Yadh Ben Achour, was comprised of representatives of most political forces in the country (apart from the banned former ruling party) as well as leading civil society organizations including the powerful Tunisian General Workers Union (UGTT). The Ben Achour-headed body, whose membership gradually rose through co-option to exceed 150, established largely through consensus⁴ a roadmap for the transition including the holding of democratic multi-party elections to a National Constituent Assembly that would draft a new constitution. The roadmap was institutionalised in a temporary constitution adopted on March 23 2011⁵.

The inclusive character of the Tunisian transition and the attention paid to legitimacy was therefore already inscribed in the relatively early stages of the post-revolutionary period. This can be noted in three key aspects. First, the acceptance by Mebazaa and M. Ghannouchi and the other inheritors of power after Ben Ali's flight that popular contestation required the establishment of a new political order and not merely the replacement of the head of state through elections held under the old constitution; thus acknowledging that the legitimacy of the continuing popular uprising transcended that of

⁴ The Ennahda Party resigned from the commission at the end of June 2011 complaining that decisions were not being taken consensually.

⁵ Décret-loi n° 2011-14 du 23 mars 2011, portant organisation provisoire des pouvoirs publics, accessed at <http://www.wipo.int/edocs/lexdocs/laws/fr/tn/tn052fr.pdf>.

the formally existing constitution. Second, the comprehensive membership of the Ben Achour commission which included not only representatives of political parties but also of key civil society organizations including trade unions, human rights organizations and key professional associations such as the bar association. Third, the decision to proceed with the drafting of a new constitution through the popularly elected National Constituent Assembly (NCA), which would need to approve the new Constitution by a two-thirds majority, or failing that, through popular referendum. Because the NCA was to be elected through a proportional system that guaranteed representation of all but the very smallest political groupings, it was again clear that the transitional process was to be characterised by inclusivity, providing a foundation for a broad popular legitimacy.

The NCA elections resulted in a strong representation for the Islam-inspired party Ennahdha, led by the long-time exile and Islamic thinker Rached Ghannouchi (2013); with 37% of the votes, Ennahdha garnered 41% of seats. Other parties were far behind in terms of both votes and seats, and the secularist-oriented vote in particular was divided between a number of small parties. A governing coalition was established between Ennahdha and two smaller parties; the heterogeneous Congress for the Revolution which included both secularists and Islamists and was headed by the longtime human rights activist Moncef Marzouki, and the Ettakatol Party, Tunisian affiliate of the Socialist International (to which most European social democratic parties belong), headed by Mostapha Ben Jaafar. The governing 'Troika' appointed Marzouki as President, an Ennahdha leader, Hamadi Jebali as Prime Minister, and Ben Jaafar as President of the NCA.

Given both the lack of experience amongst the Tunisian political class in democratic-policy making and divergent visions of the preferred nature of the state, the constitution-drafting process was unsurprisingly marked by substantial contestation and a number of crises that threatened at times to derail the process. While the sharpest moments of popular contestation followed violent attacks (including an attack on the American school of Tunis on September 14 2012⁶, on the UGTT trade union on December 4 2012⁷, the assassination of the leftist party leader Chokri Belaid on February 6 2013⁸, and the assassination of NCA member Mohamed Brahmi on July 25 2013⁹) it can be argued that these disturbing events

⁶ Karen Brulliard, "In Tunisia, embassy attack tests fledgling democracy", *Washington Post*, September 20 2012, accessed at http://www.washingtonpost.com/world/middle_east/in-tunisia-embassy-attack-tests-fledgling-democracy/2012/09/20/19f3986a-0273-11e2-8102-ebee9c66e190_story.html.

⁷ Mohamed-Salah Omri, "Trade unions and the construction of a specifically Tunisian protest configuration", *OpenDemocracy*, 24 September 2013, accessed at <https://www.opendemocracy.net/mohamed-salah-omri/trade-unions-and-construction-of-specifically-tunisian-protest-configuration>.

⁸ Wafa Zaiane, "Chokri Belaid assassination prompts protests", *BBC News*, February 6 2013, accessed at <http://www.bbc.com/news/world-21349719>.

⁹ "Tear gas fired at Tunisian protesters: Police disperse supporters of assassinated politician Mohamed Brahmi, as they call for the government to be toppled, *Al Jazeera*, 28 Jul 2013, accessed at <http://www.aljazeera.com/news/africa/2013/07/201372710011814239.html>.

channelled into collective action what was already considerable disquiet about the constitutional process taking place within the National Constituent Assembly.

Legitimacy and public engagement

Structured public consultation was not formally required in the constitutional process adopted by National Constituent Assembly. Some members with legal expertise indicated that they had been elected to draft a constitution and that they had the expertise to do so on behalf of the people. In their view, public consultation would be little more than a 'sham' because the average citizen had little understanding of what would make for a good constitution. However, NCA members were also keen to respond both to the clear interest of the public and to follow contemporary international practices in the constitutional process which emphasize inclusive and participatory processes of constitution-making (Hart, 2003, Samuels, 2005; Landemore, 2014).

The NCA established six constitutional committees that were each to address one main thematic chapter of the new constitution. The work of the committees would be channelled through a coordinating committee chaired by the Assembly President Ben Jaafar, with the key Rapporteur¹⁰ position being held by the Ennahdha member Habib Kheder, who won a hotly contested vote against Fadhel Moussa, Dean of the law faculty at the University of Tunis and representative of the leftist-secularist Massar Party¹¹. It was agreed that the NCA members would form multi-party panels and visit all 24 of Tunisia's governorates¹² after the first draft of the new constitution was published at the end of 2012. In addition, numerous civil society organizations provided written and oral testimony to the various constitutional committees, and particular groups such as university students were consulted. The public hearings took place in a generally peaceful environment although there were a few small protests by Salafist groups inside and outside some meetings objecting to the 'Western imposition' of democracy on Tunisia. Both mainstream Islamists and secularist groups organized their supporters to give testimony in favour of their varying positions, allowing the spectrum of perspectives to be aired. Further constitutional drafts were developed over the next six months, mainly entailing a gradual relinquishing by Ennahdha of efforts to deepen the constitution's Islamic references, so that by July 2014 a relatively small number of points of clear difference remained to be hammered out by the NCA.

The formally consultative and publicly inclusive process and the relatively limited points of discord masked a deeper dissatisfaction about the process among key parts of the population, and specifically those with a secularist perspective. Increasingly, secularist voices began to question the democratic legitimacy of the NCA, particularly on the grounds

¹⁰ Effectively coordinator of the constitutional process.

¹¹ Asma Ghribi, "Ennahdha Candidate Wins Key Position for Drafting of New Constitution", *TunisiaLive*, February 2 2012, accessed at <http://www.tunisia-live.net/2012/02/02/ennahdas-habib-khedr-victorious-in-elections-for-constituent-assemblys-subcommittee/>.

¹² Equivalent to counties in an Anglo-Saxon context.

that it had exceeded its initially anticipated mandate of one year (although this time limit was not legally enshrined). The assassination of Belaid had resulted in very large demonstrations that led to the resignation of the first Ennahdha prime minister and the appointment of non-partisan ministers to head several key ministries, although constitutional development continued. The assassination of Brahmi five months later focused the resolve of the opposition to rebalance a transition process that they felt gave too much weight to the election results of October 23 2011 and paid insufficient attention to civil society, the perspectives of activists who had been instrumental in the January 2011 revolution, and the founding principles of the independent Tunisian state. The coup d'état that had taken place in Egypt in late June, overthrowing the elected Muslim Brotherhood government, raised further questions about the outcome of the Tunisian transition.

The question of the legitimacy of the transition became paramount and was played out first on the streets. Large opposition demonstrations were organized regrouping secularist civil society, political parties, union supporters, and many non-affiliated citizens who felt that the goals of the revolution were being subverted towards Islamist objectives. A social media-driven homonym of the Tamarrod (Disobedience) movement that had led secularist street protests in the run-up to the Egyptian coup briefly commanded attention with its claims of massive endorsement of its call for the dissolution of both the Troika government and the National Constituent Assembly and for the constitution to be written instead by a committee of experts. While a number of opposition parties publicly called for the dissolution of the National Constituent Assembly, privately most opposition party figures acknowledged the dangers entailed in dissolving state institutions and ceding power to some unspecified and unaccountable group of experts. Instead, while insisting that the government would have to resign in favour of a non-partisan government of 'technocrats' to manage the organization of elections following constitutional adoption, most mainstream opposition figures acknowledged it was necessary for the NCA to remain in place, albeit with circumscribed roles and powers.

It was at this point of the transition – the late summer of 2013 - that the legitimacy of the transition process reached its nadir. With a different balance of institutional forces in Tunisia, another institution, such as the military, may well have seized power claiming the mantle of representing the legitimacy of higher national interest. The institutionalized non-involvement of the armed forces in Tunisian politics, which both Bourguiba and Ben Ali had been careful to assure, limited this risk, and forced the different main forces in Tunisian society to find a compromise through dialogue leading to a renewed legitimacy of the transition process.

The particular configuration of organized groups in Tunisia assured that no single group had sufficient capacity to convert itself into a hegemonic force capable of subjugating or sublimating its competitors. The initial flare of publicity for the Tamarrod group subsided amid doubts about its claims to have gathered more than a million signatures demanding

the dissolution of the National Constituent Assembly¹³. The regular secularist demonstrations and the sit-in outside the ANC continued to draw large numbers but as the weeks passed by it became clear that there was a slow but steady dissipation of energy. The pro-Islamist forces also failed in their attempt to show that they had overwhelming support. In an attempt to demonstrate their superior capacity for mobilisation of their base Ennahdha and its allies promised a ‘million-person’ demonstration at government headquarters, the Kasbah, on August 3. About one-fifth of the promised million actually appeared¹⁴.

Ultimately, the absence of a sole (electoral) legitimacy was confirmed by the decision of the NCA President Ben Jaafar to suspend the work of the NCA from August 6th in order to permit discussion between political and social actors to find a compromise. The suspension acknowledged the legitimacy of the street protests and of the opposition boycott. While some supporters of the Troika coalition with a majority in the NCA (and of which Ben Jaafar himself was part) contested the decision and threatened to have Ben Jaafar replaced, these demands either came from fringe anti-secularist parties¹⁵ or appeared (as in the case of many opposition calls for dissolution of state institutions, discussed above) to be a bargaining position to maintain pressure on opposition politicians to return. Ennahdha in particular held to a cautious line in expressing ‘concern’ about the suspension of the NCA plenaries, while ‘hoping’ that this would permit compromise to emerge.

The autumn months of 2013 were characterised by a gradually emergent pattern in which the different political actors – reflecting the different legitimacy claims - moderated their initial positions, informal shuttle diplomacy occurred between the major actors, while various initiatives were launched to help mediate a compromise.

The rise of associative legitimacy – the National Dialogue and the search for compromise

The decisive breakthrough in the constitutional process involved the emergence of the so-called Quartet; four major Tunisian organizations including most prominently the General Union of Tunisian Workers (UGTT) – by far the largest and historically most influential of Tunisian union centrals, the UTICA employers association, the Tunisian Human Rights League (LTDH), and the Tunisian Bar Association. Together, these groups represent the most important pillars of the associative organization of post-independence Tunisian society. While all of them had to some extent been forced to compromise with the former regime,

¹³ Hamza Marzouk, “ Le Mouvement Tamarrod atteint plus d’1 million de signatures, .L’Economiste Maghrebin, accessed at <http://www.leconomistemaghrebin.com/2013/09/02/le-mouvement-tamarrod-atteint-plus-qu1-million-de-signatures/>.

¹⁴ “Manifestation massive des partisans d’Ennahda”, *Nouvel Observateur*, August 4 2013, accessed at <http://tempsreel.nouvelobs.com/monde/20130804.OBS2151/tunisie-manifestation-massive-des-partisans-d-ennahda.html>.

¹⁵ On 27 September 2013, for example, Abderaouf Ayadi, the leader of the Wafa party, criticised the Quartet’s efforts to organize a National Dialogue which he argued undermined the election results of 2011 and were a step towards the installation of an anti-democratic regime.

they had retained legitimacy as vehicles for the expression of citizen perspectives, articulation of social and economic concerns, and negotiation with the former regime. Unlike the fledgling civil society organizations that had mushroomed after the revolution, whose real social base was often ephemeral, substantial symbolic capital (Bourdieu, 2000) inhered in the UGTT and its allies, symbolic capital that assumed even greater importance in the post-revolutionary legitimacy void. The Quartet, through its four member institutions, could with some justification claim to represent organically, without having been formally elected, the perspectives of much of the social foundation of the Bourguibist state; workers and managers in the large state and state-associated sectors which were the cornerstone of the country's post-independence development strategy, and the largely secularist intelligentsia created through the new country's massive increase in public education provision. The Quartet, thus, reflected the third crucial aspect of legitimacy in the post-revolutionary environment, the legitimacy of the nation's anchoring institutions, what I will call an associative¹⁶ legitimacy.

The key role played by the UGTT in the transition is explored in more detail elsewhere (see for example Yousfi, 2015). However, one particularly striking phenomenon was the UGTT's transformation during the 2013 crisis from an organization generally perceived as partisan (organising street demonstrations against the Troika government after the assassination of Brahmi) into a widely respected broker between actors from across the ideological spectrum. Indeed, as discussed earlier, since the revolution, several physical attacks had taken place on UGTT activists and premises, widely attributed to the Leagues for the Protection of the Revolution, itself commonly assumed to be close to Ennahdha, if not its implicit pseudo-militia. Relations between Ennahdha and UGTT leaders through 2012 and 2013 were cold at best, with Ennahdha frequently refusing to engage UGTT on the grounds that the former's electoral legitimacy trumped any legitimacy claims of the UGTT. Key to this transformation was the peace-making between UGTT leader Houcine Abassi and Ennahdha chief Rachid Ghannouchi; acknowledgement by each of the legitimacy of the other's organization's role.

The 'National Dialogue', which brought together representatives of all the different political parties with elected deputies in the ANC along with civil society participants, began its formal work on October 7 2013. Although the National Dialogue was an entirely voluntary initiative with no legal standing, it was quickly almost universally accorded legitimacy equalling or surpassing that of the parliament and government. While the dialogue deliberations took place behind closed doors, the points of discussion and discord were immediately relayed to the media. Despite a considerable amount of brinkmanship on the part of the competing participants, the Dialogue proved an effective forum for addressing the main points of contention; passage of the Constitution, replacement of a political

¹⁶ This type of legitimacy is typically described as 'corporatist' but given the wide current use of the term 'corporation' I believe the former term can lead to confusion and that the word 'associative' better describes this form of legitimacy claim.

government (dominated by the Islamists of Ennahdha) with a technocratic government, and agreement on the organization of elections in 2014.

Constitutional agreement and the foundations of a new institutional order

The National Dialogue was successful in stabilizing the political situation and enabling a framework accord that permitted the NCA to recommence work including on the Constitution, at the beginning of January 2014. Interestingly, while the National Dialogue had been grounded particularly on an extra parliamentary, associative legitimacy of the Quartet members, it at the same time its main participants were representatives of political parties that held seats in the NCA, and further, the Dialogue did not seek to replace the NCA as legislative body. The Dialogue's decisions were ultimately submitted to the NCA for that body to incorporate them in the constitutional text, in the approval of a new technocratic government, and in establishing the framework for the organization of the 2014 legislative and presidential elections. The majority of political actors – even while refusing the NCA unbridled legitimacy - recognised the danger of dissolving the country's only elected body and asserting an untested popular and / or associative legitimacy.

Further, the NCA did not simply play the role of a rubber stamp for the decisions of the Dialogue. A balance was struck between acknowledging and respecting the agreements reached at the National Dialogue and the continuing role of the Assembly as a place for the scrutiny and amelioration of legislation. An innovative parliamentary structure, the Compromise Committee, had already been established prior to the August 6 suspension of parliamentary business, comprised of representatives of the different political groupings. This Commission came to play a crucial role in the last weeks of the constitutional debate once the Assembly recommenced work on the Constitution at the beginning of 2014. With the plenary debating constitutional clauses one by one, when major disagreements were encountered, the article was set aside for the Compromise Committee¹⁷ to discuss. Despite some heated debates within the plenary sessions in January 2014, and the adoption of some important revisions to the constitutional draft (mainly but not exclusively strengthening secular rights and freedoms), the plenary debate and article-by-article voting on the constitutional draft was remarkably efficient, taking only three weeks from its beginning until the overwhelming vote in favour of the full draft on January 26 2014.

While the constitution was voted by the elected National Constituent Assembly, its broad acceptance both among parliamentarians from across the political spectrum, and wider civil society, was clearly the result of the interplay of the three competing legitimacies: electoral, popular, and associative. The goodwill across political society that predominated for a few months after the constitutional adoption allowed the same compromise-driven consensus approach to be used in the adoption of election-related legislation and the establishment of

¹⁷ The name of the Committee is sometimes translated as Consensus Committee.

a calendar for the new parliament, the Assembly of the Representatives of the People, and the presidency, in the last quarter of 2014, meeting the constitutional deadline.

Achievements and revealed fragility of the constitutional compromise

The electoral processes of 2014 were marked by two contradictory developments within the political class. Despite the inevitable frictions and accusations in a heated election campaign, and brief fears that the losing presidential candidate would make a serious effort to challenge the results, including through popular mobilisation, in the end the second democratic elections passed peacefully and again with a shift in power. The Nidaa Tounes party, itself a coalition of different anti-Islamist tendencies, supplanted Ennahdha as the largest party in parliament, but like Ennahdha in 2011, was well short of a majority with 86 out of 217 members. Ennahdha came a strong second with 69 seats, with businessman Slim Riahi's Free Patriotic Union (16 seats) and the leftist Popular Front (15 seats) well behind, followed by the liberal secularist Afek Tounes (8 seats), a handful of independents and remnants of the centrist parties from the National Constituent Assembly. In the presidential election the Bourguiba minister and 2011 transition prime minister Beji Caid Essebsi defeated the 2011 – 2014 interim president Moncef Marzouki, tacitly supported by many Ennahdha activists¹⁸ by a clear, if relatively narrow, margin of 56% to 44%.

The failure of the centrist parties who had insisted on dialogue between the 'Islamist' and 'secularist' camps was the most notable feature of the 2014 election. The poor results of Ennahdha's two coalition partners from 2011 to 2014, Ettakatol and CPR, could be seen as a predictable anti-government sanction that typically falls hardest on junior coalition partners, as seen once again in the UK election of 2015. However, even the centrist parties that remained outside the 2011 – 2014 governments scored poorly. Some problems of the centrist parties were of their own making; both the CPR and the Republican parties fell apart into different splinter groups, none of which had sufficient critical mass or public profile to mount effective campaigns¹⁹. Centrist parties in many countries have difficulty asserting themselves, particularly in a politically polarised environment. The most evident prima facie explanation for the parties' poor showing derives from this 'squeezing' effect, particularly due to the effectiveness of Nidaa Tounes's 'make your vote count' campaign, which was a clear call to prioritise ejecting Ennahdha from power over any other partisan political interests.

However, in contrast with more institutionalised democratic systems, the squeezing out of discourses of compromise and moderation in the late 2014 election campaign highlighted

¹⁸ But not by its top leadership, which remained scrupulously neutral and indeed in the second round was accused by Marzouki supporters of tacitly endorsing Essebsi.

¹⁹ Apart from Afek Tounes which performed relatively well in the election of 2014. It is however a case apart, as the organization has a clear neoliberal ideology and target audience (pro-business entrepreneurial and professional elites), had existed prior to its merger with the Republican Party, and remained practically and ideologically if not organizationally distinct. In any event Afek scored less than 2% of the popular vote in earning its 8 seats.

the relative fragility of the Tunisian settlement. The bipolarisation of the election campaign between 'pro-secularist' and 'pro-Islamist' forces, and the entrenchment of longstanding regional cleavages in the election results and subsequent protests against those results in the country's south, demonstrated the continuing mobilising potential of Manichean discourses that frequently barely respected the 'Other's' right to exist. The anti-Islamist campaign underlined the claimed danger that another Islamist victory would result in the adoption of repressive Islamist rule, while on the other side, particularly during the presidential election, secularist forces were accused of representing a return to the days of repressive dictatorship. It was clear that the constitutional accord had not resulted in an institutionalized acceptance of the democratic legitimacy of competing political forces. Respect for democratic processes often appeared to be more a result of a recognition of the realpolitik of each side's inability to exclude the other, rather than a respect for the right to disagree that lies at the heart of an 'agonist' political settlement (Mouffe, 2013).

The Islamists' dilemma

Despite Nidaa's clear advance over Ennahdha in terms both of votes and seats, they remained 23 seats short of a majority in the 217 seat Assembly. Inability of any party (or obvious coalition) to win an outright majority led to several months of horse-trading including an abandoned attempt to nominate a minority Nidaa Tounes government. In fact many national and international observers suspected the lengthy government-formation drama to be an elaborately choreographed demonstration by Nidaa leaders to the party's activists that there was no choice but to accept an alliance with Ennahdha, notwithstanding Nidaa's electoral campaign having been built around the absolute necessity of removing Ennahdha from power.

Despite having secured three-quarters as many votes and seats as Nidaa, and having overwhelmed Nidaa in much of the south of the country, Ennahdha eventually accepted a very junior role in the coalition, with only one full minister out of 26, Employment Minister Zied Laâdhari, along with three junior minister positions. This compares for example with Afek Tounes, which received three full cabinet positions in the new government headed by new Prime Minister Habib Essid, despite having secured only one-fifteenth of Ennahdha's popular vote (1.9% versus 27.8%).

Ennahdha's strategic acceptance of what at first glance appeared a poor deal, was driven by the party's decision to privilege its acceptance as a legitimate political force by the new government over a demand for its fair share of ministerial positions. Although Ennahdha's leader Rached Ghannouchi claimed that this was because of the party's commitment to a successful outcome for Tunisia ('better to be in the back half of the boat helping to row, than capsizing the boat'), party leaders saw little choice but to accept any deal that allowed it to survive as an accepted and mainstream political force. In the wake of the coup in Egypt in 2013, and by now fully aware of the continuing challenges to the party's legitimacy, underlined in the secularists' mobilizing discourse of the 2014 election campaigns.

Ennahdha leaders needed to avoid being cornered into an opposition role where party members' social conservatism would be highlighted and tied to the still redolent accusation of the Ben Ali propaganda machine that Islamists seek to impose a repressive theocracy. Thus, again, Ennahdha needed to distance itself from the accusation of claiming 'numinous authority', without losing much of its base, for whom its status as a religiously-inspired party was a key mobilising point.

The practical impact on political life of Ennahdha's stance has been the effective sidelining of the most organized and strategically capable political force in the country from carrying out effective government oversight. Ennahdha's reticence is particularly noticeable within the parliament (the renamed Assembly of Representatives of the People – ARP), where for example security related legislation that is widely criticised as repressive by the international human rights community, and which would almost certainly be mainly used against Islamists, has encountered little overt resistance from the large Ennahdha caucus.

The dual threats from jihadism

The first months of 2015 plunged the country back into crisis. The delays in formation of the new government caused a slowdown in the reform agenda that had been embarked on by the 'technocratic' government of Mehdi Jomaa that was in power through most of 2014 and early 2015. But the big blow came from two major terrorist attacks on foreign tourists – an important contributor to the already struggling Tunisian economy – the second of which in Sousse on June 26 2015 resulted in 38 deaths and the wholesale evacuation of a large proportion of foreign tourists from the country, effectively curtailing the 2015 mass market tourist season.

The question of state legitimacy is posed in its starkest form by the jihadist attacks, both in terms of the direct threat to state stability posed by the attacks, and the risk that state response to the attacks will result in the exclusion of important forms of legitimacy that permit a democratic order to be broadly anchored.

The jihadist approach has many parallels with that of the leftist Red Brigades in Italy in the 1970 (Orsini, 2011). According to Brigade theorists, terrorist attacks or kidnappings would result in heavy handed repression which would then swell the ranks of revolutionaries and lead to a revolution. The Red Brigade strategy was largely ineffective. However from 2001 Al Qaeda and other violent jihadists adopted a similar strategy; aiming to demonstrate the weakness of the state with the hope that this would lead to an overreaction by state forces, rising tensions and ultimately the collapse of the state.

This jihadist strategy continued in Tunisia in 2015. During a July 4 2015 speech on national TV announcing the reimposition of a state of emergency, President Essebsi surprisingly warned Tunisians that if a Sousse-type attack "were to happen again, the country would collapse". Perhaps unsurprisingly, Islamic State propaganda on social media responded by

claiming that the imposition of the state of emergency was proof of the success of their attacks. The security threat provided an impetus for the government to push forward with tightened anti-terrorist legislation, as well as promises to close down mosques that had fallen under the control of extremist imams, and the proposed banning of the fundamentalist Islamic party Hizb-ul-Tahrir, a movement hitherto widely viewed as peaceful.

While electronic news sites and social media networks had always included many trenchant critiques of the role of international human rights organizations in supposedly hampering effective security work, and thus wittingly or unwittingly giving succour to jihadists, explicit attacks on the 'foreign interference' of international NGOs and even of foreign governments moved into mainstream print media after the Sousse attack. This demonization of foreign influence, long a mainstay of the Ben Ali era, promotes the idea that there is a dark conspiracy against the state, constructing an argument for the delegitimisation of international NGOs, as has occurred in Egypt after the military takeover in 2013. An editorial in the state-owned daily *La Presse* on July 9 2015 calling for international NGO's to be 'stopped' from 'undermining' the anti-terrorism law by questioning its respect of human rights and the rule of law. This was followed on July 13 2015 by another editorial²⁰ that responded to the British decision to recommend its citizens leave Tunisia due to security concerns by suggesting that Britain is providing a 'royal welcome' to jihadists who it claimed were behind the Sousse attack and failing to investigate these supposedly UK-based terrorist masterminds. The same day, a column in the competing *Le Temps*²¹ suggested that 'after having been a Qatari-Turkish vassal', Tunisia is about to become an American "protectorate", with what appeared to be an attack on the twin threats of the 'medieval Islamists' of Ennahdha and the 1950's style communists of the UGTT trade union movement.

By the summer of 2015, therefore, there were signs that discourses of tolerance were being replaced by an emphasis in official publications and statements on the existential threat faced by the country, the imposition of a series of somewhat arbitrary restrictions on freedom of speech and movement, and the evoking of conspiracies against the Tunisian state. The mainstream Islamists and the UGTT union - two of the key actors in the interwoven legitimacies of the constitutional settlement process - were under pressure and presented not as pillars of a legitimate order but threats to the state.

The worrying developments in Tunisia neither detract from the successful transition from 2011 to 2014, nor do they necessarily presage a sharp return to a narrowly based and repressive governance system. Freedom of speech – despite being subject to occasional arbitrary attacks by largely unreformed state security and justice systems – continues to flourish especially in increasingly sophisticated online media and social media. Small opposition parties within the parliament have been vocal in challenging government

²⁰ Said Benkraiem, "Une réaction demesuree", *La Presse*, July 13 2015, page 1.

²¹ Khaied Guezmir, "Aux nouveau protectorats: Le Tunisie n'est pas à vendre", *Le Temps*, July 13 2015, page 3.

actions. Organized civil society, while often reticent to take the side of 'Islamists', continues to press for respect of personal freedoms, and the new constitutional framework of rights and liberties has resulted in the flourishing of hitherto unheard voices, including the country's first open campaigning for gay rights.

The international community can play an important, and possibly decisive role in Tunisia in the next period. The country clearly requires external support to counter the security threat posed by jihadists, who operate relatively freely in much of neighbouring Libya. At the same time it is important for Tunisia's Western allies to understand that a purely security-oriented approach – especially if implemented arbitrarily - will only recreate the cycle of repression and radicalisation that many Arab countries have been facing for decades. The longer term solution must include support to Tunisia in implementing the provisions of its democratically drafted and adopted constitution, and particularly in strengthening democratic institutions. Tunisia's parliament must be empowered to effectively exercise its substantial constitutional roles of legislation, oversight and representation. Through effective parliamentary oversight, government transparency and accountability will be fostered, reinforcing state legitimacy. Through effective representation, parliament can ensure that the diverse voices in Tunisian society are heard, respected, and included, reducing the attraction of exit, whether in a desperate search for economic security across the Mediterranean, or in the even more doomed aspiration to die a martyr in the killing fields of the Levant.

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