Global Dialogues 7

The Tunisian Constitutional Process: Main Actors and Key Issues

Mathieu Rousselin, Christopher Smith (eds.)

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Introduction

Religion and Politics in Post-Revolutionary Tunisia

Mathieu Rousselin
and Christopher Smith

In the wake of the successful social movement which ousted from power Tunisian dictator Ben Ali, the elections of October 2011 gave a majority to the Islamic political party Ennahda within the Constituent Assembly. The party therefore played a leading role in drafting the new constitution and controlled the executive from December 2011 to January 2014 (Hamadi Jebali and Ali Larayedh governments). During this period, Ennahda has been repeatedly accused of seeking to 'Islamize' society as well as of monopolizing the main positions of power in the state apparatus via the appointment of trusted people in the administration, in the judiciary or in the media. These attempts have been met with criticism from secular political opponents, resulting in a deep societal split regarding the desirable articulation between religious and political spheres. This split was eventually overcome in the framework of the National Dialogue and led to the formation of a technocratic government under Mehdi Jomaa a few days after the adoption of the new constitution (January 2014).

At the very heart of these developments lies the debate on the respective role of religion and secularization in democratization processes. This debate is itself organized around two main bones of contention. The first issue is the extent to which secularization is a necessary condition for successful transition processes. Indeed, democratization and modernization were largely achieved in Western Europe in a process whereby religious forces were progressively pushed out of the public sphere, a development which is epitomized in the French law on the Separation of the Churches and the State (1905) and in Mustafa Kemal Atatürk's reforms of the 1924 Constitution in

Turkey. The second issue is the role of religious political parties as lawful actors within the political arena. Indeed, Islamic political parties such as the Ennahda often draw the comparison between their political platforms and that of Christian-Democrats in Western Europe, arguing that European fears of a purported 'Islamization agenda' are either misguided or are the product of a climate of suspicion targeting Islam in particular. The validity of this comparison is strongly criticized by secular parties which underline the incompatibility between parts of the electoral platform of Islamic parties and fundamental democratic principles such as the equality between men and women, the secular character of the state and the freedom of conscience and expression (in particular, the right to question 'the sacredness of Islam').

Against this background, this edition of the Centre for Global Cooperation Research's Global Dialogues consists of five articles that reflect on the domestic, international, legal, and economic implications of religion and politics in the context of post-revolutionary Tunisia. This multi-disciplinary piece provides both casual onlookers and experts alike with an essential, comprehensive understanding of this event. This contribution is the result of a Global Dialogues event and an accompanying workshop which took place in Duisburg in May 2014. The articles draw inspiration from and add to the issues discussed at both of these events.

In the introductory article 'The Arab Political Transition and Post-Islamism', Professor Hamadi Redissi explores the concept of 'post-Islamism' in the context of the pre and post-revolutionary Arab world. In the immediate aftermath of the Arab Spring, many optimistic observers claimed that a revival of 'post-Islamism' was upon us; that is, a new era marked by the victory of religiously-inspired humanist reason over theocratic folly. Redissi rejects these suggestions by submitting that they are misguided attempts to reframe the aftermath of an event that has not led to much substantial political change among Islamic forces. In fact, he finds that supporters of a supposed 'post-Islamist' transition fail to take into account many of the vital facts at the heart of the revolutions and political regimes which arose shortly thereafter. Instead, they have simply recycled a popular concept from the 1990s in order to claim victory. Redissi suggests that we are witnessing the opposite. The real triumph of the Arab Spring lies with political Islamism, whose sympathizers have been able to seize power all across the region.

This introductory contribution is followed by three articles which examine substantive changes in the post-revolutionary era by examining the case of Tunisia from different perspectives. The first article is a legal analysis of the new Tunisian constitution by Tunisian legal scholars Elyès Bousbih and Abderrahmen Yaalaoui. In this piece, Bousbih and Yaalaoui

particularly focus on the prevalence and implication of clauses related to religion and its place in Tunisian political life. They take into account their relation to the previous Tunisian constitution under the autocratic regime to provide insight on how religion is dealt with differently. Most strikingly, the new constitution manages to both retain and add articles explicitly mentioning religion. Bousbih and Yaalaoui find it is impossible to analyze the new constitution without significantly taking the context of the previous constitution into account. They reach what some legal scholars would consider a controversial conclusion by claiming that the new constitution is more liberal concerning Islam and the tolerance of other religions.

Markus Böckenförde provides a complementary, albeit differently angled, legal perspective by commenting on the dynamics of the Tunisian constitutional process. He argues strongly that this process is a shining example of a constitutional democracy in the Islamic world thanks both religious and secular political actors' unbudging commitment to compromise. This has resulted in an occasionally ambiguous constitution, which nonetheless managed to strike a workable balance for both factions. Böckenförde uses Alfred Stepan's concept of 'twin tolerations' to highlight how religion and democracy can successfully coexist. Finally, Böckenförde exposes the clear Islamophobic hysteria exhibited by many Western observers throughout the constitutional process in Tunisia. He finds that oftentimes the Tunisian constitution is just as, if not in parts more, progressive as the constitutions of its Western European counterparts, which do not incite any substantial criticisms from the very same organizations.

Mathieu Rousselin provides a counter-narrative to the mostly exclusive focus on religion and democracy by questioning if religion is truly the main source of cleavage in Tunisian politics. He finds that religion is indeed an important factor, but simultaneously submits that a much more important matter is lost in this focus: economics. Rousselin tackles this issue by analyzing various parties' platforms on structural adjustment programs and other neoliberal reform agendas in two steps. First, he examines political parties' stances on religion and sees if this has any discernable influence on their approach on economic reforms normally pushed by Western international institutions such as the IMF, the World Bank, and the EU. Rousselin finds that religion seems to play a minimal role in parties' approaches to economic reform. Instead, as some would expect, an explicit party platform against the neoliberal world order seems to play a much more dramatic role in how parties approach economic matters. Even Ennahdha, a strong advocate for 'social justice', tellingly seems to offer no alternative and instead follows many of the same positions seen among liberal political forces.

In the concluding article, Laura-Theresa Krüger and Edmund Ratka examine the remarkable differences between German

and French approaches to 'post-revolutionary' Tunisia. This is done with a particular emphasis on how both countries have dealt with political Islam. By adopting a constructivist analytical framework, Krüger and Ratka find that each country's history and political culture have a significant effect on how they negotiate and react to developments in each state. Germany, with its deeply-anchored Christian Democratic tradition, often handles developments with much more openness and is able to consequently inspire more trust and exert more influence on Tunisian politics. France, with its complicated past as a colonial and post-colonial power, acts with much more hesitation and is therefore often reacted to with skepticism by major Tunisian political forces. It is especially France's tradition of laicism which often prevents it from acknowledging the compatibility between democracy and religion in the public sphere. This international perspective helps to clarify how international actors act differently in a delicate period of political transition.

Readers receive a critical understanding of post-revolutionary Tunisia thanks to the encompassing approach presented in this edition of Global Dialogues. Indeed, these pieces highlight the complexity and many intricacies of the constitutional process and the political landscape in contemporary Tunisia. They add much-needed insight to a debate which often deserves more consideration than currently given. It reminds us that such drastic societal change has implications for a whole spectrum of issues on both domestic and international levels that must be carefully scrutinized by observers and citizens alike. These phenomena can only truly be understood when we unite theoretical research with area studies, commit to interdisciplinary research, and shift away from conventional transformation research following a simplistic, linear grasp of politics. This contribution holds true to this belief, and in doing so provides new incentive to continue a global dialogue on the contentious role of religion in political life.

The Arab Political Transition and Post-Islamism

Hamadi Redissi

I would like to discuss a thesis at the core of the Arab revolutions: It submits that we are entering a 'post-Islamist' era marked by the end of millennial Islamist utopia and the beginning of religious diversification. It has been said that a paradigmatic shift is afoot. The term 'post-Islamism' is subject to the same epistemological reservations attributed to Gehlen's 'post-history', 'post-modernism' in literature, and Habermas's 'post-metaphysical' approach. After the revolutions, Asef Bayat, who in 1995 became the first intellectual to discuss this, repeated its tenants word for word: 'Post-Islamism is not anti-Islamic or secular; a post-Islamist movement dearly upholds religion but also highlights citizens' rights. It aspires to a pious society within a democratic state'[1]. As reworded by Olivier Roy, post-Islamism in general implies a series of processes: realism replaces ideology, acceptance of the nation state supersedes pan-Islamism, democracy eliminates jihadism, and Islamic identity progresses beyond mere normative concerns[2]. It is submitted that these changes occurred before the revolution, and as a result an opportunity was created for their full implementation. Is this really the case?

[1] Bayat, Asef (2011). 'The Post-Islamist Revolutions', *Foreign Affairs*, 26 April, available at http://www.foreignaffairs.com/articles/67812/asef-bayat/the-post-islamist-revolutions.

[2] Roy, Olivier (2011). 'L'entrée dans une ère postislamiste?', *Esprit* 12 (December): 107–15.

Post-Islamism in Practice

In its initial form, post-Islamism had no relationship whatsoever with the Arab revolution. It referred more to post-Khomeinist Iranian society, which had been disillusioned after experimenting with radical Islamism that had exhausted its potential and was called into question by even its most ardent supporters: 'As such, post-Islamism is not anti-Islamic, but rather reflects a tendency to resecularize religion'. It is a kind

of 'fusion' between faith and individual rights, an 'association' between democracy and modernity. Bayat attributes post-Islamism to the unfulfilled promises of a revolution which was unable to reduce social inequalities and thereby led both a demoralized youth towards nihilism and women coerced into wearing the veil toward revolting[3]. The term was used again in 1999 by Olivier Roy in the wake of the failure of political Islam (1992): 'Why "post-Islam"? Firstly, it is a matter of admitting that political Islam has failed; that is, the construction of an Islamic state which governs society according to Islamic principles'[4]. This conclusion is definitive: 'Political Islam finds itself today at an impasse'. When confronted with reality, the Islamist state project trivializes itself by the mere fact that its multiple strategies no longer have anything to do with coming to power. Paradoxically, post-Islamism allows for secularism or laïcité (not necessarily based on the French model) and leads to a redirection of Islamism outside of the political sphere. 'Our thesis is therefore that the structure of post-Islamist Islamization does not correspond to a decline of religion, but rather to a form of secularization of the space within which religious practices are developed'. Therefore, Islamic parties 'weaken' and 'trivialize' themselves. They are no longer able to capture the essential nature of the movement; they go from revolutionary contestation to 'neo-fundamentalism' or a 'legal post-Islamism'. That is, toward a more identity-based Sharia than one established as law. Islamization therefore works well with Westernization during a time in which religious affirmation is becoming increasingly individualistic[5]. When taken as a historical category, these are the most prominent forms of post-Islamism. Asef Bayat has expressed his reservations of an approach which associates post-Islamism with a 'privatization of re-Islamization'. He perceives post-Islamism as an analytical category, as both 'circumstance and project': 'Post-Islamism is neither anti-Islamic nor non-Islamic nor secularist'. Instead, it represents a tendency to combine religiosity with rights, faith with autonomy, and Islam with liberty'. It highlights rights over duties, features plurality as an alternative to singular voices, historicity over scripturalism, and the future instead of the past. All in all, he wishes to construct what has been called 'alternative modernity'[6]. He sees post-Islamism spreading everywhere, from Iran to Shiite Lebanon, from Turkey to India.

What about the revolutions? The Arab Spring does not seem to change both authors' perception. Much to the contrary, it is an opportunity for them to revisit their revolutionary analyses verbatim. Both authors see Islamist actors pursuing a democratic conversion that began before the revolutions.

In fact, far from being novel, the mentioned changes predate the 'revolution'. They are not related in any way to the diversity of Islamism. Instead, they refer to one of the fringes

[3] Bayat, Asef (1996). 'The Coming of a Post-Islamist Society', *Critique: Critical Middle East Studies* 9 (Fall): 43–52.

[4] Roy, Olivier (1999). 'Avant-Propos. Pourquoi le «postislamisme»?', *Revue du monde musulman et de la Méditerranée* 85-86: 9–10.

[5] Roy, Olivier (1999). 'Le post-islamisme', *Revue du monde musulman et de la Méditerranée* 85-86: 11–30.

[6] Bayat, Asef (2007). *Islam and Democracy: What is the real question?*, ISIM paper 8, Leiden: Amsterdam University Press, 17–21.

of political Islam which since the 1980s has been committed to acting within the institutional framework by means of an ideological shift. Paradoxically, as evoked by Olivier Mongin, this reversal does not appear to be an obstacle to 'the electoral victory of an Islamist party that would have learned the lessons' brought by the end of utopia and jihadism[7]. The truth is that the following novel question remains relevant for 'revisionist' Islamists, who had already achieved a few electoral successes in an authoritarian context throughout the Arab world: What are the reasons for a revolution that began on 'liberal' grounds and ended with a runaway Islamist electoral success? If one agrees that political Islam had been steadily maturing for over two decades, one is forced to look elsewhere for the reasons behind this political success. For example, by examining a democracy that sought to be *prima facie* 'Islamic', and also, come election time, allowed religiously-inspired parties to make all the difference. Islamist parties have undoubtedly changed, but to refer to them as 'Islamo-conservatives' or 'right-wing' already anticipates a stage frankly beyond their life course. It should not be excluded that the Islamist democratic victory clears the way toward the trivialization of both Islamism and an Islam that 'is soluble at the ballot box'. One starts to dream of a stable and perpetual Arab democracy, within which political Islam takes turns at ruling and is not just offered as a radical alternative. The opposite perspective of a 'soft' Islamization is also plausible and will be judged on its own merits. There are, however, plenty of signs which suggest that this is not as fanciful as many would like us to believe. Indeed, political Islam claims to find itself boisterously challenged by Salafism. This has only led to moving the Islamic cursor toward a 'new right' that has once again taken up topics seen negatively in political Islam and normalized in post-Islamism. As soon as one form of political Islam starts to dim and another follows suit, it seizes its theses and occupies a 'missing structure'. It is not disputed here that the religious sphere burst into a myriad of actors. Nevertheless, the fact that it once again dominates the social sphere (and not the other way around) gives the impression that secularization remains but a stitch in a trial democracy, in which Islamism succeeds post-Islamism, and Salafism succeeds missionary pietism as seen with Tablighi. Even global jihadism, which had been swiftly eliminated, is alive and well 'after' the revolution.

A central question remains: What hope is there for an Arab democracy which does not end up being a non-liberal theodemocracy? Asef Bayat and Olivier Roy's paradoxical Hegelian thought considers secularization to hold a contradictory process that disassociates religion and culture and dilutes faith into identity. When reading them, one begins to dream of a *completely Islamic* world where Islamism manages to create secularization by itself and to the advantage of third parties!

[7] Mongin, Olivier (2011). 'Au-delà du printemps arabe, le basculement social à l'échelle mondiale', *Esprit* 12 (December): 142; et du même, 'Révolution post-islamiste', *Le Monde*, 12.02.2011.

Theo-democracy refers to a completely different thing: It uses elections as its foundation and the world according to the precepts of Islam as its driving force. As an illiberal democracy, it sacrifices liberal values at the altar of the sacrosanct popular vote. This fact does not seem to seriously disturb those who consider Sharia a 'myth' or a 'bricolage', and in no way an authoritarian tool used to impose a rule of daily conduct completely outside of the control of the state. And finally, one must mention the suspect ambiguity of pre-and post-Islamist political Islam.

Grey Areas

Many outstanding questions show that the distinctions between Islamism and post-Islamism are artificial: Sharia, democracy, the status of women, religious minorities and freedom of conscience. In the past, Sharia was a corpus of relatively well-defined common norms as established by Islamic law. Today, we no longer know what Sharia is: For example, do the veil, the niqab, and Halal food make up part of Sharia? As a reaction to secularization, Sharia expresses the anguish of living in a world without God. Paradoxically, the adoption of democracy has led to an opposite reaction: an appropriate response to an outdated authoritarian tradition. It expresses the compatibility between Islam and Western democracy. In this regard, two rival experiences require genuine attention: the Turkish experience, in which the Justice and Development Party (AKP) continues to respect secularism until today, and the Iranian experience, which shows that voting is only a disguising feature of a religious dictatorship. This is to say that the issue of values remains central. First, equality between men and women: Women have gained rights in certain countries as well in the public and private spheres. Social equality is basically accepted, although equality between the sexes in terms of personal status remains either rejected or limited. Second, modern citizenship is eroded by divisions in faith (Muslim, non-Muslim), ethnicity (Arab and non-Arab), or sectarianism (Sunni and non-Sunni). Finally, freedom of conscience is understood in a unique sense which rejects the freedom to not believe, blasphemy, apostasy, and violations against the sacred.

It was once thought that these grey areas would be demystified by public democratic opinion. This has not happened. The Arab revolutions have, much to the contrary, kept this blurriness, exacerbated contradictions, and further narrowed the horizon of meaning. They have liberated popular, fanciful energies that are hostile to secularism and belligerent against any criticism of religion. To stick with Tunisia, since January 14, 2014 many physical attacks have targeted the most vulnerable: artists, intellectuals, journalists, and women. Those accused

of violating the sacred. Within these conditions, the hope that the revolution would expand the horizon of spiritual and normative expectations seems to have been compromised. This is unless it concerns another part of the 'global war for the spirit of Islam between good and bad Islam', to which Abdurrhaman Wahid, former president of Indonesia and former head of Nadawt al-Ulama, refers. If 'bad Islam' succeeds, then the post-Islamist civil state will have been nothing more than the tactics of (post-) Islamist reasoning. Experienced researchers have been incapable of revealing this because, as academics, they have treated people's lives as diligently as they have insensitively dealt with their rights.

The Interplay of Politics and Religion in the New Tunisian Constitution: A Legal Analysis

Elyès Bousbih and
Abderrahmen Yaalaoui

'The new does not grow out of the old but appears alongside of it and eliminates it competitively.'

Joseph Schumpeter's description of this process of creative destruction relates to a specific sector – the economy – but use of the image turns out to be eminently appropriate to our present purpose. The new Tunisian constitution, after all, shows old and new elements of the politics/religion relationship coupled in a novel form of cohabitation.

How to secularize politics, how to shift it from the realm of the sacred to the realm of the profane, is a perennial conundrum. In its relationship with religion, politics finds itself confronted with an entity conspicuous in its ubiquity: the fact that religion is present in several places at the same time precludes any reasoned attempt to answer the question 'What is religion?' '[W]hen we ask "What is religion?", we are implicitly assuming, simply by uttering the question, that religion is something specific, an entity distinct from other social realities and one whose defining features we are able to determine.'[1] In fact, this is just not the case. This resistance to definition is the natural consequence of the degree to which religion permeates daily life. Religion does not constitute a distinct sphere and is not an entity in itself. It is a dimension that is at work in numerous phenomena. In my view, this disparity in religious reality has nurtured the desire to define the notion of religion in general – resulting, on one count, in eighty-seven definitions, all more or less plausible yet in many cases mutually contradictory. From the scholarly point of view, religion, it seems, cannot occupy a conceptual sphere specific to itself and – to echo Robert Dahl here – 'a term that means anything means nothing'.

Political action ought really to approach the phenomenon of religion empirically, on a case-by-case basis, with the law backing up this strategic positioning when called upon to regulate the religious sphere. Legal regulation actually tends to stylize the ideas and concepts surrounding religion, presenting them in a simplified, pared-down manner in order to secure itself plenty of room for manoeuvre at subsequent stages. What the devisers of legal rules would seem to be doing here is attempting to minimize the vulnerabilities and constraints to which the law is subject – in other words, its Achilles' heel of not being able to reflect the different realities on the ground. In Tunisia, the new constitution plots out the religious sphere in a normatively flexible – not to say vague – manner, in order to promote this kind of pragmatic political approach. The authorities charged with issuing legal rules – in this instance, constitutional rules – try to envisage how they will be applied, in other words the transition from the sphere of law (the general) to the sphere of actual fact (the particular). Given the coverage which the constitution of 26 January 2014 gives to religion – a step up compared to that accorded by its predecessor[2] – application of the constitutional rules that regulate it is likely to become an even more frequent and prominent occurrence.

Although coverage is more intensive, the politics/religion relationship has not managed to escape the influence of its former incarnation completely. We can legitimately ask *why* this should be the case – why, in the new constitution, the politics/religion relationship has not managed make a decisive break from its previous manifestation, in the constitution of 1 June 1959.

The answer is that, at the technical legal level, the new constitution uses the same general terminology, giving rise to a semantic ambiguity[3] that prompts a process of interpretation. And to the ambivalence of Article 1 (the old) is now added that of Article 6 (the new) (I). At the politico-legal level, meanwhile, the new constitution offers evidence of a kind of conversational cohabitation between the old and new aspects of the politics/religion relationship, thus leading to semantic interaction (II).

[1] Dumouchel, Paul (2003). 'La Religion comme problème politique', *La Revue du M.A.U.S.S* 22 (Feb.): 236–47.

[2] This constitutional shift is the result of the twists and turns and changes of course that characterized the relationship between politics and religion throughout the transitional period. The issue of the encroachment of *sharia* into the constitution would not have had such a high profile in the 1950s; the denunciation of non-believers reached its apogee after the revolution; and the insubordination shown by certain mosques reached unprecedented levels (and continues to this day, with 149 mosques remaining beyond the reach of the Ministry of Religious Affairs). These phenomena/distortions have been brought under legal/constitutional regulation by Article 6 of the new constitution.

[3] A term is semantically ambiguous if it can be assigned at least two distinct meanings.

I. The legal framing of the politics/religion relationship: The semantic ambiguity

In the new Tunisian constitution, a number of articles make reference to religion,[4] but only articles 1 and 6 lay down an actual framework for it. This framework is normatively flexible enough to preclude a single consensual interpretation. The well-known semantic ambivalence of Article 1 (A) is now compounded by another – that of Article 6 (B).

A. The dual reading of Article 1

Article 1 of the constitution of 26 January 2014/1 June 1959 states that: 'Tunisia is a free, independent, sovereign state; its religion is Islam ….'

The question of how this article should be transcribed into the new constitution was the subject of numerous discussions and negotiations in the National Constituent Assembly (NCA) and, in parallel, within the media and civil society. In the Assembly, the content of Article 1 fuelled dissension between the various political parties. Whereas the Islamists (the Ennahda movement) hoped to strengthen the reference to Islam – having initially sought to install *sharia* (Islamic law) as the prime source of legislation – most of the other parties hoped to preserve the article as it was. At the same time, a small minority sought the exclusion of all reference to religion and promoted secularization. In the end, the Ennahda movement fell into line with the view of the majority of the parties and thus consented to the retention of the original version of Article 1 – the version that had appeared in the constitution of 1959.

However, by consenting to the replication of the article, was the majority party in the NAC not perhaps calculating that it might be able to play a different card here strategically – that card being the semantic ambivalence of Article 1? The way the article is phrased – 'its religion is Islam' – is confusing and allows of two interpretations: is it the religion of the State (political connotation) or of the people (sociological connotation)?

The application of this constitutional provision (usually via a legal ruling) – in other words, the process of transposing it from the general (the law) to the particular (actual situations) – cannot be achieved through deductive reasoning. This is obviously the simplest model in law, since it allows legal logic to claim compatibility with logic per se. However, although legal logic may tally with overall logic, it is not equivalent to it. Hence, in the vast majority of cases, application of a legal provision cannot be automatic and some kind of interpretation is necessary. This is where dialectic reasoning comes in. For our present purposes, however, it seems that legal

[4] Art. 58: 'On assuming office, each member of the Assembly of the Representatives of the People shall take the following oath: "I swear by Almighty God to serve my country diligently"'; Art. 74: 'Every male and female member of the electorate who has held Tunisian nationality since birth and whose religion is Islam shall be entitled to stand for election to the post of President of the Republic'; Art. 76: 'Upon election, the President of the Republic shall take the following oath before the Assembly of Representatives of the People: "I swear by Almighty God to uphold the independence of Tunisia and its territorial integrity"'; Art. 89: 'The head of the government and its members shall take the following oath before the President of the Republic: "I swear by Almighty God to work faithfully for the good of Tunisia"'.

hermeneutics finds itself confronted with the two above-mentioned theses (Islam as the religion of the State/Islam as the religion of the people) and, depending on the cases presented – and even on the political ideals current at the time – it will lean towards this or that interpretation. In all likelihood, this mix-up in meaning suits Ennahda, in the sense that if – and only if – interpretation tends towards 'Islam as the religion of the State', Ennahda's initial aspiration of getting *sharia* accepted as a source of legislation is at least in with a chance.

This explains how the famed first article of the 1959 constitution has come to be preserved. It was incorporated, as it stood, into the 2014 constitution. Through it the old elements of the politics/religion relationship perdure at a very basic level.

The new dimension of the politics/religion relationship finds expression in Article 6 of the 2014 constitution. The new has not managed to break away completely from the old, since this remains present, this time in morphological guise: like Article 1 (the old), Article 6 (the new) is open to semantically ambiguous interpretation.

B. The terminological polysemy of Article 6

Article 6 stipulates that: 'The State is the guardian of religion. It guarantees freedom of conscience and belief, freedom of worship, and the freedom of mosques and places of worship from all partisan abuse. The State undertakes to disseminate the values of moderation and tolerance, to safeguard the sacred and prohibit any attack on the latter. It also undertakes to prohibit, and confront, calls for *takfir* [excommunication] and incitement to violence and hatred.'

This article is embedded in the constitution's first chapter, entitled 'General Principles'. Of note in this context is the fact that the majority of articles in this chapter were voted through without objection and unanimously; Article 6 was the only one to which amendments of various kinds were proposed before its adoption. These amendments were aimed at getting apostasy, attacks on the sacred, and incitement to hatred and violence criminalized, and at preventing the misuse of mosques for political purposes. The initial version of Article 6 had already given cause for concern due to the vagueness of some of its provisions. The Constituent Assembly had confirmed the role of the State as guardian of religion and the sacred – a provision that was deemed to be too vague and which elicited criticism from the Tunisian Human Rights League.[5] The League's objections bear some scrutiny: the semantic ambiguity generated by the phrases 'the State is the guardian of religion' and 'the State undertakes … to safeguard the sacred' inevitably lead to very disparate interpretations depending on the individual cases involved. The terms 'guardian' and

[5] The League thought 'greater clarity [was] needed in regard to Article 6, which empowers the State to oversee religion and protect the sacred in a way that could lead to interpretations that put civic rights, fundamental freedoms at risk': Ben Hamadi, Monia (2014). 'Tunisie – L'Article 6 de la Constitution: Le péché originel', *HuffPost Maghreb*, 23 January, available at: www.huffpostmaghreb.com/2014/01/23/tunisie-constitution-article-6_n_4649995.html.

'sacred' are polysemic – they have several possible meanings. To say that the State is the guardian of religion could be interpreted in two ways: it could mean it is a general overseer of religion, empowered only to manage its broad outlines; or it could mean it is a promoter of religion, and as such invested with the power to refashion it.

As far as safeguarding the sacred is concerned, what sort of sacred are we talking about here? Does it relate only to the Muslim religion[6] (protection of mosques, Muslim cemeteries, anything that is of value or importance in Islam) or to the Muslim religion in a wider sense (particularly in regard to the protection of shrines) or again to the Christian and Jewish religions as they have survived in Tunisia. Even if we allow that 'the sacred' relates to all these,[7] this does not preclude the term being open to a variety of interpretations, thus rendering the politics/religion relationship multi-dimensional.

We thus see that the shadow of the old constitution – in particular its first article – continues to hover over the politics/religion relationship as configured legally in the new version: the semantic ambiguity persists, resulting in interpretations that are often in contradiction with one another.

The terminological generality that characterizes regulation of religious matters may be viewed as a piece of strategic positioning. The highly general nature of the constitutional provisions widens the scope for intervention at the stage when legal regulations are implemented to put those provisions into practice. The ambiguity of this constitutional provision (Article 6), as it appears in the chapter on 'General Principles', allows maximum capture of the varied real-life situations involving religion. The actual process of pin-pointing will then take place via other legal provisions, which will act empirically, on an 'as and when' basis. This is the core function of 'principles' in law: they take the form of programmatic norms that require the creation of further norms to bring about their own implementation.

Besides being present in the new constitution in a technical, formal sense (displaying the same traits of the politics/religion relationship), the old also survives in it in substantively.

[6] The use of the singular 'the faith/the religion' in the Arabic original leads one to believe the religion in question can be none other than Islam – as indeed stipulated in Art. 1.

[7] Also a reasonable assumption, given that the Arabic version of the constitution uses 'sacred' in the plural – *al moukaddaset*.

II. The cohabitation of old and new in the politics/religion relationship: The semantic interaction

Apart from Article 1 – the most obvious manifestation of the persistence of the old in the new – a number of other elements of the 1959 constitution have survived in the new version. Appearing under various guises, these elements maintain a quite close symbiotic relationship with the new.

The first instance of interaction is detectable in the preamble to the 2014 constitution, which, though retaining a form of

words inherited from its predecessor, puts this to a different purpose. This linguistic reshaping is, necessarily, not without effect, given that it establishes a clear link to the content of Article 6 of the new constitution (A). Secondly – and from the point of view of the protection of fundamental rights – the famed fifth article of the 1959 constitution[8] is echoed in Article 6 of its 2014 successor (B).

[8] I refer here to Art. 5 as amended following the constitutional referendum of 26 May 2002.

A. The constitutional preambles and Article 6 of the new constitution

In the new Tunisian constitution, the preamble and the constitutional provisions are intermeshed and complementary, particularly in regard to religion and religious freedoms. The preamble's legal validity is thus beyond question, being confirmed in Article 145, which states that: 'The Preamble is an integral part of the present Constitution'. Given that the new preamble contains within it essential elements of its predecessor, the old version will, as a result – and also by contagion, as it were – exert a definite legal force.

The presence of the old in the new (a product of the vagaries of the Tunisian transition) is not intended as a straightforward juxtaposition. Rather, it makes it possible, teleologically – and with a slight reorientation of the old – to establish a semantic connection between the two. We can illustrate this by highlighting the key element that links the two preambles.

The 1959 preamble contains the following form of words: '… to remain faithful to the teachings of Islam'. The 2014 constitution retains the phrase regarding the teachings but makes an addition as follows: 'Expressing our people's commitment to the teachings of Islam *and its objectives of openness and tolerance* ….'[9] Given that the preamble to the new constitution forms an integral part of the latter, this supplementary phrase, welded as it were onto the mention of the 'teachings of Islam', links in closely with the content of Article 6 of the constitution, particularly its second paragraph: 'The State undertakes to disseminate the values of moderation and tolerance, to safeguard the sacred and prohibit any attack on the latter. It also undertakes to prohibit, and confront, calls for *takfir* [excommunication] and incitement to violence and hatred.'

At the politico-religious level, the transitional period in Tunisia was punctuated by all kinds of acts of violence, both physical and psychological. A state of defiance – social but in particular political – gradually established itself and it was impossible for the original constituent authority to ignore these signs. Through Article 6, the NAC regulated the new religious dimension, a dimension that carried with it the risk of unwanted elements of the old surviving in post-revolutionary Tunisia.

[9] My own emphasis.

In order to reconcile 'the teachings of Islam' (what survived of the old) with these new explosions of feeling, it was necessary first to clarify this expression. There had to be agreement on the scope of the concept and the constituent authority was decisive in this regard: the sole purpose of the teachings of Islam would be to foster openness and tolerance.

Clearly the workload of the new Tunisian constitutional court will be a burgeoning one. In its efforts to interpret matters stemming from the interplay of politics and religion it will not be able to disengage itself from the nexus of communication between the old and new constitutions. The new will not grow out of the old.

In addition to the influence exerted by the old preamble, we have the spectre of Article 5 of the old constitution hovering over the 'sollen' of Article 6.

B. Article 5 of the old constitution and Article 6 of the new constitution

Writing in *Les Cahiers rationalistes*, Jean-Pierre Vernant observed that there are no groups of humans that do not have a religion and that religion is a key component of civilizations and societies.[10] Clearly, where there is a society, there is power. Politically speaking, power is the sum of the various legal competencies and material capacities of the State. It is a supreme competency through which all other competencies can be controlled. As managers of the social body, those in power are constantly coming up against the phenomenon of religion. For a long time, the relationship between government and religion varied according to circumstance. Nowadays – and in a context of globalized democratization based on human rights – it distils down to the protection of a single fundamental right, namely religious freedom.

Rights described as 'fundamental' are basically constitutional rights. They form the hard core of human rights. They encompass fundamental freedoms, which, in their turn, encompass public freedoms. Religious freedom, as a fundamental right, embraces freedom of belief and freedom of worship. Freedom of worship is regarded as the externalization of freedom of belief. These two elements are therefore inseparable: the existence of one inevitably requires the existence of the other.

Article 5 of the old constitution – of 1 June 1959 – as modified in constitutional law no. 2002-51 of 1 June 2002, stipulates that: 'The Tunisian Republic guarantees freedom of belief and safeguards the right to worship freely.' Article 6 of the new constitution – of 26 January 2014 – envisages the same actor (the State / Republic) guaranteeing the same freedoms (of belief and of worship) but it differs in this one regard: the Constituent Assembly has added a further, previously unspecified, freedom – freedom of conscience. In Article 6, freedom of conscience takes its place between freedom of belief and freedom of worship – as if the three of them together formed a single indissoluble whole representing freedom of religion. Given that it thus covers the same sphere as freedom of belief and freedom of worship, freedom of conscience must assume a similar value.

The cohabitation of old and new is thus an undeniable fact. The new dimension of the political-religious relationship has vied with the old to a point where it has rendered the constitution of 26 January 2014 more liberal than its predecessor. However surprising this assertion may seem,[11] it is none the less well-founded: the clause prohibiting amendment of Article 1[12] lends weight to it; the mention of 'the teachings of Islam and its objectives of openness and tolerance' in the Preamble corroborates it; and the provisions set out in Article 2[13] confirm it.

[10] Debray, Régis (2002). 'Le "fait religieux": définitions et problèmes', paper for seminar 'L'Enseignement du fait religieux', 5–7 November, available at: http://eduscol.education.fr/cid46334/le-fait-religieux-%A0-definitions-et-problemes.html.

[11] Given that the majority party in the constituent assembly is Islamist.

[12] The hope of seeing *sharia* recognized as the prime source of legislation in this article has been well and truly buried.

[13] 'Tunisia is a civilian state, founded on civic rights, the will of the people, and the primacy of the law. This article may not be amended.'

The Dynamics of Comprehensive Constitution-building: Religion and the Concept of Twin Tolerations in Tunisia[1]

Markus Böckenförde

Introduction

In a region where hopes fostered by the Arab Spring have ended in civil war, stagnation, and new forms of dictatorship, Tunisia, despite all the challenges it still faces, gives the appearance of an island of relative stability. Scholars of democratic transition contend that, where political upheaval occurs, it is the second post-change round of elections rather than the first which indicates how far a new democratic regime has been consolidated.[2] In Tunisia, it was the parliamentary elections of 26 October 2014 which constituted this second round and which, depending on the outcome of ongoing coalition-talks, may bring the process of transferring power peacefully via the ballot-box to a successful conclusion. The elections also give the lie to the notion that the Islamists were simply biding their time, aiming eventually to impose an authoritarian model on the country. The consolidating trend was further confirmed with the holding of the presidential elections on 23 November 2014 and the run-off to these a month later.[3]

The outlook had not been as promising a year before, following promulgation of the new constitution in January 2014.[4] Many analysts considered that a number of the latter's provisions, reflecting compromise between Islamist stakeholders and their more liberal counterparts, were irreconcilable, contradictory, or indeed 'schizophrenic'.[5] Some forecast 'grave consequences for the country' given the ambivalence of particular clauses, notably those relating to religion and the state.[6]

In what follows here, I argue that progress towards a consolidated democracy in Tunisia has been possible *because of* and not *in spite of* a continuous commitment to compromise, maintained even at the expense of the constitutional text's clarity. The constitution succeeded in balancing different interests in the relationship between state and religion, offering both camps the possibility of claiming ownership. The Tunisian model thus incorporates Alfred Stepan's seminal concept of 'twin tolerations'[7] – a paradigm that allows for the coexistence of religion and the democratic state.

The paper is also intended as a reminder to certain international NGOs both to exercise greater caution in respect of the overall context in which changes such as those in Tunisia take place and to resist the temptation to lobby for the latest, glossily presented 'international' standards and ideas, which alienate large sections of society from any proposed constitutional text. Such organizations need to accept that constitution-building is not a testing-ground for the latest international norms but a real-life experience intended to initiate a process towards truly universal values. Given that such an agenda is a rarity even in Western countries – particularly when it comes to the sensitive issue of state and religion – a little more humility is called for here.

Religion in the 'compromise constitution'

The constitution-building processes that occur in post-authoritarian and/or post-conflict situations constitute potential turning-points in a country's history. They offer an opportunity of reconciling the experiences of yesterday with the expectations of tomorrow. If founded on democratic principles, they take place not in some kind of laboratory manned by technical experts, but at a negotiating table, amongst stakeholders and representatives of society, each of whom brings with them their distinct experiences and expectations. A constitutional text that seeks to become, as it were, the nation's autobiography, must accommodate these differing perspectives. The process by which such a text is fashioned will therefore be aiming to find not primarily the best technical option available (whatever that may be) but the best compromise achievable, particularly where ideologically divisive issues are concerned. A 'compromise' document such as this provides a more solid point of departure than does a text that is unambiguously framed but is supported by only one group or political elite.

[1] I should like to express my thanks to Geoffrey Weichselbaum, Marion Volkmann, and Duncan Pickard for their very helpful comments on earlier drafts of this text.

[2] Gasiorowski, Mark J., and Power, Timothy J. (1998). 'The Structural Determinants of Democratic Consolidation – Evidence from the Third World', *Comparative Political Studies* 31 (6): 740–71, here: 746.

[3] Byrne, Eileen (2014). 'Tunisia elections: veteran politician Beji Caid Essebsi wins run-off vote', *The Guardian*, 22 December, available at: http://www.theguardian.com/world/2014/dec/22/tunisia-elections-veteran-politician-beji-caid-essebsi-wins-vote.

[4] The English-language version of the constitution referred to in this article is available at: https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en.

[5] Mersch, Sarah (2014). 'Tunisia's Compromise Constitution', *Sada*, 21 January, Carnegie Endowment for International Peace, available at: http://carnegieendowment.org/sada/2014/01/21/tunisia-s-compromise-constitution/gyze.

[6] Guellali, Amna (2014). *The Problem with Tunisia's New Constitution*, available at: http://www.hrw.org/news/2014/02/03/problem-tunisia-s-new-constitution.

[7] Stepan, Alfred (2000). Religion, 'Democracy, and the "Twin Tolerations"', *Journal of Democracy* 11 (4): 37–57 (hereinafter Stepan 2000); Stepan, Alfred (2012). 'Tunisia's Transition and the Twin Tolerations', *Journal of Democracy* 23 (2): 89–103 (hereinafter Stepan 2012).

Tunisia had the courage – and good fortune – to be able to create an environment[8] in which parameters could be set that encompassed all the major stakeholder-groups within the constitution-building process, thus rendering the writing of the constitution a matter of nation-wide interest:

+ Elections to the National Constituent Assembly (NCA) were based on a system of pure proportional representation and this worked against majoritarianism and in favour of coalition. The result was an NCA that included 19 different parties and 8 independent representatives.[9] Most election experts agree that, had a 'first-past-the-post' system been opted for, the Islamist Ennahda party would have won up to 90 per cent of the seats – rather than the 41 per cent they did succeed in securing.[10] As it was, the party had to enter into a coalition with various secular counterparts.[11]

+ The rules governing the adoption of the constitution stipulated a two-thirds majority in the NCA. In order to avoid deadlock, it was further stipulated that, if, after two rounds of voting, the required majority had not been achieved, the draft constitution would be subject to a referendum. There was a broad consensus amongst the parties that such a scenario should be avoided, in order to prevent any further polarization of Tunisian society in what was already a tense political environment. This strengthened the commitment to compromise.[12]

+ Although the party of former president Zine El Abidine Ben Ali, and various leading figures from it, were banned from participating in the elections, former members of the party were free to set up new parties and so were not excluded from the first elections.

+ To ensure strong participation by women in the NCA, it was stipulated that every other candidate on the relevant electoral list had to be a woman. It is worth noting here that also the Ennahda party showed a high commitment to gender-parity, trumping all the larger (secular) parties that gained seats in the NCA. Of the 89 seats that Ennahda won, 41 (46 per cent) were allocated to women. In addition, although Ennahda held only 41 per cent of the seats in the NCA, 63 per cent of the female members of the Assembly came from the ranks of this (Islamist) party.[13] It is true that this outcome can be explained in large measure by the specific structure of the electoral law and by other dynamics that arose in the aftermath of the elections.[14] Even so, the degree of Ennahda's commitment to gender-parity remains significant.

[8] The creation of this environment was due in large part to the decisions of the Ben Achour Commission, which included representatives from all the political parties and from civil society. Importantly – and in contrast to developments in neighbouring Egypt – the old regime was replaced by a civilian body and this body decided to prioritize the writing of a new constitution as a point of departure rather than repeatedly tinkering with an existing text and announcing the changes in a series of unilateral communiqués (see Stepan 2012: 92).

[9] National Democratic Institute (2011). *Final Report on the Tunisian National Constituent Assembly Elections*, 23 October: 19, available at: https://www.ndi.org/files/tunisia-final-election-report-021712_v2.pdf.

[10] Stepan 2012: 93. Opting for the Hare Quota to translate votes into seats also benefited the smaller parties. In J. M. Carey's view, had the Tunisians chosen the other most common electoral formula for calculating seats (d'Hondt Divisor), Ennahda might have secured 69% of the seats. See Carey, John M. (2013). *Electoral Formula and the Tunisian Constituent Assembly*, http://sites.dartmouth.edu/jcarey/files/2013/02/Tunisia-Electoral-Formula-Carey-May-2013-reduced.pdf.

[11] Given that the NCA had legislative powers – in that the government it would select would be answerable to it and subject to its vote of no confidence – the formation of a coalition was also necessary to secure an absolute majority in the Assembly.

[12] Marzouki, N. *Dancing by the Cliff: Constitution Writing in Post-Revolutionary Tunisia 2011 – 2014*, 4. Unpublished manuscript, on file with author.

[13] Marzouki, N. *Dancing by the Cliff: Constitution Writing in Post-Revolutionary Tunisia 2011 – 2014*, 4. Unpublished manuscript, on file with author.

[14] Many of the Ennahda deputies who became members of the government after the election resigned their NCA mandate (unlike ministers from the Congress for the Republic and Ettakatol) and were replaced by the next person on the list: a woman.

[15] On 26 March 2012, Ennahda announced that there would be no sharia clause in the constitution. See Feuer, Sarah J. (2012). 'Islam and Democracy in Practice: Tunisia's Ennahdha Nine Months In', *Middle East Brief* 66 (September): 3, http://www.brandeis.edu/crown/publications/meb/MEB66.pdf. A leaked Ennahda draft, compiled early on and the subject of fierce internal debate, included a sharia provision.

[16] From the English-language version of the fourth draft of the constitution, available at: http://www.constitutionnet.org/files/fourth_draft_english_idea.pdf.

[17] The non-amendability of Art. 1 is now guaranteed by an additional paragraph (2) to this effect within the article itself.

[18] Also Art. 2 includes a second paragraph on its immutability.

The negotiations to secure compromise on the constitution were a stormy affair lasting almost two years. They underwent multiple crises, constantly teetering on the edge of collapse and beset by mutual mistrust. Negotiations on the constitution started in February 2012 and the NCA went on to generate four successive drafts of the text, released in August 2012, December 2012, April 2013, and June 2013. These reflected the course of the internal debates and plotted a steady progression in the enterprise. Although forming part of the constitutional debate, religious issues only rarely occupied centre-stage. Contrary to many reports in the Western media, the gap between 'Islamists' and 'secularists' was not the only division that marked the NCA, nor was it a very rigid one. In this connection, it is impossible to overstate the importance of the parties' early consensus on the need to banish two extremely sensitive terms from the negotiating-table: none of the official drafts – not even the very first one, released in August 2012 – made use of the terms 'secular' or 'sharia' to designate the/a source of law.[15]

Besides this early overarching compromise, the NCA discussions on the constitution were marked by a number of other concessions on the religious question:

+ Article 1 of the new constitution, replicated from the first post-independence version of 1959, states that 'Tunisia is a free, independent and sovereign state. Islam is its religion'. The text thus allows of several readings: the expression 'its religion' could relate either to the state or, opting for a greater emphasis on cultural heritage, to the country of Tunisia. Despite this leeway, in all four drafts of the 2014 constitution, interpretation was restricted to the former sense, since Article 141 ('Unamendable Components') stated that 'No amendment to the Constitution may bring prejudice to … Islam [as] the religion of the state.'[16] This last provision was dropped in the final text.[17] Reading Art.1 now together with Art. 2, which was introduced in the third draft and states "Tunisia is a civil state […]", one might rather interpret this clause in the latter sense.[18]

+ The relationship between state and religion is referred to early on in the constitution, in the third paragraph of the Preamble, which underlines the Tunisian people's commitment both to 'the teachings of Islam and its open and moderate objectives' and to 'the highest principles of universal human rights'. Here again, the history of the negotiation of this section of the Preamble is illuminating: the first draft referred to 'noble human values', without mention of human rights; the second included a reference to 'the principles of human rights'; the third added the word 'universal' at the same time stipulating that such rights must be 'in

harmony with the Tunisian people's cultural specificity'; the final draft removed this latter restriction and added the term 'highest' to 'principles of human rights' – according to some analysts thereby the latter restriction remains implicitly present in the use of the term 'highest' to qualify the principles.

+ As well as the freedom of belief and religious practice, the final version of the constitutional text includes freedom of conscience, mention of which was absent from previous drafts. This addition too was the product of extended negotiations.[19]

+ Against the background of decades of suppression and the forceful silencing of views not in line with those of the political regime, there was an overarching consensus that freedom of opinion and freedom of speech should be key elements of the new constitution. A more controversial issue was how to strike the right balance between the promotion of free speech and the prevention of expressions of opinion that might offend other members of society, particularly those of a religious persuasion. Here again, the relevant provisions in the various drafts and final text not only mirror the course of the negotiations but also reflect the antagonisms that shape Tunisian society.[20] Two issues from opposite ends of the spectrum were addressed within the context of the possible limitation of free speech: the imposition of penalties for blasphemy, with a view to protecting religion; and the proscription of the practice of calling a fellow Muslim an unbeliever (*takfir*). The first of these issues was excluded from the final text (although protection of religion remained as a general principle); the second was included at the last minute because of death-threats made to an opposition deputy who had been condemned as an apostate by a member of Ennahda's ultra-conservative wing. *Takfir* is now listed as one explicit example of the overall concern to prevent incitement to hatred and violence.[21]

+ The office of president is reserved to Muslims,[22] but the gender-sensitive wording of the relevant provision explicitly allows for candidates of both sexes.

+ One of the new constitution's key innovations is the establishment of a constitutional court tasked with, *inter alia*, assessing the constitutionality of legal provisions. Since some of these provisions are ambiguously formulated and can be read in different ways, the court has the crucial responsibility of seeing that the course set in the original negotiations – namely, that of balancing the rights of different sections of Tunisian society – continues to be pursued and specified in a coherent manner. In this connection, the selection-process for the court's twelve judges is crucial in ensuring its independence and impartiality. Following considerable debate, it was decided by the drafters that parliament, the president, and the supreme judicial council should each be responsible for selecting four judges. The fact that all the main branches of government are involved in the selection-process endows the court with a high degree of legitimacy vis-à-vis those required to comply with or implement its decisions.[23] The qualifications required of candidate judges were a major bone of contention in the constitutional discussions. The first two drafts of the text stipulated 20 years of high-level legal experience; subsequent drafts, and the final version, allowed for up to one-quarter of the bench to be drawn from amongst non-lawyers.[24] This easing of requirements means that experts in sharia law who have no training in positive law can be appointed to the court and bring their expertise to bear in elucidating how certain provisions might be interpreted from an Islamic perspective. This certainly does not mean bringing in sharia law 'by the back door'. The purpose, rather, is to broaden the reading of 'secular' constitutional norms by including input from a specific cultural-cum-religious background.

[19] Volkmann, Marion (forthcoming). *The Carter Center Final report on The Constitution-Making Process in Tunisia 2011–2014.*

[20] The first draft, released a couple of months after violent protests against an art exhibition in Tunis in June 2012, included a passage criminalizing attacks on religious sanctuaries: 'The state shall also incriminate all acts of violation against any religious sanctuaries.' Later drafts, released subsequent to the Sept. 2012 attack on the US embassy (motivated in part by the release of the film 'The Innocence of Muslims', dropped this clause.

[21] Mersch, Sarah (2014). 'Tunisia's Compromise Constitution', *Sada*, 21 January, Carnegie Endowment for International Peace, available at: http://carnegieendowment.org/sada/2014/01/21/tunisia-s-compromise-constitution/gyze

[22] There is no doubt that this proviso discriminates against non-Muslims, but its actual impact in a country where over 99% of the population are Muslim is rather limited.

[23] Al-Ali, Zaid, and Romdhane, Donia Ben (2014). *Tunisia's New Constitution: Progress and Challenges to Come*, openDemocracy, 16 January, available at: https://www.opendemocracy.net/arab-awakening/zaid-al-ali-donia-ben-romdhane/tunisia%E2%80%99s-new-constitution-progress-and-challenges-to-; see also Pickard, Duncan (forthcoming). The Jury is still out on Tunisia's new Constitutional Court, Atlantic Council.

[24] Variants here included: 'having no less than ten years of high expertise, a majority of whom must be legal specialists (3rd draft), followed by 'having no less than fifteen years of high expertise, two thirds of whom must be legal specialists' (4th draft) and finally 'three-quarters of the judges have to be legal specialists with a qualification of not less than 20 years' (definitive version).

[25] Stepan 2000: 37; Stepan 2012: 89.

[26] Stepan 2000: 39; Stepan 2012: 90.

The constitution as an example of 'twin toleration'

In his seminal work on 'twin toleration', Alfred Stepan suggests that there is no empirical evidence to show that the path to successful democracy necessarily passes by way of strict secularism.[25] Indeed, recent events indicate that, where the notion of 'twin toleration' is respected, the inclusion of religion in various forms may actually be helpful in transitional processes. The first toleration in question is that of the state by citizens of religious persuasion: such citizens must allow democratically elected officials to legislate and govern without having their authority denied on the basis of religious claims. The second toleration is that of citizens of religious persuasion by the state: the state must, as a matter of right, allow such citizens to express their views and values freely within civil society and to take part freely in politics, having due respect for constitutional rights and relevant laws. In this scheme, forcing religion off the agenda would be a violation of this second toleration.[26]

In the Tunisian case, the spirit of compromise made it possible for both these types of toleration to be respected in the constitutional text. That spirit may also become one of the key factors in guaranteeing the successful application of text in light of Art. 146.

Article 146 of the constitution stipulates that the text should be read 'as a harmonious whole' and this encourages interpretation of the document along 'twin toleration' lines, thus helping to preclude irreconcilable internal differences. Article 6 – one of the constitution's most contested provisions – serves as an excellent illustration of the process at work here:

> The state is the guardian of religion. It guarantees freedom of conscience and belief, and the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalization. The state undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir and the incitement of violence and hatred.[27]

From the various dynamics of the Arab Spring, it is clear that, in the regions involved, religion is at constant risk of political misuse as a means to power. In this context, banning the 'instrumentalization' of mosques represents an important constitutional commitment. At the same time, freedom of religious practice cannot be taken for granted in a society that wants partly to ban religion from the public sphere[28] and includes in its ranks followers of minority religions of various descriptions.[29] The combination of state protection of 'the sacred' (which here can only be read as meaning that which is sacred in *all* religions) and a commitment to freedom of conscience and belief thus offers an excellent means of disseminating the values of moderation and tolerance.

There is no constitution around the world nor is there any international human rights treaty that grants freedom of opinion or the right to free speech without any kind of restriction. The International Covenant on Civil and Political Rights (ICCPR), for example, explicitly states that freedom of expression comes with 'special duties and responsibilities' and is subject to certain restrictions.[30] In fact, the Covenant explicitly *prohibits* 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.[31] The Tunisian constitution falls into line with these international requirements: Article 31 guarantees freedom of expression and, like other rights in the constitution, is subject to restriction only in very limited, clearly defined circumstances, as set out in a limitation-clause[32] that is probably the most advanced of its kind in the Arab world.[33] Given the recent use of *takfir* to whip up hostilities in Tunisia, and given its subsequent prohibition, along with 'incitement to violence and hatred', in Article 6 of the constitution, it is hard to see, as some claim, that the interplay of the various constitutional

[27] See https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en.

[28] See the statements in the documentary *Laicité inch'allah* directed by Nadia El Fani.

[29] According to the International Religious Freedom Report 2013 (available at: http://www.state.gov/documents/organization/222527.pdf), Tunisian society is 99% Sunni Muslim, with the remaining 1% made up of Shia Muslims, Baha'is, Jews, and Christians. (The latter group includes Roman Catholics, Protestants, members of the Greek and Russian Orthodox churches, French Reformists, Anglicans, Seventh-day Adventists, and Jehovah's Witnesses).

[30] See Art. 19 (3) ICCPR: 'It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals', available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

[31] See Art. 20 (2) ICCPR, ibid. Authoritative interpretation is provided by the Human Rights Committee in its General Comment No. 34, available at: http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf. For further analysis of these provisions, see below.

[32] Art. 49 stipulates: '(1) The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defense, public health or public morals, and provided there is proportionality between these restrictions and the objective sought.
(2) Judicial authorities ensure that rights and freedoms are protected from all violations. There can be no amendment to the Constitution that undermines the human rights and freedoms guaranteed in this Constitution.'

[33] Al-Ali, Zaid, and Romdhane, Donia Ben (2014). *Tunisia's New Constitution: Progress and Challenges to Come*, openDemocracy, 16 January, available at: https://www.opendemocracy.net/arab-awakening/zaid-al-ali-donia-ben-romdhane/tunisia%E2%80%99s-new-constitution-progress-and-challenges-to-.

[34] Guellali, Amna (2014). *The Problem with Tunisia's New Constitution*, available at: http://www.hrw.org/news/2014/02/03/problem-tunisia-s-new-constitution.

[35] Guellali, Amna (2014). *The Problem with Tunisia's New Constitution*, available at: http://www.hrw.org/news/2014/02/03/problem-tunisia-s-new-constitution.

provisions will '[allow] lawyers, judges and politicians [to] interpret Article 6 however they see fit'.[34]

Test the West: Some reflections on the Western way with state and religion

On 26 January 2014, the Tunisian Constituent Assembly approved the country's new constitution. After almost two and a half years of hard work, and despite various rifts that complicated the negotiations and temporarily deepened the country's political divide, the members of the Assembly agreed a final version. They demonstrated that ideological differences need not end in conflict or stalemate and can instead be accommodated in a consensus-document that serves as a baseline from which to embark on a new era.

A week or so after the new constitution had been adopted, the director of the Human Rights Watch office in Tunisia, Amna Guellali, attacked Article 6 – which, as we saw previously, sought to find a compromise between two differing visions of the role of religion and the state in society.[35] She predicted '[potentially] grave consequences for the country', given that 'the clauses allow for the most repressive interpretations in the name of offense against the sacred', and she claimed that the wording of the article '[breaks] with international human rights statutes'. These remarks are questionable on a number of counts. First, they take no account of the clear message which Article 146 conveys about the constitutional provisions having to be interpreted as a 'harmonious whole' (thus precluding what Guellali terms 'the most repressive of interpretations', since these would conflict with other clauses). Second, Guellali's conclusion that Article 6 of the constitution is in violation of international human-rights statutes is based not only on an 'orthodox' interpretation of the constitutional text but also on a uni-dimensional reading of the relevant international statute and the interpretation of it provided by the Human Rights Committee.[36] Third, the remarks betray a delusory assumption that it is the written text of a constitution which, of itself, guarantees protection of human rights and maintenance of the rule of law. The author fails to understand that constitutional texts may serve simply as a first step towards the creation of a culture of constitutionalism which guarantees adherence to, and the enduring legitimacy of, the text.

The drafting of a constitutional text in a post-authoritarian environment does not mark the end of a process of democratic consolidation: it is the starting-point of a much longer journey towards this goal. As indicated earlier, one important precondition for the success of this journey is that it should begin with a document that not only lays down the institutional framework for a future state but also takes into account

differing expectations within society. If, for example, whole sections of Tunisian society fail to identify with the constitution as a defining inaugural document, the commitment to ensure its implementation will wane. This also holds true for the judiciary, whose job it is to interpret constitutional norms and see that they are put into practice. Judges may differ in their reading of the constitutional text, reflecting as they do the different strands and values in society. Expecting all of them to come from the most progressive quarters of society is likely to create frustration from the very outset (nor, incidentally, would such progressiveness mirror the experience in Western countries).

When it comes to members of the 'international community', one important contribution they can make to the constitution-building process is to facilitate the sharing of experiences and the discussion of lessons learned. Intervening at sensitive moments to issue advice and opinions that tally with their own mission-statements but do not help consolidate carefully drafted but fragile compromises is less helpful. All the more so since they cannot base such opinions on 'best practice' anywhere else – particularly not in Western Europe. In Europe, constitution-writers, legislators, and judiciaries at every level, including those empowered to interpret international human-rights texts, have first-hand experience of the enduring nature of the state/religion challenge and of the need for mutual compromise and space-creating ambiguity in dealing with it. They continue to rely on constitutional norms, conventions, and laws that grant a preferential status to religion and are continually adjusting these norms or applying them without fear of major upheaval. To rectify what is perhaps a skewed perception of the European way with religion, democracy, and human rights, it is worth taking a look at two or three examples from the wide range of current practices to be found on the continent. Some of the regulations in force in certain European countries fall short of the standards achieved in the Tunisian constitution; and some aspects that have come in for harsh criticism in the Tunisian context are still to be found in some parts of Europe. The examples that follow here are ***not*** intended to bolster the case for stronger religious representation in state affairs; they merely seek to remind us that progression towards liberal democracy is an ongoing process and appears to allow of religious permutations.

+ A 2010 report by the Venice Commission[37] states that blasphemy is a recognized offence in Austria, Denmark, Finland, Greece, Italy, Liechtenstein, the Netherlands, and San Marino, and that the penalty incurred for it is usually a term of imprisonment (ranging from three to six months, with a two-year sentence for malicious blasphemy in Greece). In addition, Andorra, Cyprus, Croatia, the Czech Republic, Denmark, Spain, Finland, Germany, Greece, Iceland, Italy, Lithuania, Norway, the Netherlands, Poland, Portugal, the Russian Federation, the Slovak Republic, Switzerland, Turkey, and Ukraine, recognize an offence of religious insult.[38]

+ In its Recommendation 1805 (2007), the Parliamentary Assembly of the Council of Europe stated that: 'With regard to blasphemy, religious insults and hate speech against persons on the grounds of their religion, the state is responsible for determining what should count as criminal offences within the limits imposed by the case law of the European Court of Human Rights.'

+ In its judgment on *I. A. v. Turkey* of 2005 (42571/98),[39] The European Court of Human Rights ruled that the Turkish authorities had not violated the right to freedom of expression when it convicted a publisher for producing material insulting to the Prophet and the Holy Book. The Court had to weigh the right of the plaintiff to free expression against the right of others to have their freedom of thought, conscience, and religion respected. The Court came to the view that certain passages in the novel in question did indeed constitute an abusive attack on the Prophet Mohammed.

+ Until 1995, all mature democracies in Western Europe in which Lutheranism was the dominant religion (Sweden, Denmark, Iceland, Finland, Norway) had an established church.[40]

+ In the United Kingdom, the monarch is the Supreme Governor of the Church of England. Twenty-six seats in the UK parliament's second chamber are reserved to Anglican bishops. By constitutional convention and due to his/her role in the appointment process of the two most prominent Archbishops within the Church of England, the Prime Minister should not be perceived as possessing bias against the established church.[41]

+ In Germany, religious societies have the constitutional right to regulate and administer their own affairs.[42] This can result in situations such as the decision of the German Federal Constitutional Court to uphold the dismissal of a divorced senior doctor from a Catholic hospital on the grounds that he had remarried.[43] Employees of church-run institutions are also liable to instant dismissal for disaffiliating from the church.[44] In appreciating the potential impact of such practices, it should be noted that an employer such as the German Caritas Association,[45] the largest Catholic-run social and welfare organization in Germany, is estimated to employ almost half a million people. Also of note:

[36] The 2011 Human Rights Council 'ruling' (16/18) to which the author refers does not include any explicit reference to 'the sacred' nor is there any paragraph in the resolution that '[rules] out any idea that accusations of defamation of religion could be used to limit freedom of expression' (see http://geneva.usmission.gov/wp-content/uploads/2012/04/Resolution16-18.pdf). Rather, the carefully chosen wording of the Human Rights Committee's General Comment No. 34 provide guidelines on what to consider while drafting 'defamation laws' or blasphemy laws (paras 47 and 48); available at: http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.

[37] Venice Commission (2010). *Blasphemy, Insult and Hatred: Finding Answers in a Democratic Society*, Science and technique of democracy series no. 47, Strasbourg: Council of Europe, 19, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD%282010%29047-e.

[38] In Germany and Portugal, a disturbance of the peace must also have been caused for the relevant action to qualify as an offence.

[39] Available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70113#{%22itemid%22:[%22001-70113%22]}.

[40] Stepan 2000: 41.

[41] Under the Roman Catholic Relief Act of 1829 (sect. 17), and the Jews' Relief Act of 1858 (sect 4), no Roman Catholic or Jew may advise the sovereign on ecclesiastical matters. If an individual of either of these religious persuasions were to occupy the office of Prime Minister, the ecclesiastical appointment procedure might therefore need to be adjusted.

[42] Art. 140 of the German Basic Law read together with Art. 137 (3) of the Weimar Constitution.

[43] German Federal Constitutional Court, 22.10.2014 - 2 BvR 661/12, available at: https://www.bundesverfassungsgericht.de/entscheidungen/rs20141022_2bvr066112.html. The Court did not issue a final decision but referred the case back to the Federal Labour Court to re-balance more appropriately the various relevant constitutional rights.

[44] See judgment of the Federal Labour Court, 25. 4. 2013 - 2 AZR 579/12.

most of the organizations/institutions under discussion here (hospitals, kindergardens, schools) are funded largely (and sometimes exclusively) by the state.

+ The constitution of Malta – a country no more than 300 km distant from Tunisia – contains the following stipulations:[46]

1. The religion of Malta is the Roman Catholic Apostolic Religion.

2. The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.

3. Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.[47]

Despite these constitutional provisions, the country was considered to satisfy the criteria for accession to the European Union (the 'Copenhagen criteria'), one of which is 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.[48]

Conclusion

Three years after the Jasmine Revolution, Tunisia's National Constituent Assembly adopted a comprehensive constitutional text which, whilst accommodating the differing views within Tunisian society, still lends itself to largely coherent interpretation. The path to constitutionalism proper still lies ahead and it is up to Tunisian society itself, and to the relevant institutions, to consolidate what has been achieved so far and inaugurate an era of constitutionalism based on the firm foundations of the constitutional text. The simple fact that coherent interpretation and application of this text is possible maximizes the likelihood that the constitutional path will be the one most immediately and unwaveringly followed.

The international community can do much to facilitate Tunisian progression towards constitutionalism. What is more, as international actors and activists lend their support to domestic stakeholders, they may also be led to reflect on recent European experiences in this domain. As the European examples previously cited show, it is quite possible for provisions reflecting the religious and cultural identities of a country to be included in a constitution, and form part of a constitutionalist outlook, without prejudice either to democracy, to the rule of law, to human rights, or to respect for minorities.

It may also be helpful to ask ourselves why we do not consider the Maltese constitutional provisions problematic but predict that the Tunisian equivalents will result in 'grave consequences' for the country. One immediate response here may be to recommend taking a closer look at how the provisions actually operate in Malta. But is this not precisely the approach that should be adopted in the Tunisian case as well?

[45] Guntau, Burkhard (2009). *Christliche Diakonie und Karitas in Deutschland*, Konrad Adenauer Foundation / China Office, 29 April: 2, available at: http://www.kas.de/wf/doc/kas_16323-1522-1-30.pdf?090429084556.

[46] At a meeting entitled 'Religion and Politics in Post-Revolutionary Tunisia', organized by the Centre for Global Cooperation Research, slips of paper with these provisions written on them were handed out to participants but with 'Islam' substituted for 'Roman Catholic'. When participants were asked what country might have included this kind of provision in its constitution, they cited places such as Saudi Arabia, Iran, and Pakistan.
(The present article is based on the discussions held at this meeting.)

[47] Art. 2 of the Constitution of Malta, available at: https://www.constituteproject.org/constitution/Malta_2011.pdf?lang=en.

[48] See http://ec.europa.eu/enlargement/policy/glossary/terms/accession-criteria_en.htm.

Is Religion Truly the Main Source of Cleavage in the Tunisian Party Landscape?

Mathieu Rousselin

In the framework of this special issue on religion and politics in post-revolutionary Tunisia, this contribution offers to step back from the immediate debate on the negotiation and adoption of new constitutional rules so as to question the dominant narrative according to which religion constitutes the main source of cleavage in Tunisian politics. The logical conclusion of this narrative is that the main fault line in the domestic party landscape lies between the Islamist party Ennahdha and a number of secular parties, notably Nidaa Tounes/Union for Tunisia and the Popular Front. Drawing from the pioneering work of Lipset and Rokkan (1967) on party systems, this article tests the relevance of the religious cleavage by comparing the declarations and voting records of the three most important party blocks on a number of economic issues. Without downplaying the importance of religious factors, the analysis conducted in this article suggests that, in economic matters, the main fault line in the Tunisian party landscape is not between religious and secular forces but rather between supporters and opponents of structural adjustment programmes and of neoliberal reform agendas.

The restructuration of the Tunisian party landscape

In the aftermath of the 'Jasmine Revolution' (17 December 2010 to 14 January 2011), Tunisia witnessed a sudden and spectacular increase in the number of authorised political parties, a situation which stood in stark contrast with the Ben Ali era, which could be characterised as a de facto single-party system under the heel of the Constitutional Democratic Rally. In the run up to the October 2011 elections for the Constituent Assembly, an astounding 144 parties were being tallied up through the Tunisian Interior Ministry. Sure enough, many of these parties did not possess the staff, financial resources, geographical implantation or programmatic strength to genuinely influence the course of events on their own. Consequently, the formation of a Troika government under the leadership of the Islamist party Ennahdha (together with Ettakatol and the Congress) was followed by an intense period of organisational mergers within the Tunisian party landscape, which is currently structured around three main poles (Sallon 2013).

The first pole is the *Islamist block centred on Ennahdha* which represented around 40% of the Tunisian electorate in October 2011. Since 2013, polls repeatedly emphasise the erosion of the party's support base, which oscillates between 17% (poll by Emrhod from April 2014) and roughly 30% (poll by SIGMA from May 2014). The second pole is the *liberal, centre-left Union for Tunisia* which brings together five organisations, most of which are themselves the product of previous mergers. Nidaa Tounes, a grouping of 10–12 parties around former Prime Minister Beji Caib Essebsi, is the backbone of this second block. Among the auxiliary parties are the socio-democrats from Al-Massar (The Democratic and Social Way – itself a grouping of Ettajdid, the Tunisian Labour Party and the Democratic and Modernist Pole Al-Qotb) and the liberal democrats from Al-Joumhouri (The Republican Party – itself a grouping of smaller parties including Afek Tounes and the Progressive Democratic Party, PDP). Although the Union for Tunisia only holds 16 seats (7%) in the Constituent Assembly, recent polls indicate that the coalition may able to attract a substantial part of Ennahdha's electorate. It is reported to weigh between 23% (Emrhod April 2014) and 40% (SIGMA June 2014) of the electorate, with the latest polls indicating a downwards trend. Finally, the third and last pole is the *Popular Front, a socialist and ecological block* which brings together 12 organisations from the radical left (including Marxists, environmentalists and feminists) as well as various Arab nationalists. With only 7 seats in the Assembly (3%), this block is clearly dwarfed by the other two, though it has a strong presence within the country's intelligentsia. In February 2013, polls indicated that 12% of Tunisians would vote the party (Soudani 2013); this number fell down to 6–7% (SIGMA June 2014), where it now seems to be stable.

The dominant narrative: religion as the main source of cleavage in Tunisian politics

To most international observers and Tunisians alike, religion seems to be the most fundamental fault line in domestic politics. According to the prevailing view, the Tunisian party landscape is divided into religious forces on the one hand (political Islam as represented by Ennahdha) and secular forces on the other hand (Nidaa Tounes/Union for Tunisia and Popular Front). These views were for instance expressed and defended by Dr. Radwan Masmoudi from the Center for the Study of Islam and Democracy on the occasion of the conference that led to this publication. Incidentally, many contributions in this edited volume share this tacit assumption, for instance when they consider the new constitution as a 'compromise' between two sides or when they analyse the behaviour of foreign actors that are cautious not to 'take sides', etc.

To a political scientist however, this narrative ought to be questioned very systematically. Indeed, research has instructed us for over a half century that religion is one of the possible sources of cleavage in society and in politics, but is certainly not the only one, nor necessarily the most potent. In their ground-breaking study of voter alignments, Lipset and Rokkan (1967) identified four possible sources of cleavage: centre/periphery (geographical cleavage), state/church (cleavage between religious and secular forces), capital/labour or owner/worker (class cleavage) and protectionism/free-trade (cleavage on the limits to the state control over the economy via tariffs or restrictions to trade, which is often indicative of countries' economic profile depending on whether they have a strong agricultural sector or a developed industrial base).

The investigation of the first possible source of cleavage is probably better left to political geographers and sociologists. The recent work of Gana et al. (2012) deserves a special mention here, since it established that the electoral geography of Tunisia cannot be captured with the relatively simplistic binary opposition between secular urban centres and religious rural regions. Instead, their work reveals a more subtle division in three main blocks: urban centres and coastal cities, which voted for 'modernist' parties (Ettakatol, Congress, Afek, Al-Qotb); a Tunisian hinterland suffering from high unemployment (including the towns where the 'Jasmine Revolution' started) which voted for social-liberal parties with a rather conciliatory tone on political Islam (PDP, Aridha); and a rather conservative South with low female employment rates which, together with the region of Kairouan, massively supported the Islamic party Ennahdha.

Does the cleavage on economic issues follow religious lines?

The purpose of this contribution is now to question the dominant narrative according to which religion is the primary fault line in Tunisian politics by way of an investigation of the declarations and voting records of the three main political blocks on a number of economic policy issues. These issues were selected so as to test whether the opposition between capital and labour, identified by Lipset and Rokkan as one possible source of cleavage, has any relevance at all in the Tunisian party landscape – and, if it has, so as to check whether the cleavage on economic issues overlaps with the religious/secular cleavage. These issues are: the relationship with selected international organisations in the framework of the Deauville Partnership; the attitude regarding the payment of the national debt; and the treatment of the various compensation schemes and public subsidy programmes.

The relationship with the International Monetary Fund and the World Bank

In the months that followed the sudden and unexpected collapse of Ben Ali's regime, the prevailing view within the Tunisian elite was that the country ought to focus exclusively on the 'political dimension' of the democratic transition (i.e. organisation of the first free elections and negotiation of a new constitution) whereas the necessity to tackle economic and social challenges was postponed and assumed to be something that could only be undertaken in a hypothetical 'second phase' of the democratic transition. Concretely, this means that the 'Jasmine Revolution', which was largely brought about by glaring economic and social inequalities, led to an extensive reshuffling of the political and legal order, but was not followed by any 'revolutionary change' as far as the economy is concerned. As a consequence, the first transition governments, both under the premiership of secular (Mohammed Ghannouchi, Beji Caib Essebsi) and of religious (Hamadi Jebeli and Ali Larayedh) leaders, did not break with the economic and social policies of the Ben Ali era. International organisations such as the World Bank (WB) and the International Monetary Fund (IMF) therefore continued to exert their influence and to demand the adoption of neoliberal structural adjustment plans in exchange for their financial support.

The political framework within which these adjustment plans were imposed and monitored is the 'Deauville Partnership', which was negotiated between the G8 countries and Tunisian Prime Minister B.C. Essebsi in 2011. This partnership foresaw a one billion dollar loan by the World Bank and other international organisations (African Development

Bank, French Development Agency and European Union) in exchange for the adoption of the 'Jasmin Plan', a 5-year economic programme negotiated by the Tunisian government in a particularly secretive fashion.[1] According to this Plan, 'the State ought to withdraw, gradually, from all activities that could be taken over by the private sector' and ought to focus instead on the creation of 'an economic and commercial climate that is propitious to free enterprise'. Still according to the Jasmin Plan, such a 'climate' requires the privatisation of national banks, the removal of restrictions on the free-movement of capitals so as to create new opportunities for foreign investors such as insurance or hedge funds, as well as the creation of genuine 'incentives to private initiative', including in fields such as culture, health and education.[2]

The Deauville Partnership did not suffer from the power shift that followed the October 2011 elections. Indeed, given the absence of economic training of most Ennahdha members, the two governments of Hamadi Jebeli (December 2011 to March 2013) and Ali Larayedh (March 2013 to January 2014) were crucially dependent on the 'policy advice' and 'technical assistance' provided by international organisations, which gained considerable influence on Tunisian policy-making (Bond and Sharife 2012). To take but a single example: under the premiership of H. Jebeli, Ennahdha Investment Minister Riadh Bettaieb publicly acknowledged that the drafting of the new National Investment Code had been externalised to a number of law firms and private consultancies which benefited from the 'technical assistance' of the Organisation for Economic Cooperation and Development and of the European Investment Bank, as well as from the 'financial assistance' of the World Bank's International Finance Corporation (a blatant conflict of interest since the IFC also holds shares in numerous Tunisian investment funds). As evidenced by Hammami (2013), the negotiation of the new Investment Code also reveals the astonishing continuity of the relationship between the aforementioned international organisations and the Tunisian power structures irrespective of their ideological orientations. Indeed and with a short interruption during the hot phase of the 'Jasmine Revolution', these organisations provided technical and financial assistance to the Mohammed Ghannouchi's government under Ben Ali, then to the Essebsi government and eventually to the two Ennahdha-led governments.

In retrospect, the World Bank's 2012 'Programme Document'[3] and the International Monetary Fund's 'Staff Report' on the Tunisian Request for a Stand-By Arrangement[4] appear in many ways to have constituted the basic roadmap for the Jebeli and Larayedh governments, even though the economic 'reforms' they introduced did not appear in their party's electoral programme and therefore did not receive popular endorsement. Consequently, as far as the Deauville Partnership

[1] In his Memoires *Tunisie, la route des jasmins* (2013), the former Tunisian Finance Minister Jaloul Ayed, himself a banker who served under both M. Ghannouchi and B.C. Essebsi, reveals that the expression 'Jasmin Plan' was suggested to him by the World Bank President (and former Managing Director at Goldman Sachs) Robert Zoellick. The deliberate refusal by successive Tunisian governments (whether of secular orientation or of religious inspiration) to communicate on the negotiation of the Deauville partnership and on the conditions of the Jasmin Plan is for instance criticised by the Tunisian Observatory of the Economy, see http://www.agoravox.fr/actualites/international/article/partenariat-de-deauville-comment-130510.

[2] These various recommendations are taken from the policy document 'The Economic and Social Programme of Tunisia' available via the website of the Tunisian Ministry of Finance at: http://www.portail.finances.gov.tn/publications/PLan-Jasmin-traduction-FR-SIGMA-finale-1-.doc.

[3] Available at: http://pdfcast.org/download/document-de-programme.pdf.

[4] Available at: https://www.imf.org/external/pubs/cat/longres.aspx?sk=40672.0.

and the relationship with the IMF and WB is concerned, religion does not seem to constitute a genuine cleavage line, to the extent that both Islamist and secular political forces made the pledge of allegiance to neoliberal structural adjustment programmes (Prince 2013). The Deauville Partnership and related adjustment programmes were however fiercely opposed by the Popular Front, including by the activist Chokri Belaid a few days before his assassination, on the grounds that they were tantamount to another 'Treaty of Bardo' (by which Tunisia became a French protectorate in 1881) and erected the WB and IMF as new colonial powers.

The attitude regarding the payment of the national debt

Strongly related with the relationship towards the IMF and WB, the attitude regarding the payment of the country's national debt is yet another indicator that the main cleavage line in Tunisian politics may not be between Ennahdha and secular political forces, but rather between forces that endorse neoliberalism and forces that oppose it. In the April 2014 issue of Le Monde Diplomatique, Serge Halimi recalls his surprise upon interviewing shortly one after another Rached Ghannouchi (who declared that 'Tunisia's longstanding tradition is to pay its debts') and Beji Caib Essebsi (for whom 'a country that respects itself pays its debts'). The resemblance between the positions of the main religious force Ennahdha and that of the main secular opposition block Nidaa Tounes on the issue of the national debt stands in stark contrast with the course of action recommended by the Popular Front, namely the suspension of the debt's payment pending the outcome of an audit report.

The joint refusal by Ennahdha and Nidaa Tounes to initiate an audit report on the Tunisian debt is all the more puzzling if one considers both the availability of historical precedents in Latin America and the existence of the Sack doctrine on 'odious' or 'illegitimate debts' in international law. This doctrine, according to which the national debt of a country ought to be declared non-enforceable if it was contracted without the consent of the population and did not serve the interests of the nation, seems indeed particularly suitable in the Tunisian case, where debts were contracted by a corrupt and dictatorial regime and often for the private interests of the Ben Ali and Trabelsi families. The 'odious debt' doctrine has been vocally advocated by Mehdi Khodjet El Khil, a Tunisian analyst with the independent blogging platform nawaat, who authored a series of remarkable articles on the Tunisian debt and calculated that, although the national debt represents 'only' around 50% of the country's GDP and therefore much less than the national debt of many Western countries, Tunisia

had already paid back as of 2009 more than twice the amount it initially borrowed only for the purpose of servicing the interests of its debts.

The treatment of compensation schemes and public subsidy programmes

For decades, Tunisia has been dependent on low labour costs to improve its international competitiveness and attractiveness for foreign investors. This situation resulted in a massive problem of domestic consumption, which could only be addressed via several complex subsidy and compensation programmes, the most common of which concern three domains (food stuff, energy and transport) and represent a cost of around 5.5 billion dinar, or 20%, for the Tunisian national budget (Ben Hamadi 2013). The rationale behind these programmes is therefore far from being socialist: since 1970, Tunisian workers in industries that are dependent on foreign capitals accept miserable wages in exchange for the promise of being able to buy subsidised bread and semolina or energy products such as gas or diesel oil (Halimi 2014). In addition, these compensation programmes have been repeatedly criticised for benefiting wealthier Tunisians comparatively more than the poor. For instance, since around two-thirds of the overall subsidies are spent on fuel and since the most deprived Tunisians generally do not possess a vehicle whereas the richest usually have several large vehicles with high fuel consumption in their car parks, the energy subsidies have a strong anti-social effect (which, fairly enough, even the IMF criticises). Similarly, a recent study of the Tunisian National Institute of Statistics (2013: 3–6) evidenced the regressive nature of the food subsidies distributed via the Caisse Générale de Compensation: poorer Tunisians receive on average 23 dinars less per year than their wealthier fellow country(wo)men; in 2011, only 9% of the food subsidies went to the poorest households, whereas 60% went to middle-class households, 7% went to the richest households and the remainder of the subsidies went to other economic agents (including tourists, hotels and restaurant owners as well as smugglers). The same study also highlighted the social usefulness of the subsidy programme, since subsidised goods make up 20% of the total food consumption of the poorest Tunisians. The National Institute of Statistics also calculated that the abolition of this mechanism would lead to an increase of the poverty rate from 15 to 19% (2013: 8–10).

Obviously, these numbers can be read in a wide variety of ways by political parties. Given the precedent of the 1984 bread riots, all parties are acutely aware of the political sensitivity of the topic and virtually no domestic player, not even

the Tunisian employers' association, is advocating the immediate suppression of the existing compensation scheme. Yet, noticeable differences exist between the three political forces analysed in this article. The increase in the overall cost of the various compensation schemes from 1.5 billion dinars in 2010 to 5.5 billion three years later forced Ennahdha-led governments to tackle an issue they were long unwilling to address, most likely because any reform would come to the detriment of the middle-class. Under the premiership of H. Jebeli, Ennahdha reversed the decision to increase fuel prices by 100 millimes, which had been inspired by the IMF and endorsed by Ettakatol Ministry of Finance Elyes Fakhfakh. Instead, one of the last decisions of the Jebeli government was to levy 1% of the wage from workers in the public and private sectors earning a net salary of 1700 dinars and more, thereby effectively hitting the middleclass. This decision was adopted with the support of Ennahdha members of the Assembly and despite the existence of counter-proposals from Nidaa Tounes and the Popular Front which offered to concentrate the fiscal effort on the wealthier classes (such as for instance, additional taxation on larger real estate transactions or on the purchase of expensive vehicles).

Following the nomination of Mehdi Jomaa as Prime Minister, Ennahdha and Nidaa Tounes initiated talks on possible reforms of the compensation schemes within the framework of a National Economic Dialogue. Despite minor disagreements, both parties concurred on the necessity of a reform that would abandon the universality of the compensation mechanism in favour of measures more targeted at the poorest fraction of the population. This consensus between Ennahdha and Nidaa Tounes led the current Prime Minister Mehdi Jomaa to publicly support this course of action during an interview with Al-Jazeera on March 27th, 2014. The course of action advocated by Ennahdha and Nidaa Tounes is however strongly rejected by the Popular Front, which left the National Economic Dialogue in May 2014 on the grounds that it could not endorse the planned suppression of compensation mechanisms. Using the findings and projections of the aforementioned study of the National Institute of Statistics (which foresees a 4% increase in poverty in case universality is abandoned), the Popular Front offers to keep an unconditional compensation mechanism and, concomitantly, to impose higher taxes on energy-intensive industries and to fight smuggling and trafficking more energetically so as to generate additional revenues and finance the compensation fund. Therefore, on the issue of compensation as on the other two issues discussed earlier, the dividing line does not oppose religious and secular forces – rather, the main source of cleavage lies in the economic orientation of individual political organisations irrespective of their religious or secular leaning.

Some elements of conclusion

Going somehow against the dominant narrative which erects the opposition between secular and religious forces as the main source of cleavage in Tunisian society, this article has sought to investigate the possible existence of other fault lines in domestic politics. To this end, the article compared the positions of the country's three main political forces on a number of economic issues that match other potential sources of cleavage identified by Lipset and Rokkan, in particular the opposition between capital and labour: the adoption or rejection of structural adjustment programmes as counterparts to the Deauville Partnership; the attitude towards the unconditional payment of the national debt; and the opportuneness of a reform of the country's various compensation schemes.

On each of these issues, Ennahdha displays a high number of similarities with Nidaa Tounes – yet, both parties diverge to a greater extent from the Front Populaire. This may be an indication that the most fundamental source of cleavage lies in the economy and opposes liberal, pro-market forces (Ennahdha and Nidaa Tounes/Union for Tunisia) and forces favouring state intervention and strong regulation (Front Populaire). The proximity in terms of economic policy between Ennahdha and Nidaa Tounes has already been highlighted by keen observers of Tunisian politics such as R. Prince (2013b), who for instance noticed that 'although Ennahda and Nidaa Tounes disagree sharply on cultural policies – for instance, on the Islamisation of Tunisian society – both parties are firmly committed to the same neo-liberal economic policies that Tunisia has embraced for the past 30 years.'

Recent speculations, masterfully entertained by R. Ghannouchi in a number of interviews,[5] regarding the possible formation of a coalition government between Ennahdha and Nidaa Tounes after the next elections would undoubtedly and permanently rebut the thesis according to which religion is the main source of cleavage in domestic politics. A number of European countries in which religiously-inspired conservatives and liberal social-democrats jointly control the executive within a single coalition government have already paved the way for that development.

[5] For instance, R. Ghannouchi declared to the Réseau des démocrates (Democrats' Network) in May 2014 that 'Nidaa Tounes is part of the country's political reality', that 'ideological bipolarisation is dangerous' and that 'Tunisia needs a government of national unity' broader than was the Troika (which could only be achieved if Ennahdha and Nidaa Tounes joined forces). These declarations are available online at: http://forumdesdemocrates.over-blog.com/2014/05/rachedghannouchi-la-tunisie-a-besoin-d-un-gouvernement-d-union-nationale.html.

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Adapting Foreign Policy to a Country in Transition: France, Germany and the new Tunisia

Laura-Theresa Krüger and Edmund Ratka

The outburst of popular rage and desire for change that spread from the Tunisian province to large parts of the Arab world and led to the fall from power of Ben Ali in Tunis and Mubarak in Cairo within a few weeks heralded the start of a new era in 2011. The internal and regional reconfigurations taking place in the Middle East and North Africa presented a challenge also for external actors such as the European Union and its member states. How would European powers react to the unexpected democratic transition of a (Arab-Muslim) country whose authoritarian (seemingly secular) *ancient régime* has long been their reliable partner, both in economic and security terms? We delve into this question by taking the approaches of France and Germany towards Tunisia as case studies.

Comparing the general commitment to post-revolutionary Tunisia of German and French foreign policy leads to a remarkable 'puzzle': Berlin, whose policy towards the Maghreb had been characterized by benign neglect since long, has become an active player especially in Tunisia. German-Tunisian relations have flourished since the revolution of 14 January 2011. To the contrary, Paris, traditionally considering the region its *chasse gardée* and maintaining particular close political, cultural and economic ties to its ancient protectorate Tunisia, has initially shown reserve and hesitation towards the Tunisian revolution and its outcomes. While of course still being its main economic and cultural partner, France's political actorness in Tunisia has come to be questioned. Tellingly, among Tunisian civil society activists, Germany is generally seen as a dynamic and proactive actor and a positive example in external support to the democratic transition. The French role, by contrast, is considered to be more ambiguous, with the colonial heritage and the cherishing of Ben Ali still lying heavily on the Tunisian minds.[1]

Why could Berlin adapt its 'Tunisian policy' much more easily and swiftly to the new context after the 14 January revolution than Paris did? We argue that a key explanatory factor is to be found in the political cultures of France and Germany, which either facilitated or hindered the redefinition of relations with post-revolutionary Tunisia. In particular, the two countries differently perceived – and dealt with – the rise of political Islam, the latter manifesting itself in the (though not absolute) victory of the Ennahda party in the first free elections on 23 October 2011. In the following, we compare (1) the general commitment and policies of Germany and France towards post-revolutionary Tunisia and their support to the democratic transition up to the adoption of the Constitution as well as (2) their respective approach towards the rise of political Islam in Tunisia during this period. Finally, (3) we trace back German and French behaviour to elements of these countries' political culture and the latter's respective '(mis-) fit' with the dynamics in Tunisia. Our time frame comprises the period from the departure of Ben Ali, which marks the beginning of the transition period, to the adoption of a new Tunisian Constitution in early 2014.[2]

Political culture has traditionally been defined as '*set of attitudes, beliefs, and sentiments which give order and meaning to a political process and which provide the underlying assumptions and rules that govern behavior in the political system.*'[3] Following social constructivist foreign policy theory, we consider political culture to be constitutive for a country's foreign policy repertoire: '*Cultural analysis should be able to tell you what types of options will be favoured, ceteris paribus. Well-known and well-practiced options, preferably tied in to the nation's heroic history, will be preferred over less well-known and less familiar options or options with traumatic track records – even if an objective cost-benefit analysis of the two options would suggest otherwise.*'[4] Political culture can thus enable or hinder the adoption of certain foreign policy options. We assume that a resemblance or fit in the political culture of the foreign policy actor with the one of target countries greatly facilitates the redefinition and actual realisation of foreign policy actions as well as the establishment of cooperative relations between both countries. A misfit, to the contrary, makes it much harder to identify 'obvious' policy options and gives reason to expect a more cautious and reticent foreign policy.

[1] Cf. Krüger, Laura-Theresa, and Ratka, Edmund (2014). '"A New Response to a Changing Neighbourhood"? The Perception of European Policies in Tunisia after the Arab Spring', *L'Europe en formation* 371: 9–25.

[2] It should be noted that with the installment of a nonpartisan caretaker government in January 2014 and the subsequent election defeats of Ennahda in Tunisia as well as with a view to regional developments, such as the further rise of Islamist terrorism, the issue of political Islam in European-Tunisian relations now poses itself differently. This is, however, beyond the reach of this article.

[3] Cf. Pye, Lucian W. (1968). 'Political Culture', in David L. Sills (ed.), *International Encyclopedia of the Social Sciences,* New York: Macmillan, 218.

[4] Hudson, Valerie M. (2007). *Foreign Policy Analysis. Classic and Contemporary Theory,* Lanham, Md.: Rowman & Littlefield Publishers, 121.

Our analysis of the foreign policy of Germany and France towards Tunisia after the revolution reveals that with the former a fit in certain elements of political culture occurred. This enabled Germany – at least for the moment – to rapidly increase its presence in the country and emerge as one of the main external actors in Tunisia since 2011. France, by contrast, struggled to adapt to the post-revolutionary dynamics in Tunisia which have led to a misfit between the political cultures of the two countries. Against this background, French diplomacy displayed a remarkable paralysis in the first years of the Tunisian transition. However, getting over the misfit, Paris has been increasingly active in Tunisia since mid-2013 and seems keen on successfully redefining Franco-Tunisian relations.

Germany's constant support of post-revolutionary Tunisia vs. the initial paralysis of France

In the wake of the revolutionary dynamics in the Arab world, the region and in particular the Maghreb rose in rank on Germany's foreign policy agenda. Shortly after the fall of Ben Ali in Tunis and amidst the protests in Cairo, then Foreign Minister Guido Westerwelle spoke of a '*historic caesura*' and declared: '*Nothing will be as it was before. This holds true on the one hand for the societal situation in the affected countries and on the other hand for Europe and its strategic neighbourhood relations*'.[5] Politicians from all sides advocated for more German commitment in Europe's Southern neighbourhood, often blaming France and other Southern EU member states for a misguided European Mediterranean policy.[6] The promotion of democracy – previously considered an only marginal interest – should now become the key feature of the 'new' Mediterranean policy for which Germany was arguing. Henceforth, democracy was regarded as a precondition for stability, as Westerwelle affirmed in a parliamentary speech on 27 January 2011: '*What we are witnessing today refutes the contention that democracy and civil rights make countries unstable. We are witnessing the opposite. [...] The road to stability passes through democracy.*'[7]

Rapidly, Berlin followed up on its words with deeds. In February 2011, the Foreign office conceived a specific 'transformation policy', identifying Tunisia and Egypt as the main target countries, which was endowed with an extra € 100 million in 2012/2013 (with half of the money going to projects in Tunisia). In addition, outstanding Tunisian loans were swapped and development aid significantly increased.[8] On the political level, intensive travel diplomacy between Berlin and Tunis emerged, starting with Westerwelle's visit to Tunisia on 12 February 2011. Both governments officially signed a 'transformation partnership' at the beginning of 2012. The intergovernmental consultations on state secretary level, which took place in September of the same year and again in June 2014, marked a further institutionalisation of the relationship.

The activism and the presence of Germany and its many semi-governmental or government-funded institutions in Tunisia came along with political efforts to support the constitutional process. As societal polarization and economic frustration grew, Germany encouraged patience and inclusive dialogue, trying to play the role of a mediator between government and Islamists on the one hand and the opposition and large parts of civil society on the other hand.[9] The rumours circulating in Tunis that the prime minister of the caretaker-government Mehdi Jomaa, a technocrat known to be close to Ennahda who took office at the beginning of 2014, was Berlin's pick provides some anecdotal evidence of the new German actorness in Tunisia.

France, by contrast, seems to have lost some ground in Tunisia after the revolution and struggled to adapt to the Tunisian transition. Just some days before the ousting of President Ben Ali, with violent repressions of the demonstrations already under way, several members of the French government refrained from criticising the incumbent regime. Foreign Minister Michèle Alliot-Marie became infamous for her offer of French security know-how to the Ben Ali regime.[10] Also other ministers such as Frédéric Mitterrand backed up Ben Ali.[11] On 14 January 2011, the Elysée barely '*took notice*' of the Tunisian transition.[12]

Then, for about one month, France did not take major actions towards Tunisia and seemed to be paralyzed concerning the dynamics at the southern rim of the Mediterranean. After the ousting of Hosni Mubarak in Egypt on 14 February 2011, however, French President Nicolas Sarkozy rushed forward to assume a more active role in the transitions in Northern Africa. The discredited Michèle Alliot-Marie had to resign at the end of the month and Sarkozy started advocating for a Western intervention in Libya. From mid-February on, he deployed a whole series of ministers and state secretaries on official visits to Tunisia. Still, they generally refrained from giving concrete political advice on how the Tunisian transition should best be managed but rather diffused a message of friendly support and particularly emphasized that they had not come to teach lessons, but to listen to the Tunisian partners and their needs ('*nous mettre à l'écoute*'[13]). While listening to Tunisian needs and ideas, the deployed ministerial corps clearly refrained from giving concrete advice for the transitional process.[14] With a view to substantiate French support, Foreign Minister Alain Juppé announced € 350 million of grants and loans. The French 'shuttle diplomacy', however, silently fizzled out in late 2011 and official visits became scarce while Tunisian government representatives continued to visit France on a regular basis.[15]

[5] Westerwelle, Guido (2011). Bundestagsrede [Speech to the German Federal Parliament], 9 February, Plenarprotokoll 17/89: 9963, Berlin: Deutscher Bundestag. All translations are our own.

[6] Kerstin Müller, the foreign affairs spokesperson of the Greens declared: '*I would appreciate – and one must say that once also in parliament – if France went back in the second row now. The claim one did not know of the scale of brutality exerted by the regime is not credible. We need a new policy towards Tunisia, towards all countries in this region. France will not be able to conduct such a policy in a credible way'*. Müller, Kerstin (2011). Bundestagsrede, 27 January, Plenarprotokoll 17/87: 9774, Berlin: Deutscher Bundestag.

[7] Westerwelle, Guido (2011). Bundestagsrede, 27 January, Plenarprotokoll 17/87: 9767, Berlin: Deutscher Bundestag.

[8] For Tunisia, the debt conversion accounted for € 60 million and the German development bank KfW provided a new credit line of € 220 million to the country. Cf. Auswärtiges Amt (2012). Bericht an den Unterausschuss 'Zivile Krisenprävention und vernetzte Sicherheit' zum Thema Transformationspartnerschaften in der MENA-Region [Federal Foreign Office report on civilian crisis prevention], Berlin, 10 April.

[9] Foreign minister Westerwelle himself mediated several times between the opposing parties in Tunis, in particular during the state crisis in summer 2013. Cf. Khefifi, Walid (2013). 'Médiation entre le pouvoir et l'opposition', *Le Temps*, 15 August: 2.

[10] Cf. Le Monde (2011). *Tunisie: les propos "effrayants" d'Alliot-Marie suscitent la polémique*, 13 January, http://www.lemonde.fr/afrique/article/2011/01/13/tunisie-les-propos-effrayants-d-alliot-marie-suscitent-la-polemique_1465278_3212.html, accessed 14.06.2014.

[11] Cf. Le Post (2011). *Frédéric Mitterrand: "Dire que la Tunisie est une dictature univoque me semble exagéré"*, 10 January, http://archives-lepost.huffingtonpost.fr/article/2011/01/10/2366147_frederic-mitterrand-dire-que-la-tunisie-est-une-dictature-univoque-me-semble-exagere.html, accessed 14.06.2014.

[12] France only pledged support to the Tunisian people one day later, cf. RFI (2011). *Tunisie: Tour d'horizons des réactions à la fuite du président Ben Ali*, 15 January, http://www.rfi.fr/afrique/20110115-tunisie-tour-horizon-reactions-depart-rpesident-ben-ali/, accessed 20.05.2014.

[13] Koscuisko-Morizet, Nathalie (2011). Conférence de presse de Nathalie Kosciusko-Morizet, Ministre de l'écologie, du développemment durable, des transports et du logement, Tunis, 7 March, http://www.ambassade-france-tn.org/Conference-de-presse-de-Nathalie, accessed 28.07.2014.

[14] Cf. for instance Lagarde, Christine, and Wauquiez, Laurent (2011). Point de presse conjoint de Madame Christina Lagarde, Ministre de l'économie, des finances et de l'industrie, et de Monsieur Laurent Wauquierz, Ministre chargé des affaires européennes, Tunis, 22 February, http://www.ambassadefrance-tn.org/Point-de-presse-de-Christine, accessed 28.07.2014.

[15] Cf. Ambassade de France à Tunis (2014). Visites bilatérales, années 2011–2014, http://www.ambassadefrance-tn.org/Annees-2011-2013, accessed 23.07.2014.

[16] Hollande, François (2012). Conférence de presse avec M. Moncef Marzouki, Président de la République Tunisienne, 17 July, http://www.elysee.fr/conferences-de-presse/article/conference-de-presse-avec-m-moncef-marzouki-president-de-la-republique-tunisienne/, accessed 9.05.2014.

In July 2012, two months after the election of François Hollande, a new French President who did not bear the legacy of close ties to the Ben Ali regime, Moncef Marzouki paid his first visit to France as Tunisian President with an extensive diplomatic schedule. He was even accorded the honour of holding a speech in the *Assemblée Nationale* where he spread a warm and positive message, clearly stating that the larger part of France had always been loyal and supportive of the Tunisian people. According to him, political changes in the two countries could hardly cast a cloud over the tight Franco-Tunisian relations. In the ensuing press conference, Hollande, for his part, also underlined that a page had been turned, though he was careful not to give lectures on how to accomplish the Tunisian transition. He preferred to '*begin modestly, but begin*' in re-launching the Euro-Mediterranean relations and clearly stated that it was not up to France to propose the rhythm or means of the proceedings in the Maghreb.[16]

Despite Marzouki's flattering words, Hollande's long-awaited first official visit to Tunisia, originally announced for December 2012, was postponed several times. Hollande's appearance in Tunis in July 2013, which came along with the announcement of substantial French funds to support the Tunisian transition, may indicate a turning point in Franco-Tunisian relations, with Paris finally overcoming the misfit in political culture.

However, until today, France has not adopted an official overall strategy towards the Tunisian democratisation (in particular if compared to the German 'transformation partnership'). This fact as well as the *être à l'écoute*-approach may be an indication of both French strategy of providing cautious, non-interfering support and the lack of certainty about how to adapt to the dramatic changes in the regional context. Still, the unavailability of detailed information and the lack of transparency on the concrete assistance to Tunisia remind of the traditional French African policy, largely a *domaine réservé* of the Elysée and its impenetrable development network.

The German hope for Islam-democrats vs. the French cautiousness of Islamism

2011 and 2012 witnessed the rise of political Islam in the transforming Arab world. In the first free elections in Tunisia and Egypt, the Ennahda party and the Muslim Brotherhood won respectively relative or absolute majorities. Germany embraced this dynamic in a much more vigorous manner than an uncertain France. Policy-makers in Berlin rather emphasized appreciatively the (largely successful) procedure of democratic elections (and the mere fact that they took place) especially in Tunisia instead of worrying about the outcome.[17]

[17] Cf. Auswärtiges Amt (2011). Press release: Human Rights Commissioner visits Tunisia and Egypt, http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2011/111111-MRHH_TUN_EGY.html, accessed 23.07.2014.

[18] '*The image that we in the West, including in Germany, have always drawn of Islamic societies is wrong. These people are able to have their say in politics*', Mützenich, Rolf (2011). Bundestagsrede, 9 February, Plenarprotokoll 17/89: 9965, Berlin: Deutscher Bundestag. '*We must learn that the alternative which also the authoritarian rulers did made us believe – authoritarian or Islamist – is not a real one. […] What can we draw as interim conclusion? First: Stability can be elusive. Authoritarian regimes do not guarantee stability. Second: The assumption there would be peoples that are not suitable for democracy and state of law is wrong and arrogant*', Polenz, Ruprecht (2011). Bundestagsrede, 27 January, Plenarprotokoll 17/87: 9770–2, Berlin: Deutscher Bundestag.

[19] Westerwelle, Guido (2012). 'Politischer Islam und Demokratie', *Frankfurter Allgemeine Zeitung,* 13 January.

[20] Cit. in Auswärtiges Amt (2013). Politische Gespräche in Tunis, 15 August, http://www.auswaertiges-amt.de/DE/AAmt/zz_Archiv_BM-Reisen/2013/08_Tunesien/130813-Reiseankuendigung-TUN_node.html, accessed 14.06.2013.

[21] Cf. Westerwelle, Guido, and Abdessalem, Rafik (2012). 'Mit Freiheit verantwortungsvoll umgehen', *Frankfurter Rundschau,* 24 September.

[22] Cit. in Veleva, Inna (2013). 'Endlich liefern', *Zenith*, 8 May , www.zenithonline.de/deutsch/politik/a/artikel/endlich-liefern-003644, accessed 14.06.2013.

Already in the immediate aftermath of the Tunisian revolution, German politicians openly called into question their long held image of Islamic societies as incompatible with democracy.[18] At the beginning of 2012 Westerwelle frankly stated that '*parties which are inspired by Islamic values and national traditions are currently most likely to evolve into catch-all parties (Volksparteien) with a majority appeal. […] We have a great interest that the model of Islamic-democratic parties solidifies. We should thus support it with all our efforts*.'[19]

While concrete German material help for the Islamists is not known, by doing 'business as usual' with the Ennahda-dominated government, Germany provided much needed international legitimacy to the party which increasingly came under pressure in the two years following the elections. When Westerwelle travelled to Tunis on 14 and 15 August 2013 mediating in the Tunisian state crisis, he preached for an '*inclusive restart*' and warned against an Egyptian scenario. In Cairo, a few weeks earlier, the Muslim Brotherhood had been toppled by the military after mass protests. As he at least implicitly bolstered the staggering Tunisian government with his visit, Westerwelle affirmed that '*Germany is not on the side of any party, but on the side of democracy*'.[20] Already on 9 January 2012, only shortly after the first democratically elected and Ennahda-dominated government had taken office, the German-Tunisian 'transformation partnership' was signed by Westerwelle and his colleague Rafik Abdessalem, an Ennahda politician who is also the son-in-law of party leader Rachid Ghannouchi. Following the unrest triggered in several Arab countries by the insulting portrayal of Prophet Muhammad in a film, Westerwelle and Abdessalem published a joint article in September 2012 calling for tolerance and condemning extremism on all sides.[21] Remarkably, as the polarization within Tunisia mounted in the first half of 2013 after the assassination of Chokri Belaid, a charismatic opposition politician and Ennahda critic, and as the country was shaken by a wave of anti-government protests, German ambassador Jens Plötner cautioned secular elites: '*The 37 percent who voted for Ennahda cannot be ignored*.'[22]

At the top of the German Foreign Office and among diplomats and experts a strong tendency towards engagement with moderate Islamists can thus be observed. However, the issue remains contested in the broader public and in particular within the Christian-democrat milieu. Ruprecht Polenz, a CDU parliamentarian who presided the foreign affairs committee until his retirement in autumn 2013, advocated since the first days of the Arab Spring for including Islamist parties in the political processes in the transitional countries, if they accept principles of non-violence, tolerance and pluralism.[23] The head of the CDU/CSU group in parliament Volker Kauder, by contrast, has from the very beginning cautioned against an

Islamist take-over, fearing negative consequences for oriental Christians.[24]

It is thus far from certain that Germany will lastingly embrace moderate political Islam as a force to partner with in the emerging and sometimes quickly changing landscape of the 'transitional' countries in the Middle East. The disempowerment of the Muslim Brotherhood in Egypt and the bloody rise of Islamist extremism in countries such as Syria and Iraq may alter the perception and positing of Germany in this regard. Nonetheless, in a decisive period in the aftermath of revolution in Tunisia, the relative ease of Germany to cope with religion-based political parties in the Arab world contributed to remarkable deepening of German-Tunisian relations.

In contrast to Germany, the uncertain attitude of France towards the role of religion in politics led to a diplomatic zigzag course since the Tunisian revolution. In an early visit to Tunisia in April 2011, Foreign Minister Alain Juppé tried to break from the past and declared that France was now open to talk to any political actor that refused violence and adhered to democratic values.[25] But when the Islamist Ennahda party won the first free Tunisian elections to the ANC in October 2011, France became more hesitant: Sarkozy is reported to have announced in his Council of Ministers that France would be keeping watch over human rights and democratic principles.[26] More explicitly, Juppé stated in a radio interview that the election results would not alter Franco-Tunisian relations but that France would be watchful regarding the 'red line' of values, democratic principles and human rights such as gender equality. French aid that was allocated also in the framework of the Deauville Partnership, until now largely promoted by France, would henceforth be made conditional upon this 'red line'.[27] This is remarkable as Paris has until then, in particular during the renegotiation of the European Neighbourhood Policy in February 2011, always argued against too strong an emphasis on conditionality which, in turn, was at the time actively promoted by Berlin.[28] In contrast to the initial rhetoric, France thus remained sceptical about the role of political Islam in post-revolutionary Tunisia. It is this scepticism that President Moncef Marzouki referred to when he stated in the Parisian *Assemblée Nationale* in mid-2012 that '*The question I am often confronted with is whether Tunisia has fallen into the hands of Islamism. The answer is no: Tunisia has fallen into the hands of democracy.*'[29] It was only in mid-2013 that President François Hollande suddenly claimed in the Tunisian ANC that Islam and democracy were compatible, a point we will come back to later on.

[23] Cf. Polenz, Ruprecht (2011). Bundestagsrede, 27 January, Plenarprotokoll 17/87: 9772, Berlin: Deutscher Bundestag.

[24] Kauder, Volker (2011). Bundestagsrede, 9 February, Plenarprotokoll 17/93: 9966–7, Berlin: Deutscher Bundestag.

[25] Cf. Juppé, Alain (2011). Alain Juppé en conférence de presse à Tunis, Tunis, 21 April, http://www.ambassadefrance-tn.org/Alain-Juppe-en-conference-de, accessed 20.05.2014.

[26] Cf. Le Point (2011). *Sarkozy: la France 'vigilante' sur respect des droits de l'Homme en Tunisie et Libye*, 26 October, www.lepoint.fr/politique/sarkozy-la-france-vigilante-sur-respect-des-droits-de-l-homme-en-tunisie-et-libye-26-10-2011-1389296_20.php, accessed 20.05.2014.

[27] Cf. TF1 (2011). *Juppé: 'la France va rester vigilante' sur la Tunisie*, 26 October, http://videos.tf1.fr/infos/2011/juppe-la-france-va-rester-vigilante-sur-la-tunisie-6788444.html, accessed 20.05.2014

[28] On the position and respective influence of Germany and France on the negotiations within in the EU about the reform of the Neighbourhood Policy and the response to the Arab Spring in particular, see Ratka, Edmund (2014). *Deutschlands Mittelmeerpolitik. Selektive Europäisierung von der Mittelmeerunion bis zum Arabischen Frühling*, Baden-Baden: Nomos, 211–27.

[29] Marzouki, Moncef (2012). Réception de M. Moncef Marzouki à l'Assemblée nationale, 18 July, http://www.ambassadefrance-tn.org/Reception-de-M-Moncef-Marzouki-a-l#allocution-moncef-marzouki-1, accessed 20.05.014.

The fit of German and the misfit of French political cultures with the post-revolutionary dynamics in Tunisia

In order to better comprehend French and German relations towards Tunisia since the ousting of Ben Ali on 14 January 2011 in general and their stance towards political Islamism in particular, we draw on three elements of the political cultures of Germany and France, arguing that the respective fit or misfit helps understand why the former could – and did – much more easily and swiftly engage with post-revolutionary Tunisia than the latter. These elements are the organisation of political decision-making, national transition experiences and the relationship between state and religion.

As for the first element, the German political culture with a parliamentary and party system that favours coalition governments and its relatively strong (yet moderate) trade unions and other societal groups that are involved into the political decision-making process roughly mirrors the emerging Tunisian one. In autumn 2013, Tunisia found the way out of the political deadlock through the establishment of a national dialogue. Under the aegis of important civil society organisations and in particular the trade union UGTT, the different political parties reached compromises on the establishment of non-partisan caretaker government and on the new constitution which was adopted in January 2014. As for France, the constitution of the Fifth Republic guarantees encompassing prerogatives to the President while leaving less power to the *Assemblée Nationale*. The rather centralised and hierarchical French decision-making structure therefore does not match the Tunisian transitional constitutional situation featuring a strong ANC that has also elected the President, nor does it correspond to the consensus-seeking culture Tunisians were ultimately looking for.

Second, German transitional experiences appear to be closer to the developments in Tunisia than the transitional experiences present in the collective memory of France. During its last constitutional transformation, France experienced a strong caesura with the establishment of the incumbent constitution in 1958, almost diametrically opposed to that of the Fourth Republic, and the loss of its last colonies. The French experienced the transition (from a democratic system to another democratic system) thus as a turbulent period that came to a close with the emergence of a strong leader, namely Charles de Gaulle. Germany, in turn, experienced two transitions, after 1945 in the West and after 1989 in the East, from (albeit of course very different in its severity) dictatorial regimes to a new democratic one that was characterized, among others, by better control and sharing of power. In particular the transition of Eastern Germany in the wake of reunification is still very present in the country, making political decision-makers aware of the challenges Tunisians are facing,

including the length of transitional processes and the task of taking along – as far as possible – all political and societal groups during such a process.

Lastly, the respective relationships between state and religion in France and Germany help understand French cautiousness against political Islam in Tunisia as well as the German ease in cooperating with the Ennahda party. In the time after the Second World War and Nazi terror regime, with all its (also moral) consequences, the Christian democrats, taking on pre-war traditions of religiously inspired parties, firmly established themselves as political force and played an important role in political and societal stabilisation of the young Federal Republic. In addition, churches and religious representatives remained very visible actors in the political and public life for decades and their privileged stance is still manifested, for instance, in church taxes collected by the state. In France, on the contrary, the principle of *laïcité* goes back as far as the French Revolution and has been legally codified in 1905. In addition, the high proportion of Muslims among the French immigrants tends to sharpen societal debates on the role of religion in everyday life, such as the recurring controversies on wearing veils and headscarves.

By highlighting the French and German reactions to three key events in the Tunisian transition, the following table shows how certain elements in the respective political cultures influenced – and in our case catalysed or retarded – an affirmative political response to the Tunisian revolution.

Event in Tunisia	*French reaction*	*Relevant/active element of the political culture*		*German reaction*
		France	*Germany*	
14 January 2011: ousting of Ben Ali	hesitation	**transitional experience**		rapid commitment and support of the transition
		caution, negative connotation	inclusive process, positive connotation, patience	
23 October 2011: elections to the ANC	caution against Ennahda, emphasis on conditionality after Ennahda victory	**relationship between state and religion**		continuing support, backing of Ennahda-dominated government
		laïcité	secularism	
national political crisis in mid-2013	initially refraining from evaluating the ongoing transition, then more active role since July 2013	**political decision-making**		active mediation between the conflicting parties
		hierarchical	consensual, inclusive	

Table 1: Elements in French and German political cultures and their effects on their policies towards Tunisia.

Germany and France in Tunisia: Towards competition of cooperation?

Against the background of the misfit between the French and Tunisian political cultures, France had difficulties adapting its policy towards Tunisia to the post-revolutionary setting. Yet, it has started to reactivate and re-establish its relations towards Tunisia since mid-2013. On his first official visit to Tunisia and surrounded by a ministerial entourage, Hollande intended to give the bilateral relations a new start. He declared before the Tunisian *Assemblée Nationale Constituante* (ANC) that re-establishing ('*refonder*') Franco-Tunisian relations meant taking Tunisian history and the lessons learned into full account. Furthermore, he stressed France's trust in the new Tunisia and the French predisposition to work with all democratically elected representatives. Furthermore, he announced the allocation of € 500 million to infrastructural and economic projects in Tunisia. He especially highlighted that it was the Tunisians own responsibility to make sure that the democratic transition would be successful, but also firmly emphasized that this responsibility transcended their country as Tunisia was seen as an example in the broader Arab world.

France also modified its stance towards political Islam as an actor in the Tunisian transition. In July 2013, Hollande announced that '*France knows that Islam and democracy are compatible*'[30], followed by applause in the ANC. About half a year later, on the occasion of the adoption of the Tunisian Constitution, Hollande repeated this message and showed the French strong political will of commitment and support: While Germany was (only) represented by its Head of Parliament Norbert Lammert, the French President himself attended the ceremony in Tunis in February 2014. In his speech, Hollande highly praised different aspects of what he called a '*texte majeur*', like freedom of worship and conscience, gender equality or the important role assigned to civil society. Furthermore, he admired that all obstacles notwithstanding, Tunisia had managed to keep the political dialogue and mutual respect on track. Still, he intended to remind the assembly that what had been adopted '*is already much. Now, it still needs to be put into practice.*'[31] Hollande's recurrent visits to Tunis could be read as signs that France is now reclaiming its place in post-revolutionary Tunisia.

The concept of political culture helps understand the options a country can easily and rapidly pursue in its foreign policy. For instance, in the case of Germany, the fit with the Tunisian political culture catalysed its capacities to act and establish itself as a key partner of post-revolutionary Tunisia. Still, we have seen that national political culture functions neither as a directly causal variable nor does it determine foreign policy ad infinitum. Rather, it functions as an enabling

[30] Hollande, François (2013). Discours du président François Hollande devant l'ANC, Tunis, 5 July, http://www.ambassade-france-tn.org/Discours-du-president-Francois, accessed 20.05.2014; cf. also Hollande, François (2014). Discours du président de la République devant l'Assemblée nationale constituante tunisienne, Tunis, 7 February, http://www.elysee.fr/declarations/article/discours-du-president-de-la-republique-devant-l-assemblee-nationale-constituante-tunisienne/, accessed 20.05.2014.

[31] Hollande, François (2014). Discours du président de la République devant l'Assemblée nationale constituante tunisienne, Tunis, 7 February, http://www.elysee.fr/declarations/article/discours-du-president-de-la-republique-devant-l-assemblee-nationale-constituante-tunisienne/, accessed 20.05.2014.

catalyst or as an impeding stumbling block towards certain foreign policy options a country might pursue. In this sense, France was, after some time, able (or willing) to modify its political stance towards Tunisia. In particular, in the process of re-founding the Franco-Tunisian relations, Paris increasingly accepted political Islam as an important political force in the new Tunisia. In this regard, the French policy seems to gradually converge towards the approach Germany has been following from the beginning. Paris is increasingly regaining a firmer role towards the Tunisian democratisation process, eager to reaffirm its presence and visibility in the country. The fact the Prime Minister Mehdi Jomaa first travelled to Paris in April 2014 may be a first sign of success for this Parisian strategy. Still, when Jomaa visited Berlin two months later, where extensive bilateral government consultations took place, the German Foreign Ministry announced to scale up its transformation funds, showing a strong will to maintain the level of intense cooperation.

It remains to be seen if the French catch-up combined with Germany's new commitment to Europe's Southern Neighbourhood will lead to (reinforced) competition between Paris and Berlin on the matter of Tunisia. The other option might be, as the joint visit by Foreign Ministers Laurent Fabius and Frank-Walter Steinmeier to Tunis in April 2014 indicates, the establishment of a strongly coordinated policy of both countries. A common Franco-German approach of sustainable support for Tunisia's democratic transition could thus emerge as a first element of redefining European relations with North Africa in the new era after the Arab Spring.

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