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## **Deceptive Liberal Reforms: Institutional Adjustments and the Dynamics of Authoritarianism in Tunisia (1997–2005)**

Eric Gobe\*

Currently no authoritarian regime south of the Mediterranean is likely to legitimate its rule and action independently of the dominant normative discourse praising democracy. International institutions and organisations, notably the European Union, have made the rule of law and good governance the alpha and omega of their prescriptions and recommendations. Consequently, authoritarian rulers now have to pay at least minimal tribute to a number of internationally established references<sup>1</sup> and cannot violate too obviously the principles governing the rule of law or completely eliminate political pluralism. Until the 1980s they still benefited from the rhetoric of unanimity inherited from the struggle for independence but various difficulties, in particular the confrontation with political Islam, prompted them to adopt institutional amendments supposed to ‘provide a remedy for the distance that has appeared between the state and society’, though without weakening their grip on power.<sup>2</sup> In the early 1990s, therefore a certain degree of pluralism emerged in the Maghreb countries, but it seems to be largely symbolic and does not allow an actual representation of political forces.

In Ben Ali’s Tunisia, the institutional reforms introduced in the 1990s and at the beginning of the twenty-first century were presented by the regime as legal and political changes that sought to deepen pluralism within existing representative bodies. In reality, however, they only institutionalised a controlled pluralism that could not challenge the survival of the authoritarian regime. In fact, the changes were conceived so as to make a possible change in power unthinkable, while at the same time allowing the regime to talk about deepening democracy. Political systems north and south of the Mediterranean converge, insofar as the Maghreb countries in general and Tunisia in particular import legal devices that govern political institutions in democratic countries, to maintain the fiction of the rule of law while preventing the latter’s translation into reality.

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In other words, in Tunisia legal formalism participates in a discourse on broadening and deepening democracy and the rule of law. In reality, the recent constitutional and legislative reform in Tunisia paradoxically ‘limits authoritarian practices while at the same time authorising them, indeed legitimating them if necessary.’<sup>3</sup>

## **Constitutional Amendments to what End?**

Recent amendments to the Tunisian constitution have been conceived and implemented by President Ben Ali in relation to the electoral calendar that determines the rhythm of the country’s political life. The aim was to include in the constitution provisions to preserve and indeed to enlarge the prerogatives of the president of the republic, so as to ensure his ‘re-election’ while respecting legal forms.

### **The Constitutional Law of 27 October 1997: Strengthening Presidential Power and Extending the Scope of the Referendum**

The main provision of the constitutional law of 1997 seeks to extend the referendum to the revision of the constitution itself. According to the new article 76, ‘the president of the republic can submit proposals for revision of the constitution to referendum.’ Until that point, the constitution could be revised only through a vote in parliament on a proposition submitted by the president of the republic or by one third of the deputies. This amendment only took on its full significance in 2002, when it allowed the head of state to organise a referendum on his new proposals for constitutional reform that finally allowed him to stand for a fourth or even a fifth term. For an authoritarian regime, ‘consulting the people in this or that form at this or that time is not a gratuitous act.’<sup>4</sup> Organising a referendum on an issue as important as the president’s term of office has a legitimising dimension, be this under Ben Ali or his predecessor, Habib Bourguiba; it takes on the value of a plebiscite.

The provision that broadens the scope of the referendum as a legislative procedure also strengthens the president’s constitutional powers.<sup>5</sup> Previously, a referendum could be called only to reorganise the constitutional framework of the state and to ratify ‘treaties having an impact on the working of the institutions.’ According to the new article 47, ‘the president of the republic can submit directly to referendum proposals for laws that have national importance or affect the superior interest of the country.’ Since the head of state ‘can

alone determine this qualification, formulated in particularly general terms, it is legislation at large that is now covered by this procedure of semi-direct democracy.’<sup>6</sup>

Another constitutional amendment further strengthens the president’s powers by redefining the boundary between the domains of legislation and government decree.<sup>7</sup> The constitution of 1959 explicitly spelled out the prerogatives of the legislature without defining a regulatory domain, which meant that in theory, legislation was not confined to the narrow limits set by these prerogatives. Henceforth, the new article 35 removes all ambiguity, stipulating that ‘matters other than those that are in the domain of law are in the purview of the regulatory power.’ Moreover, the president of the republic holds the ultimate power to rule by decree (article 53) and has to protect it: he may have the Constitutional Council review any bill affecting the domain of rule by decree, and the council must reach a decision within ten days (article 35).

The amendments to article 8 constitutionalise a number of provisions of the law governing political parties. On the pretext of ‘consecrating the role of parties in the constitution,’<sup>8</sup> the new provisions seek to ban any political group that is based, ‘fundamentally in its principles, objectives, activity, or programs on a religion, a language, a race, a sex or a region’ that do not respect ‘the people’s sovereignty, the values of the republic, human rights, and the principles governing personal status affairs’; or that fail to renounce ‘any form of violence, fanaticism, racism, or discrimination.’ Similar restrictions are found in the Algerian constitution as well as in the Moroccan party law of 2005. The latter explains that parties cannot be established on a ‘religious, linguistic, ethnic, or regional basis that is discriminatory or contrary to human rights’ (article 4), whereas article 42 of the Algerian constitution states that ‘political parties cannot be based on a religious, linguistic racial, gender, corporatist, or regional foundation.’ The phrasing is always imprecise and thus allows the regime to arbitrarily interpret the law. In fact, these provisions seek principally to exclude from the arena of political debate actors who have a popular base, especially Islamist groups, or at least those that are likely to contest the supremacy of the governing elites and to position themselves as a credible alternative force.

Following the lines of the 1997 amendments, those of 2002 seek above all to restore – without saying so – the presidency for life that the 1976 constitution granted to the late Habib Bourguiba and that President Ben Ali abrogated in July 1988.

### **The Constitutional Reform of 1 June 2002: Restoring the Presidency for Life**

The constitutional amendments examined by the Chamber of Deputies, sitting in extraordinary session on 27 February 2002, include a number of changes, most importantly to article 39. Hidden among numerous other changes, the amended article 39 de facto re-establishes the presidency for life by abolishing the earlier limitation of presidential terms to a total of three.

The other amendments (concerning 39 out of the 80 articles) fall into four categories. Some are simple enunciations of general principles or human rights. Thus the revised constitution proclaims that ‘the republic guarantees the fundamental freedoms and human rights in their universal acceptance’; it also endorses ‘the values of solidarity, mutual aid and tolerance among individuals, groups and generations’ (new article 5), which is key to president Ben Ali’s discourse of legitimation. The new article 15 stipulates that every ‘citizen has a duty to protect the country, to safeguard its independence, its sovereignty, and the integrity of the national territory’, allegedly seeking to ‘root’ the ‘duty of loyalty to Tunisia.’<sup>9</sup> The provision allows the regime to persecute opponents who dare to criticise it in foreign media.

Other changes are deceptive and are no more than decoys. The new article 9 states that ‘the inviolability of the home, the confidentiality of correspondence, and the protection of data are guaranteed,’ except, of course, in cases defined by law. Moreover, ‘police custody is subject to judicial supervision. Detention is permissible only on order of a judge,’<sup>10</sup> but the judiciary remains subservient to the executive branch of government.

The text proposes establishment of a two-round presidential election, but in the election of 1999 the two opposition candidates received only 0.52 per cent of the vote;<sup>11</sup> opposition candidates running in the presidential election of 2004 obtained results that were only slightly less humiliating.<sup>12</sup>

The 2002 reform broadened the powers of the Constitutional Council and constitutionalised its composition, which was previously governed by an organic law. The new text seems to strengthen the independence of the council. Whereas the organic law of 2 April 1996 provided for a single authority, the head of state, to appoint all nine members of the council, the new article 75 stipulates that four members are designated by the president of the republic, two by the president of the Chamber of Deputies (for a renewable period of three years), while three others sit *ex officio*: the first president of the Court of Cassation, the first president of the Administrative Tribunal, and the first president of the Court of Accounts. As in most democracies, members of the constitutional jurisdiction are barred from exercising responsibilities in government or parliament and ‘cannot exercise functions of political or

trade union leadership, or activities likely to affect their neutrality or independence.’ Like the constitutional courts of some democratic regimes, the council is henceforth supposed to supervise and regulate elections. Thus it adjudicates complaints against the election of members of both houses of parliament, and it supervises referendums and announces their results (new article 72).<sup>13</sup> The text of the revision incontestably provides the Constitutional Council with new powers insofar as its judgments have henceforth constraining for Authorities (new article 75). However, a key question remains: what is the role of a constitutional council in an authoritarian political system in which only the head of state may request it to issue a ruling? It is true that the reform of the council carries some promise, as ‘the conditions governing the use of judicial instruments by [institutional] actors are not invariants.’<sup>14</sup> However, for the time being, the authoritarian environment in which the council operates largely attenuates the features that remind us of constitutional courts in democratic regimes.

The third category of amendments allows the president to co-opt more members of his clientele by officially establishing an upper house. The new chamber is supposed to ‘double representation [...], so that the first chamber represents citizens directly, whereas the second represents them indirectly through the different components of society.’<sup>15</sup> According to the new article 19, the Chamber of Counsellors will comprise three sorts of members. The first group includes those who are chosen at the governorate level from among elected members of local councils. Each governorate sends one or two representatives to the new chamber, depending on the size of its population. Another third of members is elected at the national level by employers, farmers and salaried employees.<sup>16</sup> The third group is appointed by the president of the republic from ‘among leading national figures’, to allow Tunisia to benefit from ‘the experience and the competence of its people.’<sup>17</sup>

The procedure basically prevents any representation of oppositional forces in the upper house, since the Democratic Constitutional Rally (DCR) has a quasi-monopoly on representation on local councils and controls most of the professional organisations. In the first elections to the council on 3 July 2005, all counsellors elected from among local office holders were members of the DCR. Nonetheless, an unforeseen glitch jammed the presidential machine: the seats reserved for ‘employees’ were not filled because of a boycott by the Tunisian General Labour Union (*Union générale tunisienne du travail*, UGTT). The union refused to participate in the elections because the office of the president tried to interfere directly in the choice of ‘its’ candidates. In May 2005 the leadership of the UGTT voted against the union’s participation in the elections.<sup>18</sup> As for the designation of the last third, it

indeed illustrated extensive nepotism as, to use a phrase coined by Abdelwahab Hani, numerous palace ‘cronies’ were appointed ‘crony-counsellors’.<sup>19</sup> Prominent among them are DCR lawyers who skim off more benefits than all other members of the profession. For them, the second chamber was a godsend, rewarding the most zealous.<sup>20</sup> The third group also included representatives of Tunisia’s ‘true-false NGOs’<sup>21</sup> and ‘recycles’ several former ministers and other dignitaries.<sup>22</sup>

Consistent with the 1997 reform, the fourth category of constitutional amendments accentuates the preponderance of the president of the republic. Certain provisions strengthen his constitutional powers to the detriment of the parliament. The new article 32 assigns to the president alone the power to ratify international treaties, while the new article 28 states that ‘the proposals for laws presented by members of the Chamber of Deputies are not admissible when their adoption would result in a reduction of public resources or an increase in taxes, or new expenses.’ Article 41 also grants the head of state ‘legal immunity’, while in office, for decisions made during the exercise of his duties.

In debates at committee stage most DCR deputies showed particular zeal when it came to proposing amendments to strengthen the powers of the president. The parliamentary committee examining the reform project expressed its desire to raise the age limit for candidates for president from 70 to 75. Not surprisingly, this proposal was immediately accepted by the regime. Combined with the provisions of the new article 39, this amendment allowed President Ben Ali (born 3 September 1936) to seek a fifth term in office in 2009. Thus the heart of the constitutional reform of 1 June 2002 concerns articles 39 and 40 of the constitution, that is, those that govern the election of the head of state.

The amendments were put to a referendum in order to give additional legitimacy to reform presented by President Ben Ali as an ‘historic achievement.’ The results of the referendum of 27 May 2002 confirm that the direct consultation of the people is conceived by the Tunisian regime as a plebiscite for the president and his policies as, according to official figures, the proposed amendments were approved by 99.52 per cent of the voters, with a turnout of 99.59 per cent.<sup>23</sup> Apart from their unrealistic character, these figures are clear indicators of an authoritarian institutionalisation of political expression. The electoral reforms and new rules governing political parties adopted between 1992 and 2003 further confirm this trend.

## **Electoral Reforms and the Funding of Political Parties: Features of a Graciously Granted Pluralism**

Recent changes affecting elections and the funding of political parties have continued to ‘defuse’<sup>24</sup> Tunisian politics. With the exception of the Progressive Democratic Party (PDP), the Democratic Forum for Labour and Liberties (*le Forum démocratique pour le travail et les libertés*, FDTL),<sup>25</sup> and more recently and to a lesser extent, the Ettajdid movement (formerly the Communist Party), the recognised political groups are ‘organs of legitimation for the dominant party’ rather than opposition groups.<sup>26</sup> President Ben Ali has not only sought to avoid political conflict and to construct a malleable opposition that can legitimise his rule; he has succeeded in doing so.

### **The Clientelist Regulation of Party Funding**

If Habib Bourguiba paid lip service to pluralism and kept the opposition at a distance, the current president has made the opposition his satellite and now keeps it dependent on him.<sup>27</sup> That is the meaning of the 21 July 1997 law governing the funding of political parties. On the condition that they are represented in parliament, parties receive an annual allocation divided into a fixed amount (60,000 Tunisian dinars – DT) and a variable amount calculated on the basis of their number of deputies (5,000 DT per deputy). Opposition deputies mainly challenged the provision in the law that excludes from public funding recognised parties without deputies even though they participate in elections: ‘When we look at the title of the proposed law, it seems clearly inappropriate. Its content concerns [only] parties [...] represented in the Chamber of Deputies [...]. If it is necessary to specify which parties are concerned, it would be appropriate to speak of the ‘proposed law on the financing of the political parties represented in the Chamber of Deputies. [...] In addition to its arbitrary character overall, this restriction only accentuates the marginalisation of a certain number of organisations. We do not understand what governs such a provision and what condemns certain parties to renunciation and impotence.’<sup>28</sup>

Moreover, political movements receive a set allowance for their newspapers. The law is phrased in such a way that the regime has great latitude in distributing these public funds. One article provides for an ‘annual subsidy, whose amount is fixed by decree and is allocated to political parties as a contribution to the cost of paper and printing for the publication of



their newspapers. This subsidy will be paid in four instalments, on condition that publication is regular.’<sup>29</sup> The latter provision is of considerable importance, because opposition parties find it difficult to ensure regular publication of their newspapers.

Elections constitute a way of compensating the most ‘deserving’ opponents. In the legislative elections of 1999 and 2004, no alternative means of funding were available to opposition groups. The distribution of seats among these parties is governed by clientelist considerations. The most recent changes to the electoral law seek to keep the opposition parties dependent on the regime while at the same time fuelling the illusion of a decisive advance on the long path to democracy.

### **An Opposition Quota in Parliament**

The mode of election – majority vote for party lists – has remained a constant feature of Tunisian electoral law. Obsessed by the threat that the Tunisian nation might explode, the leaders of the Néo-Destour party, the ancestor of the DCR, chose this mode of election after independence in order to obtain a homogeneous assembly.<sup>30</sup> It has always allowed the regime party to avoid having its predominance questioned and has transformed elections into mere plebiscites on the ruling regime and its policies. The most recent electoral reforms remain consistent with this logic.

An initial reform in 1994 introduced a quota of nineteen seats allocated to opposition parties, to be distributed according to their election results. It created the appearance of pluralism without fundamentally changing the situation. The allocation of these seats depends more on the goodwill of the regime than on the voters. The electoral law thus avoided any rivalry between the DCR and the opposition parties; instead, it forced the latter to compete with each other.

The adoption in October 1998 of an organic law completing certain provisions of the electoral law simply continued the 1994 reform. The increase in the number of seats reserved for the opposition to 20 per cent did not change the rules of the game.<sup>31</sup>

In parliamentary debates, some critical voices denounced the absence of consultation regarding a reform that seemed to be largely handled by princely fiat: ‘The new parliamentary pluralism is in reality the direct result of the political will of the head of state. It is not the product of political and ideological pluralism that is anchored in society and the public sphere.’<sup>32</sup> The most virulent charge against this proposed law came from a member of the

Movement of Democratic Socialists (MDS),<sup>33</sup> Ahmed Khaskhoussi, who put his finger on the contradiction in a law that claims to deepen democracy:

*From a logical point of view, it is not normal that only 80 per cent of the seats are assigned to [the party] that won 97 per cent of the vote, just as the one that won only 3 per cent should not be assigned 20 per cent of the seats. Such a system is unjust. In fact, injustice consists in giving human beings less than what their rights entitle them to. Injustice also consists in attributing to an individual more than (s)he deserves. I think our society must not be passive and dependent, living on gifts and donations.*

Khaskoussi also denounced the logic of a ‘pluralism of the clientelist type’:

*If the leaders of the parties are neither representative nor legitimate, [...] the future candidates who will automatically represent citizens, no matter what the results of the elections are, will know in turn that they have been placed there or appointed. That is why they will not only turn their backs on the citizens and public opinion, but worse, they will look to those who give them their jobs. What will be most important for them is to keep their positions and to survive. As a Tunisian man of letters put it metaphorically, ‘they eat the bread and walk on the table.’ Still more, they will appear to observers to be ornaments in a decor without beauty.<sup>34</sup>*

The legislative reform does not challenge the DCR’s hegemonic position. In reality, it preserves the absolute monopoly of the regime party on the seats assigned by constituency and keeps the opposition in a marginal position.<sup>35</sup>

The 2003 reform of the electoral law further reduces political competition. Presented as a consequence of the constitutional reform of 2002 creating the Chamber of Councillors,<sup>36</sup> it afforded the regime the opportunity to reduce free expression abroad after it had already restricted it at home: article 62.3 of the amended electoral law ‘prohibits any person from making use during the electoral period of a radio or television station that is private or foreign, or broadcasts from abroad for the purpose of calling upon people to vote or to abstain from voting in favour of a candidate, or from using the aforementioned television and radio stations for the purpose of electoral propaganda.’<sup>37</sup> In fact, Tunisian authorities seek to limit the impact of satellite television stations that broadcast in Arabic. These media worry the regime because they are popular among Tunisians, especially the poorer strata that do not speak

French.<sup>38</sup> During the May 2002 referendum, satellite television, notably al-Jazeera, provided a sounding board for opposition leaders and militant supporters of human rights.<sup>39</sup> It provided a forum for leaders of outlawed groups like Moncef Marzouki and more outspoken representatives of legal parties, like the president of the PDP, Nejjib Chebbi, and offered them an opportunity to call for a boycott of the referendum. Moreover, the outlawed human rights organisation, the National Council for Freedoms in Tunisia (NCFT), pointed out that the law did not refer to the electoral campaign but to the electoral ‘period’, which considerably extends the length of time concerned.<sup>40</sup> The former lasts about two weeks, while the latter begins with the official call for elections and ends with the publication of the results, thus lasting some three months.<sup>41</sup>

Part of the opposition reacted very strongly; some deputies voted against the text proposed to them. Normally, opposition members of parliament simply abstain when they disagree with the regime. This time, five representatives of the Ettajdid Movement and Mokhtar Jalali, a marginalised member of the Unionist Democratic Union (UDU), voted against the reform, while six other deputies abstained.<sup>42</sup> Mohamed Harmel, the general secretary of the Ettajdid Movement, described the ban on statements from abroad as a ‘flagrant infringement of free expression.’ To justify the measure, the government had the minister of the interior and local development, Hédi M’henni, play on nationalist feelings and imply that opponents of this provision were not ‘fervent patriots’:

*[article 62.3] protects national sovereignty by preventing foreign radio and television from interfering in our internal affairs [...]. This article should be a source of pride because what is important is equality among the candidates, the dignity and independence of the country with regard to other countries. The electoral question should be treated in terms of Tunisian moral values to make it a purely Tunisian affair. That is our objective: emancipated countries object to the curiosity of foreigners [...]. In Canada, politicians and members of parliament spent hardly a quarter of an hour discussing such a provision.*<sup>43</sup>

Ultimately, the reform of the electoral law maintains the single-round majority vote for party lists and continues to entrust the supervision of the elections to the ministry of the interior and its local branches.<sup>44</sup> It therefore confirms the crushing domination of the regime and its party and makes opposition representatives indebted to presidential favours. The 1999 and 2003

constitutional amendments regarding presidential elections further illustrate a pluralism graciously granted by the head of state.

## **Constitutional Amendments Concerned with Purely Formal Competition in Presidential Elections**

In order to introduce a purely formal competition in the presidential elections of 1999 and 2004 and to co-opt 'consensual' opponents, the regime proceeded to an 'exceptional' reform of the constitution that enabled the president of the republic to choose acceptable competitors. On neither occasion did President Ben Ali take the risk of introducing new conditions for candidacy in the presidential election. Paragraph 3 of article 40 of the constitution requires presidential candidates to obtain the sponsorship of thirty elected officials (deputies or presidents of local councils), a condition that no opposition party has been able to fulfil in the history of independent Tunisia. The approval of ad hoc constitutional laws allowed President Ben Ali to temporarily lift this requirement without losing control of the procedure that governed the selection of his competitors.

In 1999, extremely restrictive conditions were imposed: only the leaders of political parties (the secretary general or the president) could stand for election, and only if they had held this position for at least five years at the time they officially declared candidacy. Moreover, they had to be less than seventy years old, and their parties had to have a least one deputy.<sup>45</sup> These conditions allowed the president to choose two acceptable competitors: Mohamed Belhaj Amor, president of the Popular Unity Party (PUP), and Abderrahmane Tlili, secretary general of the UDU.<sup>46</sup>

In 2003, the right to stand for election was no longer limited solely to leaders of political parties. The new text states that on the day he declares, a candidate for election must have been a member of the executive leadership of his party for at least five years without interruption, and that his party must be represented in the Chamber of Deputies.

In accord with their status as client-parties, the opposition groups in parliament, with the exception of the Ettajdid Movement, expressed relative satisfaction with the ad hoc amendments. Thus Mustapha Bouaouaja, a PUP deputy, declared that 'The opening up of the competition for the highest constitutional office [...] constitutes an additional step in a process in which we have participated with a faith that allows us to imagine a bright future for a country in which the choice and the will of the people will be respected.'<sup>47</sup>

Major criticism came from the Ettajdid Movement (five deputies) and from Mokhtar Jalali. Denouncing the need for sponsorship, Jalali attacked the DCR and the police state:

*The impossibility for any [opposition] candidate in the presidential elections to collect a sufficient number of sponsorships from deputies and presidents of local councils is not only an indication of the opposition's weakness, but also of the fact that the opposition cannot develop in a climate marked by the quasi-absolute domination of a single party that makes use of the state apparatus, including the official or semi-official media, controls the administration and the various institutions of the country [...]. The opposition is incapable of attracting supporters and exerting influence, no matter what its program and its slogans, in a context [...] of continual surveillance where the police spies on everything it does.<sup>48</sup>*

The two other legalised opposition parties not represented in the Chamber of Deputies vigorously denounced the law. The day before the parliamentary vote, Nejib Chebbi announced in a press conference that he had sent a letter to all deputies urging them to reject the law and to vote for an alternative proposal that would open the way to pluralism, free political participation and a peaceful transition of power. The head of the PDP proposed to follow the example of Portugal, where a candidate only needs to be sponsored by 7,500 citizens. As for Mustafa Ben Jaafar, the president of the FDTL, he drew the bitter conclusion that the palace in Carthage had become 'an air-tight lockup with zero risk' and predicted another 'simulacrum of an election.'<sup>49</sup>

In sum, the analysis of recent institutional change shows the extent to which legal formalism and constitutionalism participate in the reproduction and the dynamics of authoritarianism. Official Tunisian discourse on democracy and representation is situated in the framework of a repressive conception of law in which the rulers seek to 'protect themselves against possible "excesses" committed by ordinary citizens and by organised groups.'<sup>50</sup> The laws that allegedly seek to improve representation are conceived in such a way as to prevent opposition actors from taking advantage of their seemingly liberal provisions. In the words of Michel Camau, legislation governing political institutions in Tunisia is characterised by 'a distortion between its conceptual universe, which is that of constitutionalism, and the weak legal tenor of its organisational content'.<sup>51</sup> Consequently this legislation, contrary to that of countries north of the Mediterranean, does not perform 'a function of effective protection and guarantee' and does not establish a system of 'brakes that

are effective and normalised.’<sup>52</sup> Insofar as it does not constitute ‘a formula for mediation and representation of social conflicts by the state,’ but ‘a system of representing the state in its relationship to society,’<sup>53</sup> it performs chiefly a function of legitimising the state and the elites that run it. It appears all the more plastic and unstable as the political calendar and the survival of the authoritarian regime dictate the rhythm and the nature of institutional changes. These legal gymnastics fool hardly anyone, inside or outside the country, and convince only those who want to be convinced. Tunisia’s European partners, however, are more than willing to accept this kind of practice so as not to disturb the economic and security co-operation between the northern and southern sides of the Mediterranean.

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<sup>1</sup> Jean-Noël Ferrié, ‘Les limites d’une démocratisation par la société civile en Afrique du Nord,’ *Maghreb-Machrek*, Spring 2003, no. 175, p. 17–18.

<sup>2</sup> Jean-Philippe Bras, ‘Élections et représentation au Maghreb,’ *Monde arabe Maghreb-Machrek*, April-June 2000, no. 168, p. 5.

<sup>3</sup> Vincent Geisser, ‘Tunisie: des élections pour quoi faire? Enjeux et sens du fait électoral de Bourguiba à Ben Ali,’ *Monde arabe Maghreb-Machrek*, April-June 2000, no. 168, p. 18.

<sup>4</sup> Bertrand Badie, Guy Hermet, *La politique comparée*, Paris: Armand Colin, 2001, p. 244.

<sup>5</sup> Pierre Settembrini, ‘Le point sur les aménagements du cadre juridique de la vie politique en Tunisie,’ *Annuaire de l’Afrique du Nord 1997*, Paris, CNRS-Éditions, 1999, p. 333.

<sup>6</sup> *Ibid.*, p. 332.

<sup>7</sup> *Ibid.*, p. 333.

<sup>8</sup> *Presentation of the constitutional bill amending certain provisions of the constitution*, Parliamentary debates, no. 37, session of Tuesday 15 July 1997 (Wathiqat sharh al-asbab al-murfaqa bi-l-mashru’, Mashru’ al-Qanun ad-dusturi al-muta’alliq bi-tanqih ba’d ahkam min ad-dustur, Mudawalat majlis an-nuwwab, ‘adad 37, at-thulatha’, 15 jwilia 1997, p. 5).

<sup>9</sup> *Presentation of the constitutional bill amending certain provisions of the constitution*, Parliamentary debates, no. 33, session of Tuesday 2 April 2002 (Wathiqat sharh al-asbab al-murfaqa bi-l-mashru’, Mashru’ al-Qanun ad-dusturi al-muta’alliq bi-tanqih ba’d ahkam min ad-dustur, Mudawalat majlis an-nuwwab, ‘adad 33, at-thulatha’, 2 april 2002, p. 1778).

<sup>10</sup> The new article 12 also explains that it ‘is illegal to subject anyone to arbitrary police custody or detention.’

<sup>11</sup> Mohamed Abdelhaq and Jean-Bernard Heumann (the pseudonyms of Larbi Chouikha and Eric Gobe, respectively), ‘Oppositions et élections en Tunisie,’ *Monde arabe Maghreb-Machrek*, 168, April-June 2000, p. 14–28. The explanatory comments link this provision with the establishment of political pluralism in Tunisia: ‘The proposed amendment stipulates for the first time that the president of the republic be elected in two rounds, considering that this system is best adapted to pluralism.’ *Presentation of the constitutional bill amending certain provisions of the constitution*, session of Tuesday 2 April 2002, op. cit., p. 1779, (in Arabic).

<sup>12</sup> The three opposition candidates in the 2004 election received a total of less than 6 per cent of the vote: Mohamed Bouchicha of the PUP obtained 3.78 per cent, Mohamed Ali Halouani of the Initiative démocratique (that is, the candidate of Ettajdid and the independents) 0.95 per cent, and Mohamed Mounir Béji of the Parti social libéral 0.79 per cent. See Vincent Geisser and Eric Gobe, ‘Tunisie: consolidation autoritaire et processus électoraux,’ *L’Année du Maghreb 2004*, Paris: CNRS Editions, 2006, p. 344.

<sup>13</sup> Pierre Settembrini, op. cit., p. 332.

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<sup>14</sup> Furthermore, according to the new article 74, ‘The internal rules of the Chamber of Deputies and the internal rules of the Chamber of Counsellors are submitted to the Constitutional Council before being implemented, so that their conformity or compatibility with the constitution can be examined.’ *Presentation of the constitutional bill amending certain provisions of the constitution*, session of Tuesday 2 April 2002, op. cit., p. 1778, (in Arabic).

<sup>15</sup> *Ibid.*, p. 1778.

<sup>16</sup> The new article 19 explains that ‘candidates are proposed by the professional organisations concerned, in lists including at least double the number of seats reserved for each profession. The seats will then be distributed equally among them.’

<sup>17</sup> *Presentation of the constitutional bill amending certain provisions of the constitution*, session of Tuesday 2 April 2002, op. cit., p. 1779 (in Arabic).

<sup>18</sup> Vincent Geisser and Eric Gobe, ‘Des fissures dans la “Maison Tunisie”? Le régime de Ben Ali face aux mobilisations protestataires,’ *L’Année du Maghreb 2005 –2006*, Paris: CNRS, 2007, p. 385.

<sup>19</sup> Cf Abdelwahab Hani’s analysis, ‘Qui trouve-t-on dans la liste clientéliste du président?’, <http://www.nawaat.org>, 2 August 2005.

<sup>20</sup> *Ibid.* These ‘crony-counsellors,’ among whom we can cite the lawyers Habib Achour, Foued Haouat, Chakib Dhaouadi, Mohamed Samir Abdallah, and the former president of the bar, Abdelwaheb Behi, attempt to contain protest within the bar association and to promote the image of Ben Ali’s regime in international institutions.

<sup>21</sup> Mohamed Elyes Ben Marzouk, president of the ‘official’ association ‘Jeunes médecins sans frontières,’ Ghlem Dabbeche, president of the professional syndicate of civil engineers, or Abdessatar Grissa, an academic and a member of the United Nations Economic and Social Council. See Abdelwahab Hani, ‘Qui trouve-t-on dans la liste clientéliste du président?’, op. cit.

<sup>22</sup> They are, in fact, numerous among the new ‘senators’ designated by the president of the republic. On this subject see Vincent Geisser and Eric Gobe, ‘Des fissures dans la “Maison Tunisie”? Le régime de Ben Ali face aux mobilisations protestataires,’ op. cit., p. 386.

<sup>23</sup> Eric Gobe, ‘Tunisie 2002: un référendum pour quoi faire?’ *Annuaire de l’Afrique du Nord 2002*, Paris: CNRS Editions, 2004, p. 381–413.

<sup>24</sup> For this metaphor, see Mohamed Tozy, ‘Représentation/Intercession. Les enjeux de pouvoir dans les “champs politiques désamorçés” au Maroc,’ in Michel Camau, ed., *Changements politiques au Maghreb*, Paris: CNRS, 1991, p. 153–168.

<sup>25</sup> Led by Dr. Mustafa Ben Jaafar, the FDTL was legalised in October 2002, eight years after it applied for legalisation.

<sup>26</sup> Moncef Djaziri, ‘La problématique partisane dans les systèmes politiques du Maghreb. Relance des études comparatives,’ *Annuaire de l’Afrique du Nord 1995*, Paris: CNRS, 1997, p. 440–442.

<sup>27</sup> Under Bourguiba, dues paid by party members, the sale of newspapers, and fund-raising rallies provided party funding. Today, these resources are no longer available because the number of active party members has become ridiculously small. See Mohamed Abdelhaq and Jean-Bernard Heumann, op. cit., p. 32.

<sup>28</sup> See speech by Ahmed Khaskhoussi, *Presentation and discussion of the bill on the financing of the political parties*, Parliamentary debates, no. 37, session of Tuesday 15 July 1997 (‘Ard wa munaqasha mashru’ yata’allaq bi-t-tamwil al-’umumi li-l-ahzab as-siyasiya, ‘adad 37, at-thulatha’, 15 jwilia 1997).

<sup>29</sup> *As-Sabah*, 13 February 1999 (in Arabic).

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<sup>30</sup> Michel Camau, Fadila Amrani, and Rafaa Ben Achour, *Contrôle politique et régulations électorales en Tunisie*, Collection Maghreb contemporain, CRESM, Tunis: Edisud, 1981, p. 224.

<sup>31</sup> The new articles of the electoral law provide for the allocation of one seat by district on the basis of 65,000 inhabitants (instead of 60,000 in the preceding legislature). Nationally, seats are distributed on a proportional basis among the lists that have not obtained seats in individual districts. A minimum of 20 per cent of the seats is attributed to the opposition.

<sup>32</sup> Speech by Salem Rejeb, *Presentation and discussion of the organic bill modifying and supplementing certain provisions of the electoral code*, Parliamentary Debates, no. 2, session of Tuesday 20 October 1998, p. 38 ('Ard wa munaqasha mashru' al-qanun al-asasi al-muta'alliq bi-tanqih wa ittimam al-majalla al-intikhabiyya, Mudawalat majlis an-nuwwab, 'adad 2, at-thulatha', 20 oktober 1998). Elected on the Ettajdid list in March 1994, Salem Rejeb broke with this party shortly after the elections.

<sup>33</sup> The first autonomous political opposition group (1978–79), the MDS is a party in permanent crisis; its current leadership has been completely clientelised by the regime. On Tunisian opposition parties, see Michel Camau, Vincent Geisser, *Le syndrome autoritaire. Politique en Tunisie de Bourguiba à Ben Ali*, Paris: Presses de Sciences Po, 2003, p. 232–240

<sup>34</sup> Speech by Ahmed Khaskhoussi, *Presentation and discussion of the organic bill modifying and supplementing certain provisions of the electoral code*, op.cit, p. 35–37 (in Arabic).

<sup>35</sup> Nejib Chebbi, *Al-Mawqif*, no. 191, May 1998.

<sup>36</sup> The reform of the electoral law affects 48 articles and introduces 48 others.

<sup>37</sup> *Organic bill concerning the amendment of the electoral code*, Parliamentary Debates no. 37, 4th ordinary session of Tuesday 22 July 2003, (al-qanun al-asasi al-muta'alliq bi-tanqih wa ittimam al-majalla al-intikhabiyya, 'adad 37, at-thulatha', 22 jwilia 2003, p. 1381). Any transgression is punishable by a fine of 20,000 dinars (about 14,000 euros).

<sup>38</sup> Vincent Geisser, 'Le président Ben Ali en campagne contre "les médias sataniques," *Annuaire de l'Afrique de Nord 1999*, Paris: CNRS, 2002, p. 383.

<sup>39</sup> Khaled Shoukat, 'Tunisia... Elections without satellite TV' (in Arabic), <http://www.islamonline.com>.

<sup>40</sup> National Council for Freedoms in Tunisia (NCFT), 'Le régime tunisien criminalise la liberté d'expression à l'étranger après l'avoir annihilé à l'intérieur et empêche la presse étrangère de couvrir les élections,' communiqué issued on 30 July 2003, *Tunis News*, no. 1166, 30 July 2003, <http://www.tunisnews.net>

<sup>41</sup> Speech by the minister of the interior and local development, Hédi M'henni, *Organic bill concerning the amendment of the electoral code*, op. cit., p. 1388 (in Arabic). <http://www.tunisnews.net>

<sup>42</sup> The UDU is one of the regime's client parties. From 1981 to 1988 its founder, Abderahmane Tlili, was an active member of the central committee of the Destourian Socialist Party and its heir, the DCR. We should not attach too much importance to the critical speeches given by certain members of the opposition during parliamentary debates. They appear largely as marginalised mavericks within their party and are in general elected for a single legislature, the leadership of their party or the ruling power seeing to it that they are not re-elected in the next elections.

<sup>43</sup> The minister of the interior emphasised that an 'old democracy' like Canada had included a similar provision in its electoral law. See the speech given by the minister of the interior and local development, Hédi M'Henni, *Organic bill concerning the amendment of the electoral code*, op. cit., p. 1373.

<sup>44</sup> 'PDP: to incriminate declarations made to foreign media is an attack on freedom of expression,' *Al-Mawqif*, 20/6/2003 (in Arabic).



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<sup>45</sup> For more details, see Mohamed Abdelhaq and Jean-Bernard Heumann, op. cit., p. 36. The PUP emerged from a split in Ahmed Ben Salah's Popular Unity Movement, and is one of the political parties that serve to legitimise the regime.

<sup>46</sup> The official argument is simple: in view of the responsibilities, a candidate for election as president must be an experienced politician, have a popular base, and be able to complete his term of office in full possession of his physical and intellectual capacities. See the speech given by the prime minister, Hamed Karoui, before the Chamber of Deputies, *First reading of the constitutional bill concerning the exceptional provisions of the 3rd subparagraph of article 40 of the constitution*, Parliamentary debates, no. 2, session of Tuesday 23 March 1999, (Al-qira'a al-ula li-mashru' al-qanun ad-dusturi al-muta'alliq bi-ahkam istithna'iyya li-l-fiqrathalitha min al-fasl 40 min ad-dustur, Mudawalat majlis an-nuwwab, 'adad 32, at-thulatha', 23 mares 1999, p. 1737).

<sup>47</sup> Remarks by Mustapha Bouaouaja, *First reading of the constitutional bill concerning the exceptional provisions of the 3rd subparagraph of article 40 of the constitution*, Parliamentary Debates, no. 17, session of Tuesday, 7 January 2003 (Al-qira'a al-ula li-mashru' al-qanun ad-dusturi al-muta'alliq bi-ahkam istithna'iyya li-l-fiqrathalitha min al-fasl 40 min ad-dustur, Mudawalat majlis an-nuwwab, 'adad 17, at-thulatha', 7 janfi 2003, p. 763).

<sup>48</sup> Speech by Mokhtar Jalali, *Second reading of the constitutional bill concerning the exceptional provisions of the 3rd subparagraph of article 40 of the constitution*, Parliamentary Debates, no. 27, session of Tuesday 6 June, p. 1082-1083 (Al-qira'a ath-thaniya li-mashru' al-qanun ad-dusturi al-muta'alliq bi-ahkam istithna'iyya li-l-fiqrathalitha min al-fasl 40 min ad-dustur, Mudawalat majlis an-nuwwab, 'adad 27, at-thulatha', 6 Jouwan 2003, p. 1081-1083).

<sup>49</sup> Florence Beaugé, 'Réforme de l'éligibilité à la présidence en Tunisie,' *Le Monde*, 10 January 2003.

<sup>50</sup> Vincent Geisser, 'Tunisie : des élections pour quoi faire? Enjeux et "sens" du fait électoral de Bourguiba à Ben Ali,' op. cit., p. 18.

<sup>51</sup> Michel Camau, 'Caractère et rôle du constitutionalisme dans les États maghrébins,' in *Développements politiques au Maghreb*, Paris: CNRS, 1979, p. 380.

<sup>52</sup> Michel Camau, *Pouvoirs et institutions au Maghreb*, Tunis: Cérès, 2003, p. 151.

<sup>53</sup> Michel Camau, 'Caractère et rôle du constitutionalisme dans les États maghrébins,' op. cit., p. 407.