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Tunisia at a Crossroads

Which Rules for Which Transition?

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From November 2012 to May 2013, Dr. Mohammed Hachemaoui was a Fellow of "Elite Change and New Social Mobilization in the Arab World," a project realized by the Stiftung Wissenschaft und Politik (SWP). Funded by Germany's Federal Foreign Office (in the framework of the transformation partnerships with the Arab world) and the Robert Bosch Stiftung, the project cooperates with the PhD grant program of the Heinrich-Böll-Stiftung and the Hanns-Seidel-Stiftung.

Tunisia at a Crossroads: Which Rules for Which Transition?

Since the fall of the autocrat Zine El Abidine Ben Ali on 14 January 2011, Tunisia is often described as the "good student" of the "democratic transition" in the Arab world. According to many experts, the country that had triggered the popular uprisings in the region went on to the next stage: that of the "consolidation of democracy." This positive interpretation became even more engrained in that the political changes underway since the "Arab revolutions" seemed to oscillate between civil war and a return to authoritarianism. In fact, compared to Libya, where fragmentation and the privatization of violence have stood in the way of establishing any type of political order, and to Egypt, where the overthrow, by the army, of the first democratically elected civilian president precipitated the country into a downward spiral of repression and violence, Tunisia presents itself as the "only hope" remaining from the so-called Arab Spring. Combined, these factors appear to work like a self-fulfilling prophecy in the sense that the democratic transition in Tunisia is invariably seen as having been successfully accomplished. However, according to another interpretation of events, diametrically opposed to the latter, a "religious counter-revolution" has been underway since the Ennahda Movement has arrived in power. According to this view, the attempts of the Islamist party to "constitutionalize the sharia," to "criminalize blasphemy" and to establish "the role of women as 'complementary' to men," constitute the realization of the objectives advocated by political Islam. The two readings, as opposed as they are, nevertheless share certain aspects in common, namely teleology and determinism.

Unless we consider the homicides of the opponents Lotfi Naguedh in October 2012, Chokri Belaid in February 2013 and Mohamed Brahmi in July 2013 as peripheral events, the political process at work in Tunisia since the founding elections of 23 October 2011 is even more complex than suggested by the two abovementioned interpretations. By exposing the uncompleted and uncertain dynamics underway since the Constituent Assembly elections, this study seeks to depict the ambivalence and fragility of the Tunisian transition. Shedding doubt on the commonly recognized reports, this article intends to explore questions

that have been examined little or not at all to date: Who governs what transition? To what degree are the post-authoritarian institutions really democratic? To which scenarios might the transition lead?

By examining this little explored problem, this study, based on a field survey, arrived at the following conclusions:

- Contrary to what is conveyed by the acclaimed narrative of an "alliance between moderate Islamists and moderate secularists," the sharing of power is very unequal because Ennahda is pulling the strings of government.
- The deliberate extension of the mandate of the National Constituent Assembly (NCA), elected on 23 October 2011 to draft a constitution within one year, as well as the refusal to this day of the ruling party to commit to a road map and a binding electoral calendar, have ended up leaving the country in a crisis of the interim institutions.
- A detailed analysis of this crisis reveals a situation that, while eclipsed by the established paradigms, is essentially more complex: the preeminence of the *de facto* institutions over the *de jure* institutions. This means that it is less the prime minister than the president of the ruling party who governs, and that it is more the consultative council of the Ennahda party, wielding extra-institutional veto power, than the NCA that deliberates.
- While the political opening has rendered state repression more difficult, the militia groups protected by Ennahda now resemble an informal instrument of repression.
- The political regime adopted by the draft constitution, in addition to the fact that it does not set conditions for the independence of the judiciary, contains the drawbacks of the parliamentary as well as the presidential systems: ruling-party hegemony, government volatility, institutional deadlock, presidentialism.
- The impunity of the militias, the institutional weakness of the Independent Board of Elections, known by its French acronym ISIE, and the Draft Law on Political Exclusion together comprise an institutional environment that reveals itself to be closer to "competitive authoritarian" regimes than to democratic systems.
- Tunisia finds itself at a crossroads. Three scenarios unfold before it: instability, which may result in a new popular uprising, in authoritarianism or in a transition; emergence of a hybrid regime (neither truly democratic nor entirely authoritarian); and democratization.

Introduction: Which paradigm for which transition?

Two prevailing interpretations, contesting each other, exist on the political reshuffling underway in Tunisia since the elections of the National Constituent Assembly (NCA) of 23 October 2011. One assures that the country has already "succeeded" its "democratic transition,"[1] and the other affirms that a "religious counter-revolution" has taken root since the accession to power of Ennahda.[2] However, the political process in Tunisia is not as clear-cut as either of the accounts portrays it to be. From the government alliance between Islamists and seculars to ruling-party hegemony, from an engaged civil society to police brutality, from the abandonment of the constitutionalization of the sharia to the politicization of mosques, from the successful fight for civil liberties to the trivialization of excommunication *(takfīr)* of opponents, from media pluralism to the mass firings of judges, from the rebalancing of the political forces to the impunity of the militias, and from the institutionalization of conflict to political homicide – the elements that impede the analysis of the political process in Tunisia are countless. The symbolism is all too apparent: Once the new Tunisian leaders arrived in Sidi Bouzid – where the self-immolation by fire of the famous Tarek (called Mohamed) Bouazizi had triggered a popular uprising – to celebrate the second anniversary of the fall of the autocrat Ben Ali, they saw themselves forced to flee the sites of the ceremony under a hail of stones flung by a crowd infuriated by what it considered to be a "confiscation of the revolution."

Uncompleted and uncertain, the dynamics at work in Tunisia since the founding elections raise important questions: Who governs what transition? To what degree are post-authoritarian institutions really democratic? Which institutional arrangements are emerging from the process of the current political transition?

Transitology, by now an established field of study, quickly imposed itself as *the* paradigm for the interpretation of the Arab Spring. Based on archetypal patterns generated by Spain and Portugal, transitology tends to fail to differentiate between transitions *from* authoritarianism and those leading *to* democracy. In other words, it fails to recognize that the collapse of an authoritarian government is one thing and the construction of a democratic regime another. The teleology of democratization, at the root of this merging of concepts, moreover fails to account for the fact that non-democratic systems, such as authoritarian or hybrid regimes, often emerge as an outcome of a "transition." In fact, of the 85 transitions that took place between 1974, when the "third wave of democratization" began, and the end of the Cold War, 34 new authoritarian regimes have emerged.[3] In addition, between the collapse of the Soviet Bloc and the dawn of the Arab Spring, 33 regimes that are neither fully democratic nor entirely authoritarian have come into existence throughout the world.[4] A third factor puts strain on the dominant trends of transitology: the belief that constitutional rules determine, as in stable democracies, political trajectories.[5] Based on the assumption that formal institutions govern the action of political actors during transitions, these studies lose sight of the informal institutions and rules of the game. Yet, in many cases, the latter prove to be more significant than the statutory procedures, to the extent that political practices can circumvent, neutralize or manipulate formal institutions. In such contexts, the political outcomes pertain less to constitutional engineering than to the organization of power and the resources available to the rulers.

The application of transitology to the Arab world in general and Tunisia in particular does not appear

1 Alfred Stepan, "Tunisia's Transition and the Twin Tolerations," *Journal of Democracy*, vol. 2, no. 23 (April 2012): 89–90.
2 John Bradley, *After the Arab Spring: How the Islamists Hijacked the Middle East Revolts* (New York, 2012).
3 Barbara Geddes, "What Do We Know about Democratization after Twenty Years?," *Annual Review of Political Science*, vol. 1, no. 2 (1999): 115–44 (116).
4 Steven Levitsky and Lucan A. Way, *Competitive Authoritarianism. Hybrid Regimes after the Cold War* (Cambridge, 2010), 3.
5 Juan Linz, "The Perils of Presidentialism," *Journal of Democracy*, vol. 1, no. 1 (1990): 51–69; Alfred Stepan and Cindy Skach, "Constitutional Frameworks and Democratic Consolidation: Parliamentarianism Versus Presidentialism," *World Politics*, vol. 1, no. 46 (October, 1993): 1–22; *The Failure of Presidential Democracy*, ed. Juan Linz and Arturo Valenzuela (Baltimore, 1994); Steven Fish, "Stronger Legislatures, Stronger Democracies," *Journal of Democracy*, vol. 1, no. 17 (2006): 5–20.

to be exempted from these challenges. Two principal factors underpin and perpetuate these difficulties. First there is the enthusiasm for the Arab Spring triggered by the simultaneous fall of the autocrats Ben Ali and Mubarak, an exuberance that sometimes amounts to no more than wishful thinking. The second factor concerns the disillusion provoked by the Libyan, Syrian, Egyptian, Yemenite and Bahraini trajectories. Compared to these countries, which oscillate between authoritarianism and civil war, Tunisia is pursuing a process that does in fact appear to be more promising. Combined, these two factors function like a self-fulfilling prophecy in the sense that the democratic transition in Tunisia is invariably seen as having been successfully accomplished. The article by Alfred Stepan published in the April 2012 edition of the *Journal of Democracy* is characteristic of this approach. The author affirms that "[i]n 2011, Tunisia achieved a successful democratic transition, albeit not yet a consolidation of democracy."[6]

The global spread of hybrid regimes in the wake of the third wave of democratization should incite us to more epistemological vigilance. Having mushroomed in the wake of the Cold War, these systems of government are neither fully democratic nor entirely authoritarian.[7] The approach adopted in this study, avoiding the teleology and determinism of transitology, is to evaluate the impacts of the institutions together with those of the processes.[8] Focused on the institutional arrangements at work, it will examine the following: the rules of the political game; the organization of power; the spread of the conflict beyond a winner-loser dichotomy; the dynamics of tension; and the relations between the *de jure* and the *de facto* institutions. The study is based on a field survey that gave priority to immersion, in-depth interviews, participant observation and primary data.[9]

6 Cf. footnote no. 1.
7 Cf. Levitsky and Way, *Competitive Authoritarianism* (see note 4); Andreas Schedler, "The Menu of Manipulation," *Journal of Democracy*, vol. 2, no. 13 (2002): 36–50.
8 I refer to the theoretical framework of historical institutionalism and draw in particular on: *Explaining Institutional Change: Ambiguity, Agency, and Power*, ed. James Mahoney and Kathleen Thelen (Cambridge, 2009); Paul Pierson, *Politics in Time: History, Institutions, and Social Change* (Princeton, 2004); *Structuring Politics: Historical Institutionalism in Comparative Analysis*, ed. Steinmo Sven et al. (Cambridge, 1992).
9 The field survey was conducted from December 2012 through February 2013.

Who governs?

Ten months after the ousting of the autocrat Ben Ali, Tunisia held the first free and democratic elections in its history. On 23 October 2011, the constituents were asked to elect the 217 members of the NCA mandated to draft, within the period of one year, a new constitution for the country. Supervised by the ISIE[10] – an independent board of elections set up by the so-called Ben Achour Commission[11] – these founding elections had the following results: the Islamist Ennahda party won 41.01% of the seats, with 36.97% of the votes; the heterogeneous Congrès pour la République (CPR)[12] won 13.36% of the seats, with 8.7% of the votes; the secular socialist party Ettakatol obtained 9.22% of the seats, with 7.04% of the votes; the populist-conservative party Popular Petition (also Aridha Chaabia or Al Aridha) gained 11.98% of the seats, with 6.92% of the votes; and lastly, the left-of-center Progressive Democratic Party won 7.37% of the seats, with 3.96% of the votes. The remaining seats were shared by a myriad of small left-wing and independent parties.

Government coalition or ruling-party hegemony?

The predominant interpretation emphasizes the innovative character of the government coalition established between the "moderate Islamists" and the "moderate seculars." Yet, what exactly is this coalition about? The Ennahda Movement, due to the party-list proportional representation (largest remainder system) introduced by the Ben Achour Commission, obtained only a relative majority and was thus not able to govern alone. This constraint obliged the Islamist party, the president of which is Sheikh Rached Ghannouchi, to form a troika with the heterogeneous CPR of Moncef Marzouki and the left-wing secularist formation Ettakatol of Mustapha Ben Jaafar. The compromise, the premises of which were revealed well before the elections, was concluded very rapidly: the position of prime minister was assigned to Hamadi Jebali, until then Secretary General of the Ennahda Movement; that of president of the republic to Moncef Marzouki, founder of the CPR; and that of president of the NCA to Ben Jaafar, Secretary General of Ettakatol.

This distribution of roles between "moderate Islamists" and "moderate seculars," which structures the acclaimed account, is deceptive in that it deflects from the actual organization of power. For example, the Law on the Provisional Organization of the Public Powers, adopted on 16 December 2011,[13] more than one month after the agreement between Ghannouchi, Marzouki and Ben Jaafar, runs counter to the established account. This law, in the negotiation of which Ennahda "has shown itself to be absolutely inflexible" according to a spokesperson of the CPR,[14] is of crucial importance. Qualified in Tunisia as the "mini-Constitution," it grants few prerogatives to the allies of the dominant party, being the President of the Republic and President of the NCA. We shall return to this topic later.

Yet that is not all. While the interim period was limited *de jure* to the drafting of the constitution within a delay of one year, "the provisional organization of the public powers" granted from the outset an *unlimited mandate* to the NCA. This raises the first main question: Why did the NCA, dominated by the Troika, refuse to set a time limit of the interim period in the mini-Constitution if its main actors, such as Ennahda

10 The ISIE is directed by Kamel Jendoubi, an opponent from the left in the former regime and a militant defender of human rights.

11 High Commission for the Fulfillment of Revolutionary Goals (Haute instance de réalisation des objectifs de la révolution), chaired by the professor for public law Yadh Ben Achour.

12 The direction of the CPR was then ideologically heterogeneous, composed of secularists (such as Moncef Marzouki and the intellectual Marxist-leaning Aziz Krichen), Nasserian nationalists (such as Amor Chetoui), elements close to Islamism (following the example of Imed Daimi and Slim Ben Hamidene) and Islamists (such as Abderraouf Ayadi).

13 The Law on the Provisional Organization of the Public Powers is available on the official website of the Constituent Assembly: http://www.anc.tn/site/main/AR/docs/organisation_provisoire_des_pouvoirs_publics_tunisie.jsp (accessed August 5, 2013).

14 Interview with Amor Chetoui, deputy, negotiator and member of the political bureau of the CPR, Tunis, January 2013. Chetoui is also President of the Constitutional Committee on Legislative and Executive Powers.

and Ettakatol, had duly signed the famous *Déclaration du processus transitoire* initiated by Ben Achour in September 2011,[15] which fixed the duration of the Constituent Assembly to twelve months (at the end of which general elections were to take place to elect a parliament and form a government)?

The mini-Constitution saw for a clear distribution of responsibilities for the respective ministries. This distribution offers a good understanding of the organization of power in a transition that has not seen any considerable institutional reform. Essentially, the "palace revolution" that precipitated the ousting of Ben Ali on 14 January 2011 had neutralized the revolutionary thrust and thereby delayed the implementation of fundamental changes to the crucial structures of the authoritarian system. In that context, Ennahda brought its full weight to bear in order to gain control over the Ministry of the Interior and the Ministry of Justice, which had been the backbone of the former authoritarian regime[16] and which had not undergone institutional reforms after the breakdown of the authoritarian regime.[17] The issue of control over the power apparatuses is all the more important as the distribution of ministerial portfolios was founded neither on a political pact nor on a common agenda uniting the three members of the Troika. Moreover, in a political statement addressing the deputies of the NCA, released on 28 January 2013, then-Prime Minister Jebali recognized that "[t]he Troika resembles neighborliness more than a coalition." The chief of the executive expressed, after 14 months in office, the urgency of creating a non-partisan government, citing the following reasons: the difficulties, in the interim phase, of governing with a coalition yet without an alliance in the Constituent Assembly; the weak coordination among the members of the Troika with regard to the taking of positions and appointments; and the precipitated entry of some members into an electoral campaign.[18]

The ruling party, which negotiates with each of its two partners individually,[19] proved to be a formidable tactician. It began by conceding, very soon after the 2011 elections, the presidency of the republic and of the NCA to its two secular allies Marzouki and Ben Jaafar;[20] then it appropriated, in addition to the presidency of the government, so-called *ministères de souveraineté*, in particular the Ministries of the Interior, of Justice and of Foreign Affairs;[21] stripped the tenant of Carthage Palace[22] from the reigns of power; and weighed down the Assembly with rules of procedure that were to the advantage of the ruling party. Ennahda also obtained strategic mandates in the NCA, such as the position of General Rapporteur of the Constitution and the chairmanship of the constitutional committees on the "Preamble, Fundamental Principles and Constitutional Reform," "Rights and Liberties," and "General Legislation."

As shown *a posteriori* by the institutional crisis of February 2013, Marzouki and Ben Jaafar, two leaders enjoying international renown, have not been able to transform the unique value that their alliance with the Islamist Ennahda party represents into a more equitable sharing of power. The CPR and Ettakatol also suffered the loss of senior party officials who had

15 The CPR, which called for an interim period of three years, refused to sign this document. Read the article on the "Déclaration du processus transitoire" on http://www.tunisiawatch.com/?p=4331 (accessed August 5, 2013).

16 Cf. Michel Camau and Vincent Geisser, *Le syndrome autoritaire. Politique en Tunisie de Bourguiba à Ben Ali* (Paris, 2003); Clement Henry Moore, *The Mediterranean Debt Crescent: Money and Power in Algeria, Egypt, Morocco, Tunisia, and Turkey* (Gainesville, 1996); Béatrice Hibou, *La force de l'obéissance* (Paris, 2006).

17 The government of Hamadi Jebali formed on 22 December 2011 saw for the following distribution: the Ministries of the Interior, Justice, Foreign Affairs, Human Rights and Transitional Justice, Higher Education, Agriculture, Public Health, Transport, and Equipment, as well as the State Secretariat for Arab and African Affairs fell into the hands of Ennahda; the Ministries of State Property, Women, and Professional Training, the Vice Minister for the Administrative Reform, the Secretary of State with the Ministry of Foreign Affairs responsible for Asia and America, and the Secretary of State for Youth are relegated to the CPR; the Ministries of Social Affairs, Education, and Tourism, the Secretaries of State for the Reform, and European Affairs and the Vice Minister for Governance and the Fight Against Corruption to Ettakatol; lastly, responsibility for the Ministries of Defense, Finances, Culture, and Religious Affairs was given to non-partisan figures. Ennahda quickly gained control of the Ministry of Religious Affairs.

18 Republic of Tunisia/Presidency of the Government, *Mémoire politique pour un nouveau pacte politique*, Tunis, January 28, 2013, p. 3.

19 Interviews with deputies of the CPR, Ettakatol and Ennahda, Tunis, December 2012 to January 2013.

20 The latter two fought over the same position: that of the presidency of the republic.

21 The Ministry of Defense, which hardly represented any weight in the authoritarian arsenal of the former regime, was accorded to the independent candidate who occupied this position in the preceding government. The Ministry of Finances was attributed to an economist close of the main trade union UGTT; who then resigned six months after the forming of the government.

22 Seat of the presidency of the republic.

become disgruntled. For example, CRP, ideologically heterogeneous, very soon experienced a split of a fringe faction of its high-ranking officials, who went on to create a new party, Wafa, which was able to win over ten dissident deputies. Somewhat more gradual, the crisis that hit Ettakatol eventually emptied its parliamentary group by half of its deputies.[23]

The observation that the CPR and Ettakatol each made too many compromises with the powerful Ennahda Movement is shared by many, including senior party officials who remained loyal to the leadership of their party[24] as well as the upper echelon of the CPR and Ettakatol. In fact, President Marzouki was the first to speak publicly of "Ennahda's policy of infiltrating the state machinery," first in August and again in December 2012.[25] Khalil Zaouia, Minister of Social Affairs as well as founding member and Director of Ettakatol, supported this stance, accusing Ennahda of wanting to "control the wheels of the state."[26] The same applies to then-Prime Minister Jebali, who had implicitly endorsed this stance by advocating for the formation of a non-partisan government as the only means of "appeasing the political climate and to meet the institutional conditions for the success of a free and fair election."[27] We shall return to this point later.

Last but not least, 87% of the appointments effected by the government between December 2012 and February 2013 across all positions and ministries, from the corps of governors to parks and forestry and the security apparatus, were done so on a partisan basis. Of those 87%, 93% were connected to Ennahda.[28] In fact, during the institutional crisis of February 2013, the party in power rejected the proposal made by the opposition and by Ettakatol of forming, with the view to ensuring partisan neutrality of the public administration, a committee of independent experts mandated to reexamine the appointments made by the government. This categorical refusal of the ruling party strengthened the assertions of President Marzouki and Khalil Zaouia, Minister of Social Affairs, on the subject of "the infiltration of Ennahda in the wheels of the administration." In a situation such as that of Tunisia, where the administration had been, in the former regime, commingled with the ruling party and where the post-authoritarian transition has yet to bring about significant institutional reforms, the question of the politicization of the bureaucracy takes on central importance. This is because it concerns the equality (or not) among the competitors in the political arena, which, far from being secondary, is a basic tenet of democracy.[29] The very imbalanced distribution of power between the members of the Troika tends to be ignored by advocates of the notion that Tunisia has already "successfully accomplished its democratic transition." Thus, the quest for hegemony by the Ennahda Movement is overshadowed by the misleading account of a "government coalition between moderate Islamists and moderate secularists."

23 Interviews with three dissident deputies from Ettakatol: Dr. Salma Mabrouk, Selim Ben Abdesselam, Ali Bechrifa, Tunis, January 2013.

24 Interview with Chetoui, deputy, member of the political office and former president of the parliamentary group of the CPR, Tunis, January 2013. Interview with Lobna Jéribi, deputy and member of the political office of Ettakatol, Tunis, January 2013. The latter adds, however, that the PDP of Nejib Chebbi, by refusing to enter into the government, weakened Ettakatol. The argument fails to convince, because Ettakatol never concluded an electoral alliance with the PDP.

25 Nicolas Fauque, "Le président tunisien tire à boulets rouges sur ses alliés islamistes," LeMonde.fr, August 24, 2012.

26 "Tunisie – Khalil Zaouia accuse Ennahdha de vouloir 'contrôler les rouages de l'Etat'," Businessnews.com, November 25, 2012, http://www.businessnews.com.tn/Tunisie–Khalil-Zaouia-accuse-Ennahdha-de-vouloir-«contrôler-les-rouages-de-l'Etat»,520,34741,3 (accessed August 5, 2013).

27 Address of Prime Minister Jebali broadcast on radio on February 6, 2013.

28 Lilia Weslaty, "Nominations dans le secteur public: 87% pour la troïka dont 93% en faveur des partisans d'Ennahdha," Nawaat.org, http://nawaat.org/portail/2013/03/22/93-des-appointments-dans-le-secteur-public-ont-beneficie-a-des-partisans-dennahdha/ (accessed August 5, 2013).

29 Levitsky and Way, *Competitive Authoritarianism* (see note 4).

Lost in transition?

To achieve its hegemonic objectives, Ennahda played a shell game that consisted of passing the interim period off as an electoral mandate. In so doing, the party in power ended up provoking a negative effect: the crisis of the interim institutions.

The crisis of the interim institutions

The non-completion, by the NCA, of the drafting of the constitution within the one-year mandate, as well as the absence of a road map and of a binding electoral calendar, threw Tunisia into an acute institutional crisis. Essentially, the NCA saw its legitimacy challenged due to its failure to complete the draft of the new constitution by 23 October 2012. The interim government, for its part, could no longer claim to have electoral legitimacy with the NCA having come to its term.

Anticipating this crisis, the Tunisian General Labour Union (Union Générale Tunisienne du Travail, UGTT), which has played a major role in contemporary Tunisia since the anti-colonial movement,[30] convened the ambitious National Dialogue Conference on 16 October 2012. The Union, which had protected many fringes of the opposition during the period of authoritarianism, intended to bring together actors from the political class and from civil society to overcome the crisis of the interim institutions. The union leadership, elected after the revolution, summarized the principal axes of a consensus to be developed as follows: 1) reach an agreement on the type of political regime; 2) accelerate the implementation of the ISIE;[31] 3) set a timetable for the completion of the constitution and for the holding of general elections; and 4) set up an independent judicial body and an independent high commission to regulate the media.[32] Thus defined, the national dialogue platform provided by the UGTT was able to bring together the principal actors of the political class and of civil society, from Ettakatol to Nidaa Tounes[33] and the Popular Front.[34] The President of the NCA, the Prime Minister and the President of the Republic, present at the opening of the Conference each gave a speech. However, two political parties refused to attend the National Dialogue Conference: Ennahda and the CPR.[35] The two allies justified their refusal to participate in the dialogue by the presence of Nidaa Tounes, the opposition movement created by the former interim prime minister Beji Caid Essebsi. The latter was perceived by Ennahda President Ghannouchi as an actor "more dangerous than the Salafists."[36] However, the explanation put forth by Ennahda and its partner from the CPR failed to convince as, six months later, the two allies attended another national dialogue, organized by the President of the Republic, at which Nidaa Tounes was present, all the while their opinion of their political adversary had remained unchanged. In reality, the refusal of Ennahda and its partner to join the National Dialogue Conference was motivated,

30 Héla Yousfi, "Ce syndicat qui incarne l'opposition tunisienne," *Le Monde diplomatique*, November 2012, http://www.monde-diplomatique.fr/2012/11/YOUSFI/48348 (accessed August 5, 2013).

31 The interim government soon announced the end of the mission of the independent interim body for control of elections, the ISIE, in view of implementing a new organization. We shall return to this point in the third section.

32 Read the interview of Hocine Abassi, Secretary General of the UGTT, in: *Le Temps*, October 15, 2012.

33 Nidaa Tounes is a political party from the center founded in June 2012 by Beji Caid Essebsi, who was interim prime minister from March 2011 to the elections of the Constituent Assembly.

34 The Popular Front is a coalition of leftist formations and progressive nationalist parties formed in October 2012 under the impetus of Hamma Hammami and Chokri Belaid.

35 "Ennahdha et le CPR boycottent l'Initiative de l'UGTT," Direct Info, October 15, 2012, http://directinfo.webmanagercenter.com/2012/10/15/tunisie-politique-ennahdha-et-le-cpr-boycottent-linitiative-de-lugtt/ (accessed August 5, 2013). The boycott of the National Dialogue Conference of the UGTT advocated by the Ennahda leadership despite the participation, at the opening session, of then-Prime Minister Jebali, was the precursor of the division that traversed the ruling party and which became apparent in February 2013.

36 Declaration by Ghannouchi on 04.10.2012 on radio Shems FM. Watch the podcast on this link: http://www.businessnews.com.tn/Rached-Ghannouchi-Nidaa-Tounes-est-plus-dangereux-que-les-salafistes,520,33811,3 (accessed August 5, 2013).

as later became clear in the institutional crisis of February 2013, by other reasons: The participation of the government party at the National Dialogue Conference would have been tantamount to endorsing a new dynamic that would have led to a transition from an electoral "legitimacy" to a "procedural consensus,"[37] followed by a loss of control of the political process. Moreover, the absence of Ennahda and the CPR impeded the development of a consensus on the rules and procedures of the political transition. Then, one day before the conference, the publication by the Troika of a road map, although forgotten immediately thereafter, functioned to eclipse any alternative approaches that were in the making. The refusal of Ennahda and the CPR to work toward a procedural consensus was not new. Prior, the two allies had resigned from the Ben Achour Commission, thereby subverting the effort of the president of the High Commission for the Realization of Revolutionary Goals to form a pact for the democratic transition *before* the founding elections.[38]

The line of action by Ennahda, although having nipped in the bud the plan proposed by the UGTT for overcoming the crisis, did not solve the problem. Also, the Troika government, constrained by its institutional lifespan, was simultaneously challenged with social issues. What was entirely foreseeable against the backdrop of the state's fiscal crisis became reality: the difficulty of the interim government to revive economic growth, to control inflation and to reduce the extreme impoverishment of the interior regions of the country ended up exacerbating the discontent of those left behind. Also, the disadvantaged regions of the hinterland, bastions of the Tunisian revolution, became the drivers of social movements. Siliana, an isolated village in the center of the country, is the most tragic example thereof. The interim government responded with harsh repression to a protest movement that formed in late November 2011 against the governor, installed by the Islamist ruling party. The use of rubber bullets by the police against demonstrators as well as non-protesting citizens injured nearly 300 people and left many blind.[39] This police brutality, echoing the practices of the former regime, then raised a wave of indignation. Moreover, the ferocity of the repression of the social movement of Siliana led to increased criticism not only against the Troika government but also, or rather, against Ennahda, which controlled the Ministry of the Interior.

The President of the Republic, in conflict over prerogatives with the Prime Minister from the very first months of the government, came out of his reserve. In a powerful speech, the former human rights activist condemned police repression and appointments on the basis of party affiliation, and called for the formation of a "restrained government composed of national non-partisan competencies" in view of ensuring the neutrality of the administration and of organizing elections before the summer of 2013.[40] The leadership of Ennahda, seeking to suppress the initiative of its unpredictable ally, then found a scapegoat in Chokri Belaid, the charismatic leader of the Popular Front. In that effort, then-Minister of the Interior Ali Larayedh designated Belaid as "the instigator" of the "unrest" of Siliana,[41] while the influential member of the Ennahda leadership, Habib Ellouze, took on vigorously and in one fell swoop the UGTT, Nidaa Tounes and the Popular Front, accusing them of "paying the demonstrators." The virulent deputy ordered Belaid to "remain silent" and threatened the lawyer who had defended the leaders of the 2008 protest movement in the Gafsa mining basin to disclose the files on his purported collaboration with the political police of Ben

37 The "procedural consensus" concerns the "rules of the game or the procedures" and constitutes for Giovanni Sartori a fundamental condition of democratization. The "procedural consensus" does not exclude disagreement on the "ultimate values" or the "public policies." Cf. Giovanni Sartori, *The Theory of Democracy Revisited. Part One: The Contemporary Debate* (London, 1987), 90–91.

38 Interview with Yadh Ben Achour, Tunis, December 2012.

39 Read the summary of the inquiry report mandated by the *Forum tunisien des droits économiques et sociaux* (FTDES), the *Ligue tunisienne des droits de l'Homme* (FTDH) and the *Syndicat national des journalistes tunisiens* (SNJT): Sana Sbouaï, "Répression à Siliana: Le rapport de la commission accable les forces de l'ordre," Nawaat.org, March 20, 2013, http://nawaat.org/portail/2013/03/20/repression-a-siliana-le-rapport-de-la-commission-accable-les-forces-de-lordre/ (August 5, 2013). Read also the witness account of the reporter of the news channel France24, injured by 40 gun bullets while he covered the events of Siliana: "Blessé à Siliana, David Thomson témoigne: 'la police a tiré aveuglément'," France 24, December 3, 2012, http://www.france24.com/fr/20121203-tunisie-journaliste-france-24-david-thomson-doit-vivre-40-balles-plomb-jambes (August 5, 2013).

40 "Discours de Moncef Marzouki (video)," Direct Info, December 1, 2012, http://directinfo.webmanagercenter.com/2012/12/01/tunisie-violences-a-siliana-discours-de-moncef-marzouki-video/ (August 5, 2013).

41 Belaid was in Morocco at the time of the events.

Ali.[42] The Wahhabi preacher Bechir Ben Hassen, for his part, whose proximity to the radical wing of the ruling party was publicly known, qualified any opponent of the Ennahda government as "apostate."[43]

In addition, the political environment deteriorated ostensibly: preachings threatening with the excommunication of certain figures from the left were followed, all with impunity, by acts of violence perpetrated against the opposition parties by a militia called the Leagues for the Protection of the Revolution (LPR).[44] In that context, a call for murder was declared by a zealous preacher from Zarziz against the opponents Belaid and Nejib Chebbi.[45] As well, on 18 October 2012, the LPR assassinated Lotfi Naguedh, Regional Coordinator of Nidaa Tounes and Secretary General of the Union of Farmers in the south of Tunisia. This crime, taking place two days after the National Dialogue Conference organized by the UGTT, marked the first public appearance of the LPR. The violence escalated even more with the LPR-orchestrated attack on the seat of the UGTT on 4 December 2012 – day of the 60th anniversary of the assassination, by La Main Rouge, of Farhat Hached, founder of the union and flagship figure of the Tunisian national movement. Further, at the press conference held the day after this event, Ghannouchi congratulated the LPR for embodying the "living conscience of the revolution" and denounced the UGTT for "left-wing radicalism."[46]

The crisis of the interim institutions led not only to an impasse for the transition, it also threw the country into disarray, as shown by the hegemony of the ruling party, the absence of an electoral calendar, the excommunication of opponents and the impunity of the militias. The gray zone created by this disarray could well serve as a breeding ground for a hybrid regime.

The defeat of the non-partisan government, or the preeminence of the de facto institutions over the de jure institutions

The crisis of the interim institutions revealed a fact that, although often eschewed by the misleading reading offered by transitology, is of crucial importance in the institutional construction of the new political regime: the preeminence of the *de facto* institutions over the *de jure* institutions. In that respect, an examination of the power struggle between then-Prime Minister Jebali and Ennahda over the formation of a non-partisan government in February 2013, constituting a major moment of political crisis, provides insight into the predominant rationale at work within the Tunisian political transition.

The political changes which Tunisia underwent since the election of the Constituent Assembly are better understood in terms of how the conflict is distributed between radicals and moderates than a simplistic winner-loser dichotomy. The divide between the radicals and moderates, less ideological than political, is defined by greater intransigence on the part of the radicals (with regard to the quest for and maintenance of power) and a greater ability on the part of the moderates to negotiate a procedural compromise with their adversaries. Moreover, shaped more by structure than circumstance, this problem spares no party, not even the party in power.

In fact, it is within the party in power that the two wings, one radical, the other moderate, confront each other. The radical wing, well represented within the executive office of the party,[47] includes Ghannouchi (President of Ennahda), Ameur Larayedh (bureau head and brother of Ali Larayedh), Fathi Ayadi (President of Ennahda's consultative council – the Shura Council – and deputy), Ellouze (deputy and interface with the fundamentalist circle of influence), Mohamed Ben

42 Declaration made on radio Mosaïque FM on November 29, 2012. The video can be viewed at: https://www.facebook.com/photo.php?v=516552168394938 (accessed August 5, 2013).
43 The video can be viewed at: http://www.youtube.com/watch?v=jc_JAx77fQs (accessed August 5, 2013).
44 The LPR were formed in October 2012 at the beginning of the crisis of the interim institutions. Protected by Ennahda, they are engaged in a sustained and violent fight against the opponents of the government party as well as independent journalists. Although similar in name, the LPR differ from the "Comités de protection de la révolution" created the day after the fall of the autocrat Ben Ali essentially to defend the neighborhoods from snipers and other militia let loose by the former regime. The Comités de protection de la révolution, who fought militantly to impose the election of a constituant assembly, dissolved on their own account.
45 See the video on: http://www.lepoint.fr/monde/video-tunisie-quand-les-salafistes-reclamaient-la-tete-de-chokri-belaid-06-02-2013-1624599_24.php (accessed August 12, 2013).
46 Frida Dahmani, "Tunisie: ces milices qui vous veulent du bien," *Jeune Afrique*, January 28, 2013, http://www.jeuneafrique.com/Article/JA2715p040-043.xml1/ (accessed August 5, 2013).

47 The members of the executive office of Ennahda are elected by the hundred members who compose the movement's consultative council. The latter, referred to as the Shura Council, were elected at the movement's conference held in the summer of 2012.

Salem (Minister of Agriculture), Noureddine Bhiri (then-Minister of Justice) and Sahbi Atig (head of the Ennahda bloc at the NCA). The moderate wing, considerably less powerful and structured, is represented by Jebali (then-Prime Minister, Secretary General of Ennahda), Abdelfettah Mourou (Vice President of Ennahda) and Samir Dilou (Minister of Human Rights and Transitional Justice).

The divide between the radicals and moderates of Ennahda has less to do with fundamental values than the rules of the political game. The radicals, who cling to electoral legitimacy to continue governing beyond the initial term of the interim period, envision tackling the crisis primarily through the co-option of new parties into government. The moderates, by contrast, believe that only a national consensus on the road map and electoral calendar would allow achieving this goal. The radicals, who are holding the strings of power, conducted negotiations with different parties with the goal of expanding the partisan base of the government. However, plans for a cabinet reshuffle, announced as imminent since fall 2012, fizzled out, achieving neither to integrate the main formations of the opposition (such as Al Jomhouri, which on 29 January 2013 sealed a coalition with Nidaa Tounes and the social-democratic Al-Massar party) nor to restore the Troika, with Ettakatol moderates increasingly imposing as a *sine qua no* condition to their staying in government the entrusting of the departments of sovereignty to non-partisan political figures.

Cornered, the hardliners maneuvered to present the Draft Law on the Political Immunization of the Revolution[48] on 29 November 2012, less than one month after former interim prime minister Essebsi had urged the government and the NCA to build a consensual legitimacy in order to prevent an "end of electoral legitimacy." The proposed draft law aimed specifically to exclude from the electoral competition certain senior officials of Nidaa Tounes who had held positions in the former regime. The debate on the political exclusion bill, taking place not in the Constitutional Committee on Rights and Liberties but in the Constitutional Committee on General Legislation, was all the more controversial in that it intended to preempt two draft laws on transitional justice. One had been submitted on 2 August 2012 by Nadia Chaabane, an elected official of Al-Massar,[49] and the other one on 11 January 2013 by Samir Dilou, Minister of Human Rights and Transitional Justice[50] and a moderate intellectual of Ennahda who is against "exclusion and vengeance."[51] Moreover, the scheduling of the debate on this draft law for 1 February 2013[52] was controversial as well in that the rules of procedure of the NCA accord priority to government draft laws.

One document, which went unnoticed despite its significant relevance, revealed the extent of the divergences that oppose the two wings of Ennahda, both with regard to the perception of the crisis and their proposed means for resolving it: the *Memorandum for a New Political Pact.*[53] The document of fifteen pages, distributed by the prime minister's office to the members of the NCA on 28 January 2013, presents the road map of the then-prime minister. This road map showed itself to have more similarities with the platform of the October 2012 National Dialogue Conference than with the party line of Ennahda. The new political pact advocated by the then chief of government was based on the observation that the Troika was politically weak, both with regard to the government and the NCA; that the democratic transition was too slow; and that the state apparatus was bloated on both the right and left. The complexity, stakes and demands of this constituent phase required, according to Jebali, provoking a "psychological shock" in order to raise awareness for the urgent need to establish a new political base composed of political and social forces, both within and outside the NCA, around a political pact or consensus on the architecture of the transition. The then-Prime Minister and Secretary General of Ennahda defined the principles that should guide this procedural consensus as follows: the guar-

48 The bill tabled by 71 deputies contains 11 articles explained on 4 pages; it can be viewed on the official website of the ANC: http://www.anc.tn/site/main/AR/docs/projets/projets.jsp?n=85&a=2012 (accessed August 5, 2013).

49 See the document on http://www.anc.tn/site/main/AR/docs/projets/projets.jsp?n=47&a=2012 (accessed August 12, 2013).

50 The Draft Law on Transitional Justice, developed in consultation with international organizations and civil society associations, contains 8 chapters and 76 articles, spread over 15 pages. The bill submitted on 16.01.2013 can be viewed on the official website of the ANC: http://www.anc.tn/site/main/AR/docs/projets/projets.jsp?n=12&a=2013 (accessed August 5, 2013).

51 Interview with Dilou, Minister of Human Rights and Transitional Justice, Tunis, February 7, 2013.

52 Direct observation, the author having attended the meeting.

53 Tunisian Republic/Presidency of the Government, *Le mémoire politique pour un pacte politique nouveau*, January 26, 2013 (in Arabic). Document given to the author by the constituent Chetoui.

antee of the civil character of the state; a non-partisan cabinet; the preservation of the state's monopoly on the legitimate use of physical force and the prohibition of militias; the neutrality of the administration and the adoption of an effective participatory procedure concerning appointments.[54] The new government, restricted and dedicated to achieving a "balance between the political and the technocratic," should focus on the following priorities: ensuring the safety of citizens; controlling inflation; and holding free, fair and transparent elections within the shortest time possible under the auspices of the ISIE and the supervision of national and international organizations. Finally, in an effort to achieve the democratic transition, Jebali sought to develop the ministerial reshuffling into a major turning point.

Ennahda, which had confirmed its intention to harness Jebali by creating the position of "general coordinator of the government"[55] in early 2013, unleashed a hail of arrows against the prime minister. In the crossfire, the ultimate move was made by Ghannouchi, President of Ennahda, in person. The latter, portrayed in the party's press service as systematically taking the opposite stance of Jebali in order to influence the Shura Council, affirmed: "The ministerial reshuffle is neither a historical event nor a constituent operation [...] In the absence of a final agreement on the reshuffle, the work will proceed with the current government and *there is no need to solicit a vote of confidence from the National Constituent Assembly*. The continuance of this government until the holding of elections will in no way create a crisis."[56] The Prime Minister, who intended to conduct the ministerial reshuffle himself, on the basis of his prerogatives, was then called to order by the president of the ruling party as follows: "The men in charge of Ennahda are all bound by the decision of the internal majority at the *haraka* [movement]."

The breaking point between the Prime Minister and the Ennahda hardliners appears to have been reached at the meeting of the party's Shura Council on 1 February 2013. Little before joining the conclave, Jebali had reaffirmed to the press that "a ministerial reshuffle falls strictly under the competence of the prime minister";[57] yet, the final press release of the Shura Council called on the "Ennahda Movement and its associates to accelerate the settling of the ministerial reshuffle." Bearing the imprint of the hardline partisans, the press release from the leadership of the government party called for "an end of the injustice inflicted upon the prisoners of the LPR and the Ennahda Movement in the [assassination of Naguedh] Tataouine affair."

The test of strength between the radicals of the Ennahda Movement and Jebali turned into a zero-sum game: the radicals, who categorically rejected the road map of the Prime Minister, could not remove him from his functions of chief of the executive; and Jebali, hoisted to head of government thanks to Ennahda, could no longer count on the support of the majority party. This blockage paradoxically favored the emergence of a new political dynamic. Before the gravity of the institutional and political crisis in which the country found itself, the moderate Ettakatol party of NCA President Ben Jaafar, as well as the President of the Republic Marzouki, both knowledgeable about the inner workings of the ministerial reshuffle, rushed to support the Prime Minister. In a message addressed to the leadership of the CPR on 2 February, the resident of Carthage Palace went so far as to threaten to resign should Jebali leave office.[58] The moderates of the opposition followed suit. For example, Nidaa Tounes President Essebsi, whose former minister of the interior had served as an advisor to Jebali, considered that the "memorandum of the Prime Minister contained interesting ideas."[59] The spokesperson of Al-Massar, deputy Samir Taieb, also welcomed the approach of Jebali.[60] Finally, Popular Front leader Belaid, who considered the press release of the Ennahda Shura Council on the subject of the crime of Tataouine as a "call to murder," declared on 5 February on a broadly televised show that "the violence perpetrated by the LPR militias is

54 Ibid., p. 9.

55 Cf. Kaouthar Zentour, "Entrevue d'Ellouze," *Le Maghreb*, January 9, 2013, p. 4. This position was supposed to, according to the directing influence of Ennahda, be confided to Ben Salem, Minister of Agriculture and one of the principal hardliners of the party.

56 Read: Faïza Ennaçar, "Entrevue de Rached Ghannouchi," *Al Fajr*, February 1, 2013, p. 6. Our italics.

57 Ziyad Krichen, "Le remaniement ministériel explose les contradictions à l'intérieur d'Ennahdha," *Le Maghreb*, February 2, 2013, p. 4.

58 Hocine Al Ayyadi, "In a letter to the national council of the party CPR: Marzouki announces that he would resign if Jebali quit" (in Arabic), *Le Maghreb*, February 3, 2013, p. 5.

59 Interview with Essebsi, Tunis, February 3, 2013.

60 Interview, Tunis, February 4, 2013.

not only targeting the opposition but also Prime Minister Jebali."[61]

A meeting of the Ennahda executive office held on 3 February then marked a true turning point: the Prime Minister, far from giving up, decided on the contrary to circumvent his party. The very next morning, be began organizing political consultations, receiving representatives of the UGTT as well as the management and the governor of the Central Bank of Tunisia. As confirmed by the respected daily *Le Maghreb* from 4 and 5 February, the Prime Minister was about to form a "government of technocrats." However, a major disruption was to block the emergence of this alternative process: the murder at point-blank range of Chokri Belaid, leader of the Popular Front, in the early morning of 6 February, upon leaving his home in Tunis, by two assassins who have not been caught to this day. The assassination of the opponent was not only done "professionally," shown by both its *modus operandi* and its logistical organization, it was also political: the charismatic Belaid, who had only the day before his assassination called for the holding of a national congress against violence, had been pleading since the October 2012 National Dialogue Conference for the formation of a non-partisan government.[62] Moreover, as someone who had worked in favor of a rapprochement between the Popular Front and Nidaa Tounes,[63] his death was felt as a loss not only by the left but also by Tunisian political society as a whole. To then-Prime Minister Jebali there was no doubt: "Those who committed this assassination are not amateurs. There's a whole apparatus behind it, with a strategy. It is very much a political assassination that goes beyond the person of Belaid [...] We must brace ourselves for some very severe repercussions."[64] Indeed, the murder of left-wing opposition leader Belaid had the impact of a political earthquake; terrifying, the event plunged the country into a state of shock.[65] People were visibly moved, the demons of the political divide were stirred up, and memories from the recent history of the Algerian neighbor surfaced. This invariably raised the dreaded question: Is Tunisia on the verge of a civil war?

Then-Prime Minister Jebali held an address to the nation the same evening of the tragedy. Estimating the gravity of, to quote him, the "historical moment" and the "dangers that threaten the homeland," he publicly announced the project he had been preparing for some time: the formation of a non-partisan government that would be limited to the fight against poverty and the organization, within a very short delay, of democratic elections under international surveillance.[66] The success of this plan, he specified, rested on two conditions: the massive support of the political parties and the organizations; and a united stance against those who perpetrate violence. He also called on the members of the NCA to support the formation of a new government, to finish the drafting of the constitution and to produce a definitive electoral calendar. The initiative of then-Prime Minister Jebali, which very much resembled what left-wing opposition leader Belaid had called for on the day before his homicide, was favorably welcomed by most segments of the political class and civil society: from President Marzouki, NCA President Ben Jaafar, to Minister of Defense Abdelkrim Zbidi and the famous General Rachid Ammar, Chairman of the Joint Chiefs of Staff; from the Troika party Ettakatol to the opposition parties Nidaa Tounes of Essebsi and Al Joumhouri of Chebbi; from the powerful UGTT to the influential employers' organization UTICA (Union tunisienne de l'industrie, du commerce et de l'artisanat); from Ben Achour to Muslim reformer (and former founder of the Tunisian Islamist movement) Hmida Ennaifer. Opinion polls confirmed this approval. One conducted on 12 to 14 February shows that 87% of Tunisians were informed about the political initiative of Jebali.[67] The survey reports that 73% of respondents were favorable to the prime minister's project of forming a non-partisan government after the homicide of Belaid. Based on party affiliation, the support for the initiative was as follows: 87% of Nidaa Tounes adherents, 76% of Popular Front adherents and 65% of Ennahda

61 View the entire intervention of Belaid on Nessma TV from February 5, 2013 on this link: http://www.youtube.com/watch?v=XqTXh6TF6Wk (accessed August 5, 2013).
62 Watch the video at: http://www.dailymotion.com/video/xw663r_klem-ennes-chokri-belaid-23-12-2012_news#.UcmovpWT3Uo (accessed August 26, 2013).
63 Belaid maintained longstanding and privileged links with Mohsen Marzouk, an intellectual from the left and important member of the Nidaa Tounes leadership.
64 Interview with Prime Minister Jebali in *Le Monde*, February 12, 2013.
65 Participant observation.
66 View the entire intervention of Prime Minister Jebali from February 6, 2013 at: http://www.youtube.com/watch?v=YGg7gtdQxpM (accessed August 12, 2013).
67 Institute 3C Etudes, "Baromètre politique 3C Etudes," February 27, 2013, http://blog.3cetudes.com/2013/02/27/barometre-politique-3c-etudes-14eme-vague-fevrier-2013/ (accessed August 5, 2013).

adherents.[68] Finally, Tunisia's principal partners, namely France, the European Union and the United States, denounced the homicide of Belaid and manifested enthusiastic support for the initiative of then-Prime Minister Jebali.[69]

Strengthened by this dynamic the chief of the executive initiated discussions with the political parties in view of reaching a general agreement on the formation of a non-partisan government. Demonstrating his approach, he set up a council of elders that included national figures from diverse backgrounds, such as the social-democratic Ahmed Mestiri, the unionist Mustapha Filali, the Chief of Staff Ammar, the lawyer Ben Achour, the historian Abdeljalil Temimi, the Islamic scholar Hichem Djait, the philosopher Abou Yaareb Marzouki and the Muslim reformers Ennaifer and Mourou.

However, despite the great national and international support for the project of forming a non-partisan government, the Ennahda leadership, intent on maintaining its control of the (interim) government, threatened with its veto and endeavored to ruin the initiative. For the hardliners of the government party and their allies from the CPR, the crisis triggered by the assassination of Belaid was yet another demonstration of the need for an enlarged government, which is what they had been staunchly advocating since the beginning of the institutional crisis. A particularly fierce power struggle then unfolded between the two wings, moderate and radical, of Ennahda to determine the means for achieving the political transition in Tunisia. In order to sabotage the formation of a non-partisan government, the hardliners endeavored, as per the directive issued by Ennahda President Ghannouchi in the party's press service on 1 February, to circumvent the NCA. Nevertheless, despite the control exercised by the radicals over the bloc of elected officials, some twenty constituents of Ennahda were ready to vote in favor of the non-partisan government of Jebali.[70]

While the funeral of Belaid, spontaneously mobilizing hundreds of thousands of people throughout the national territory, began to resemble an anti-Ennahda plebiscite,[71] Ellouze, the leading Ennahda hardliner, called for a mass demonstration *(milyûniyya)* in Tunis for 16 February. Convoys of buses coming from all governorates of the country brought nearly 16,000 demonstrators to the nation's capital, according to figures from the Ministry of the Interior.[72] From the Salafist preacher Ben Hassen to the Minister of Women's Affairs Sihem Badi of the CPR and the hardliners of Ennahda's Shura Council, the spectrum of radicals was well represented. The show of force was crowned with a powerful speech held by Ghannouchi. Omitting to mention Belaid, the president of the Ennahda Movement struck the final blow to the prime minister by comparing the initiative of the "government of technocrats" to a putsch *(inqilâb)*. Thus the die was cast.

Jebali, intent on avoiding a split within his party, ultimately handled the situation like a technocrat. Dissuaded by the counter-demonstration of 16 February, he abstained from asking the NCA for a vote of confidence on the project of a non-partisan government and to thereby provoke a general debate on the political crisis. The power play of the hardline partisans reached its first objective – declared by Ghannouchi several days before Jebali's call for the formation of a non-partisan office – of preventing *de facto* the chief of the executive to exercise his *de jure* prerogative of forming a government and of circumventing the NCA. The extra-institutional veto achieved by the hardliners thus revealed the preeminence of the *de facto* institutions over the *de jure* institutions. By virtue of this informal but nevertheless significant rule of the game, it was less the NCA than Ennahda's Shura Council that held the power of control and deliberation; and, in the context of this non-democratic system, it was less the Prime Minister, elected, than the President of Ennahda, not elected by popular vote, who really governed.

Jebali, who announced the failure of his initiative on 19 February, nevertheless did not shut the door. Gauging his new popularity, he imposed the following conditions for its revival: forming a "government at the service of all Tunisians"; initiating an "inclusive national dialogue"; fixing a "clear and precise agenda for elections"; and "refusing that organizations or leagues can replace the state, which should be the only authority for the safety and liberty of Tunisi-

68 Ibid.

69 *Al Chorouk*, February 21, 2013.

70 Interview with an anonymous constituent and member of the Ennahda Shura Council.

71 Direct observation.

72 Frida Dahmani, "Tunisie: Rached Ghannouchi, le discours d'un chef," *Jeune Afrique*, February 17, 2013, http://www.jeuneafrique.com/Article/ARTJAWEB20130217125739/ (accessed August 5, 2013).

ans."[73] The party in power did not wait long to give its verdict. The following day, Ennahda's parliamentary leader Atig announced: "If Jebali adopts the vision of the Movement, he will be called on to form a new government."[74] Thus, although Jebali had abandoned the idea of forming a non-partisan government, he was nevertheless thanked by the hardliners. This raises a question that had not been voiced: For what reasons did the radicals deprive themselves of the services of a head of government who had become, in this difficult phase for the party and the country, the object of a nationwide consensus? The minimum conditions imposed by Jebali in his address of 19 February shed light on this enigma: the hardline partisans not only rejected the idea of a non-partisan government, they also rejected Jebali's motion for distancing the government from partisan tugs-of-war, for the organization of an inclusive national dialogue, for the dissolution of the militias and for the development of a precise agenda.

Some two weeks later, on 5 March, the interim government was faced with the unexpected resignation of Minister of Defense Zbidi, who cited as reasons the absence of a clear political agenda.[75] Thus, the refusal of the ruling party to commit to a road map and to adopt an electoral calendar did not put Ennahda's vision of the "transition" in a good light. A discussion held by Ghannouchi with Salafists in his office in April 2012, and filmed without his knowledge, reveals aspects of this vision: According to Ghannouchi, despite the fact that Ennahda was the ruling party, the secular elites were still in control of the administration, the economy and the media; and, gaining control over these sectors would require patience and pragmatism.[76] The political practice of the party governing the Tunisian transition was described by the philosopher Abou Yaareb Marzouki, elected to the NCA from an Ennahda list and advisor to then-Prime Minister Jebali, as follows: Although the context clearly calls for a "liberation of the state from political monopolization" and the "prevention of the politicization of the administration," the leaders of Ennahda conceive the government and its apparatuses and administration as something to be "plundered."[77]

President Marzouki, who, in compliance with Article 15 of the mini-Constitution, has the right to hold consultations with political parties and parliamentary groups in view of assigning the mandate of forming a new government to a candidate other than that of the party that gained the most votes, preferred, once again, to entrust the arbitration to Ennahda. After having driven out the moderate Jebali from the presidency of the government, the ruling party's Shura Council focused on choosing a new prime minister. Meeting behind closed doors on 16 and 17 February, the conclave of Ennahda discussed their list of candidates. These included Mohamed Ben Salem (Minister of Agriculture), Noureddine Bhiri (Minister of Justice) and Ali Larayedh (Minister of the Interior), all of whom were members of the executive office of Ennahda. All three opposed the former prime minister, even Larayedh, known to be close to Jebali. Although the Shura Council did not publicize the results of their vote, it transpired that Bhiri came in first.[78] However, after some push and pull between the Ennahda leadership and its political partners, the former decided to appoint Ali Larayedh, who purportedly came in third in the vote by the "parliament" of the party. As a revenge, Bhiri, the minister of justice who had dismissed 74 judges, began agitating against Larayedh within the political class. For example, although he did not publicly dispute Larayedh's election by the "parliament" of the Ennahda Movement, he implicitly discredited the election result by expressing himself as follows in an interview with the daily newspaper *Al Chourouk*: "Ali Larayedh was chosen after consultations with our partners in power and the consultations within the Shura Council [...]."[79] Prime Minister Larayedh was also notified by the *de facto* general coordinator of the new government in person that any prime minister from now on was more than ever dependent on the leadership of the ruling party, an institution enjoying (extra-) institutional veto power.

73 View the intervention of Jebali from 19 February 2013 at: http://www.youtube.com/watch?v=v-QlsjbqTJM (accessed August 26, 2013).

74 *Le Maghreb*, February 20, 2013.

75 The video can be viewed at: http://www.tuniscope.com/index.php/article/22324/actualites/politique/zbidi-demission-gouvernement-365121#.Ucm2YJWT3Uo (accessed August 5, 2013).

76 The video can be viewed at: http://www.youtube.com/watch?v=U_2VbocEHYI (accessed August 26, 2013).

77 Read the resignation letter of Abou Yaareb Marzouki on the website of Radio tunisienne: http://www.radiotunisienne.tn.

78 Interview with an anonymous member of the Ennahda Shura Council.

79 *Al Chourouk*, February 13, 2013.

Thus, the challenge which the ruling party then faced was: Which government for which transition? Although abandoned, the initiative of a non-partisan government left a legacy that revealed itself to be an obstacle for the radicals. This obstacle consisted of the fact that the moderates of the opposition, as those of the Troika, will no longer be ready to engage in a coalition with the Islamist party below a certain threshold of conditions after Jebali had proposed a non-partisan government. The President of the NCA, Ben Jaafar of Ettakatol, who knew that time was playing against Ennahda and that the latter could not make do with a fragmented and compromised CPR, established the "neutrality of the departments of sovereignty" and the "reexamination of the administrative appointments effected by the preceding government" as *sine qua non* conditions for the maintenance of his secular party in the Troika. After long and arduous negotiations, the Ennahda leadership, aware that the formation of a government of radicals would be untenable at the national level and disastrous for its international image, ceded on the first point and accepted the agreement. The Larayedh government was finally formed on 11 March 2013, after two long weeks, being the legal delay granted by the mini-Constitution. The only notable change was that the departments of sovereignty were entrusted to so-called "independent" figures: the Ministry of the Interior to the judge Lotfi Ben Jeddou; the Ministry of Justice to the lawyer Nadir Ben Ammou, the Ministry of Foreign Affairs to the diplomat Othmane Jerandi, and the Ministry of Defense to Rachid Sabbagh. However it remained unclear what room to maneuver these ministers would have. Would Ben Jeddou and Ben Ammou manage to shed light on the homicide of Belaid, fight against the militias and assert themselves with regard to their respective administrations? Unsurprisingly, the new prime minister gained the vote of confidence from the NCA two days later.[80]

80 Of 197 voters, 139 votes for, 45 against and 13 abstentions. See details on: http://www.marsad.tn/fr/votes/5140a679b197de08259e599d (accessed August 5, 2013).

Which rules for which transition?

On 13 March, a young street vendor from Tunis who had been regularly harassed by officials and police died after setting himself on fire. Of great impact, this tragedy was further amplified by the fact that it brought back memories of the self-immolation of another street vendor, in 2010, which had triggered the revolution. The simultaneity of this event with the vote of confidence accorded to the new government then generated a political malaise that characterized the ambivalence and uncertain trajectory of the Tunisian transition.

To reassure national and international opinion, the new prime minister declared in his inaugural address to the NCA that his government would end in December 2013. Soon thereafter, reframing the statements of the new head of government, Ghannouchi declared in a broadcast statement: "Failure to hold elections by the end of 2013 will not lead to the dissolution of the different powers." It is this incongruence that explains the refusal of Minister of Defense Zbidi to continue his office for another term in the Larayedh government, citing as reasons the absence of an electoral calendar and the exhaustion of the army by maintaining the country in a state of emergency since January 2011. The same can be said of the sensational resignation of the Chairman of the Joint Chiefs of Staff, Rachid Ammar, on 24 June 2013, the anniversary of the creation of the Tunisian army. The famous general, who maintained that "the assassination of Belaid marks the death of the Troika government" and who refused the offer given him by Larayedh to occupy the position of minister of defense, resigned three months after the departure of his ally Zbidi, stressing his support of the initiative for a non-partisan government.[81] The resignation of General Ammar occurred in the wake of a campaign that had been orchestrated many months prior. Two events underline this. One, back when the proposal to form a non-partisan government was launched, the Secretary General of the CPR, Mohamed Abbou, threatened to "bring to justice all those who call for the intervention of the army into politics," yet then came back to demand four months later, this time under his new label of "dissident," the resignation of Ammar. Neither the President of the Republic (who is also Commander-in-Chief of the Armed Forces) nor the Prime Minister nor the new Minister of Defense came to the defense of Amman. It should be noted that at that very point in time, the army, cut off from intelligent services, was severely challenged by the jihadist hideout that had been able to take roots in light of the passivity of the paramilitary corps of forest rangers (falling under the Ministry of Agriculture) on Mount Chaambi, on the border with Algeria. It is these circumstances that pushed General Ammar to go into retirement.[82] The statements made by Mohamed Abbou, the unfailing ally of the Ennahda hardliners, echoed those made *in petto* one year prior by Ghannouchi, during his famous filmed discussion with the Salafists: "The army, still under control of the secular elites, is not [yet] ours."[83]

Between political violence and exclusion: Which rules apply to which game?

Beyond the electoral calendar, the absence of which maintained imprecision and incertitude as to the political transition in Tunisia, a further issue of major importance, though little discussed, surfaced: the question concerning the quality of elections. The dominant paradigm of transitology, with its main focus on the electoral moment, loses sight of the institutional background. In other words, the "electoral sophism" that underpins transitology stands in the way of identifying the cases, increasingly many, where elections, although open, are not necessarily democratic. In fact, in hybrid regimes, electoral manipulations, diversion of state resources by the party or coalition in power, asymmetrical access to party

81 The video can be viewed at: http://directinfo.webmanagercenter.com/2013/06/25/video-le-general-ammar-invite-de-la-chaine-ettounsiya-tv/ (accessed August 5, 2013).

82 In this televised intervention, Amman emphasized the urgency of implementing a "national intelligence service" as an "indispensable [tool] for combating jihadist terrorism." In the Tunisian political regime, intelligence services fall under the Ministry of the Interior.

83 The video can be viewed at: http://www.youtube.com/watch?v=U_2VbocEHYI (accessed August 5, 2013).

funding, as well as harassment and violence have resulted in producing elections that have been more or less competitive but hardly fair.[84] How might the present institutional environment fare with regard to the upcoming elections in Tunisia? Indeed, in post-authoritarian transitions, the place of informal institutions can reveal itself as determining. Thus, the institutional crisis that erupted in October 2012 and that culminated in February 2013 with the homicide of the opponent Belaid appears to confirm the following proposition: If a ruling party is unable to reach its objectives through the formal institutions, it will implement extra-institutional instruments.

The scope of informal practice goes well beyond the measures discussed so far. Above all, the controversial role played by the strongly contested LPR in the Tunisian political game is inscribed in the framework of this parallel system. Taking shape in the beginning of the crisis of the interim government, the LPR marked their entry into politics the day after the UGTT National Dialogue Conference, which the ruling party had boycotted, with the assassination of the unionist and Regional Director of the opposition party Nidaa Tounes, Lotfi Naguedh. Unpunished, the LPR resurfaced on 4 December 2012, the day before the agreement was concluded between then-Prime Minister Jebali and the UGTT, by provoking a conflict in front of the headquarters of the historical union founded by Farhat Hached. The muscled show of militiamen triggered an acute crisis between the government and the national trade union center. Congratulated the following day for serving as a "living reminder of the revolution" by Ghannouchi, the LPR escaped justice given the backing they were given by the hardline partisans from Ennahda. Then-Prime Minister Jebali, usurped by his own party, was unable to dissolve these violent groups. Although Jebali had been calling for the dissolution of the militias since mid-December 2012,[85] Ennahda's parliamentary leader Atig visited the LPR members accused of the murder of Naguedh, and the Ennahda constituent Ali Fares qualified the deadly assault as "revolutionary," even declaring that he was already working with the Ministry of Justice in view of securing amnesty for those arrested.[86] The third brazen action of the LPR took place at the height of the crisis of the interim government. Enjoying police protection, and armed with riot clubs, the militia reappeared on 2 February 2013 – the exact day when Ennahda's Shura Council called on the judicial authority to "end the injustice committed against the members of the LPR and Ennahda" in the Naguedh affair – and stormed public meetings of the opposition parties. Further, some hundred LPR militiamen, Salafists and militants from Ennahda violently disrupted a meeting of the party Al Jomhouri in Kairouan. In the absence of an intervention by government security forces, the offensive succeeded to prevent the holding of this public meeting that was to be led by the party's Secretary General, Maya Jribi.[87] On the same day, the LPR militias also committed a violent attack on a public meeting held in El Kef by the Popular Front. One month after the departure of Minister of Justice Bhiri, the examining magistrate of the Court of First Instance of Tataouine raised the veil on the matter of the assassination of Naguedh. Discrediting the account advanced by the Ministry of the Interior, then under Larayedh, according to which the deceased suffered a heart attack, the examining magistrate laid a charge of premeditated murder against the defendants, almost all of whom were members of Ennahda and commandeered by the head of the LPR in Tataouine.[88] However, whereas a near-unanimous consensus of political society from the radicals of the opposition to the moderates of the government coalition formed around the necessity of dissolving the LPR, Ghannouchi, in an effort to preempt the action of the new prime minister, stated on the day of the investiture of Jebali's successor: "They have all the right to exist, because it is a legitimate and recognized association."[89] At a time when, given the democratic transition, repression came at a cost, were the LPR an informal instrument of coercion designed to harass the adversaries of the party in power? Everything suggests that this was the case, beginning with the solid political protection given to these militias by Ennahda. How then could these elections be called

84 Cf. Levitsky and Way, *Competitive Authoritarianism* (see note 4); Schedler, "The Menu of Manipulation" (see note 4).
85 Interview televised on the private Tunisian channel Hannibal on February 16, 2012.
86 See http://www.tanitpresse.tn.
87 Hassan Ayyadi, "Les LPR confirment qu'elles sont au-desus de la Loi, la police fuit sa responsabilité," *Le Maghreb*, February 2, 2013, p. 7.
88 Cf. "Assassinat de Lotfi Naguedh: Les LPR reconnues coupables," Radio Express FM, April 5, 2013, http://www.radioexpressfm.com/news/show/assassinat-de-lotfi-naguedh-les-lpr-condamnes (accessed August 6, 2013); read also the interview accorded by the Minister of the Interior to the journal *Le Maghreb*, March 20, 2013.
89 Declarations made on radio Shems FM on March 11, 2013.

elections if violent groups, protected by the ruling party, were pursuing their intimidations and bloody assaults against journalists, partisans, militants and candidates of the opposition parties? While such elections may be competitive, they can hardly be considered fair.

Does the institution mandated to oversee the elections have the means of ensuring free and fair elections? Or, even more pertinent, why did the rulers decide to institute a new electoral body while the one that oversaw the 2011 elections was globally recognized for having accomplished the first free and democratic elections in the history of Tunisia? What is the logic behind the creation of a permanent institution while all the institutions in place are interim? Why would one do without an institution having accumulated valuable experience and knowledge when the monitoring of elections demands exactly these assets? Why did the winners of the first round of the transition wanted to change of referee at halftime? Was ISIE President Kamel Jendoubi too independent in the eyes of the hardliners of the party in power? The latter, after having failed to co-opt Jendoubi,[90] announced on the day before the October 2012 National Dialogue Conference that they would not support the reinstatement of the principal architect of the 2011 election as head of the new electoral oversight body. Was there a link between that veto and the orchestrated media attack against the highly respected Jendoubi? There can be little doubt in light of the fact that the person behind the campaign was a lawyer dedicated to the ruling party.[91]

In fact, the bill relating to the ISIE proposed by Ennahda turned out to be entirely structured around the distancing of the exiting ISIE President Jendoubi and the weakening of the electoral oversight body. Adopted on 12 December 2012 – during the boycott of the NCA by the deputies of the democratic bloc[92] to denounce the police brutality deployed in Siliana – the law instituting the new ISIE in fact weakened the election oversight body much more than it strengthened it.[93] The new institution is composed of an executive body and a council directed by the president of the ISIE. However, while the law attributes extensive prerogatives to the head of the executive body, it remains silent on those of the president of the council. It is, however, the latter and not the director of the executive body who has the responsibility for the electoral oversight body. This organization of power with two heads bears a risk of internal conflict and deadlock. That threat is all the greater in that the members of the ISIE are elected by the NCA, whose criteria had been rejected a first time by the administrative court in mid-May 2013 for discrimination and non-respect of equal opportunity. The law does not grant financial independence to the electoral body, nor does it ensure its independence with regard to the authorities, with Article 22 designating the government as the intermediary between the ISIE and the administration. There is little hope that such an institution can stand up against an administration suspected, not without good reason, of politicization in order to control the financing of parties, to prohibit the use of mosques for political purposes, to mobilize the government against the militias, in short, to create the conditions for holding fully democratic elections.

Other factors, no less important, sustain the doubts on the proper conduct of the next elections. The Draft Law on the Political Immunization of the Revolution is one of them. Submitted by the hardliners of Ennahda and the CPR at the beginning of the crisis of the interim institutions, the instrument aims to exclude from electoral competition whom the document calls the "influential actors of the former regime" having exercised functions within the state and the ruling party (the Rassemblement constitutionnel démocratique, RCD) between 2 April 1989 and 14 January 2011.[94] Tabled by the hardline partisans soon after the call of Nidaa Tounes to transition to "consensual legiti-

90 At a press conference held on May 23, 2013 in Tunis, Jendoubi announced having refused the offers of Ennahda to enter into the government or to occupy a position of ambassador. Ennahda did not deny this announcement afterwards. "Après avoir cherché à le soudoyer, Kamel Jendoubi devient l'homme à abattre," BusinessNews.com.tn, May 24, 2013, http://www.businessnews.com.tn/Tunisie--Après-avoir-cherché-à-le-soudoyer,-Kamel-Jendoubi-devient-lhomme-à-abattre-,519,38312,3 (accessed August 6, 2013).

91 Kamel Layouni hosted a popular meeting of the ruling party in Sidi Bousaïd on January 24, 2013 in the company of Atig. Direct observation. Layouni is the lawyer of Rafik Bouchlaka, son-in-law of Ghannouchi and Minister of Foreign Affairs in the Jebali government (from December 2011 to February 2013).

92 The democratic bloc then included some thirty deputies mainly from Al Joumhouri, Al Massar and the Alliance démocratique.

93 The law can be consulted on the official website of the ANC: http://www.anc.tn.

94 The period begins five days before the "coup d'État médical" orchestrated by General Ben Ali and ends with the departure of the autocrat.

macy," the bill, if enacted, would produce a long list of people to exclude for ten years from electoral and institutional politics, including the candidature for presidential, legislative and municipal elections, the direction of the government or ministries, and the chairing of or belonging to a founding committee of a political party.[95] The exclusion also targets those who had been candidates on the lists of the ruling party of the former regime at the People's Assembly (the parliament). Essebsi, for example, who had chaired parliament from 1990 to 1991, is a perfect fit for these criteria of political exclusion. The intention of the Nidaa Tounes president and main adversary of both Ennahda and the CPR[96] to announce his candidature for the presidential election was widely known. But the list, which spans the position of prime minister to candidates on the lists of the RCD in the municipal elections, would essentially ban thousands of people from political activity. According to Human Rights Watch: "The proposed law's provisions and procedures for exclusion amount to an unnecessary and disproportionate restriction on political rights. [...] This sweeping law automatically excludes people, depriving them from fundamental political rights, without a real chance to rebut the claims against them."[97] More troubling, Article 4 of the Draft Law on the Political Immunization of the Revolution clearly opens the door to denunciation. In case of adoption, the instrument of political exclusion would put Tunisia, a member state of the International Covenant on Civil and Political Rights, in violation of its international commitments. Whereas a near-unanimous consensus, spanning from the extreme left revolutionary Hamma Hammami to the liberal Islamist Ennahda Dilou, condemned the bill, the radicals, who are pulling the strings of the Shura Council, have been urging the Ennahda bloc at the NCA to accelerate its adoption. The European tour during which former prime minister Jebali declared his opposition to the law of exclusion on the waves of BBC and in the daily *Al Sharq Al Awsat*[98] in mid-May 2013 did not have an impact at home. Nor could that be said of the leftist intellectual Aziz Krichen, member of the moderate wing of the CPR and political adviser to President Marzouki, who affirmed on 22 March 2013 on the French television channel France 24 that "the Draft Law on Political Exclusion will not be passed."[99] Won over by the hardline partisans, the ruling party has seemed, with the backing of the CPR and the armed support of the LPR,[100] well determined to get this bill passed.[101] Yet, with such an instrument of political exclusion, elections would be even less democratic. This applies even more insofar as the bill burdens the ISIE, a body with little financial autonomy, with the

95 Article 3 of the Draft Law on the Political Immunization of the Revolution.

96 According to an opinion poll on voter intentions conducted by the firm 3C Etudes in October 2012, Nidaa Tounes ranked in second place at the legislative with 28.1% (Ennahda first with 30.9%) and Essebsi ranked in first place for the presidential election with 14% (Marzouki in second place with 9.7%). Read: "Baromètre politique 3C Etudes," Institut 3C Etudes, October 18, 2012, http://blog.3cetudes.com/2012/10/18/barometre-politique-3c-etudes-vague-10-octobre-2012/ (accessed August 6, 2013).

97 "Tunisie: Une loi d'exclusion politique très large," Human Rights Watch, June 15, 2013, http://www.hrw.org/fr/news/2013/06/15/tunisie-une-loi-d-exclusion-politique-tres-large# (accessed August 12, 2013).

98 *Al Sharq Al Awsat*, May 16, 2013.

99 The video can be viewed at: http://www.france24.com/fr/20130321-lentretien-aziz-krichen-bourguiba-printemps-arabe-transition (accessed August 6, 2013).

100 Even though not very numerous, the LPR groups, who effected a sit-in before the National Constituent Assembly on June 27, 2013 to demand the adoption of the Draft Law on the Political Immunization of the Revolution on the day when it was debated in the plenary, assaulted many journalists and threatened a constituent opposed to the political exclusion measure. Read the article (in Arabic) at http://www.assabah.com.tn/article-91643.html (accessed August 26, 2013).

101 The vote on the closing of the general debate on the Draft Law on the Political Immunization of the Revolution, effected on June 28, 2013, was as follows: 96 for, 38 against, 3 abstentions. Of the favorable votes, 74 were from the Ennahda bloc, 10 from the CPR, 4 from Ettakatol, 7 independents and 1 from the Democrats. Of the votes against, 22 were from the Democrats and 16 independent. The abstentions were: two independent and one from Ettakatol (the Second Vice President of the NCA, who chaired the session on that day). For more details on the vote, visit the website of the Marsad observatory: http://www.marsad.tn/fr/votes/51cd934b7ea2c47c3f3672c7 (accessed August 6, 2013). One surprising outcome of this vote was the about-turn of Ettakatol, the party that had before expressed that the "transitional justice is the only means of immunizing the revolution." By this vote, Ettakatol, which, contrary to CPR, showed itself to be satisfied with the draft constitution, seemed to augur an alliance with Ennahda for the coming presidential election. President Marzouki waited until the day following the vote to express his refusal, in the pre-electoral context, of the Draft Law on the Political Immunization of the Revolution. The video can be viewed at: http://www.businessnews.com.tn/Tunisie--L'interview-consensuelle-accordée-par-Moncef-Marzouki-à-Iyadh-Ben-Achour-(Vidéo),520,39038,3 (accessed August 6, 2013).

heavy task of establishing a preliminary list of the people targeted by the privation of political rights.[102]

Which constitution for which community?

Analyzing the constitutional set-up in its political and institutional environment allows to better understand the lines of conflict that inhibit the process of drafting the constitution. These lines of conflict can be grouped into two categories, one concerning the polity and the other the political regime.

The first line of conflict concerns the polity. Whereas a general consensus on the subject of the political community seemed to unfold during the campaign for the election of the Constituent Assembly, Ennahda's decision to turn the sharia into one of the foundations of the constitution – an objective which the party had not mentioned in its electoral program – provoked a wave of outrage, the first since the founding elections of October 2011. In fact, many wondered whether a religious counter-revolution had been underway since the democratic accession of Ennahda to power. The demands for the "constitutionalization of the sharia," for the "criminalization of offences against sacred values" and for the upholding of the "principle of 'complementarity' of women to men" cast doubt not only on the "moderation" so readily attributed to the Ennahda Movement; it also ended up threatening the Troika by exacerbating the ideological polarization between its partners. Ben Jaafar, who made of the civil state a "red line not to be trespassed," threatened to leave the coalition if the Islamist party did not withdraw the clause concerning the sharia. Before the strong mobilization of Tunisian civil society, the threat of defection of the secular ally, and the tainting of the party's image with Western leaders, the Ennahda Shura Council complied and Ghannouchi announced in March 2012 that the party had abandoned the constitutionalization of the sharia. By ceding with regard to the sharia, the Islamist party demonstrated "pragmatism," and, perhaps more importantly, also gained a considerable compensation from the secularists in return: the non-constitutionalization of the Universal Declaration of Human Rights.[103] The preamble of the draft constitution, which has not changed much between the first draft from August 2012 and the draft from April 2013, states: "We, the elected officials of the Tunisian people [...], based on the constants of Islam [...], the universal principles of man and their compatibility with the cultural specificities of the Tunisian people [...]."[104] The compromise reached revealed itself to be much weaker than the agreement achieved by the famous "Collectif du 18 octobre 2005," in which certain Ennahda members, then in hiding, following the example of Dilou, engaged themselves, alongside secularist opponents such as Chebbi and Hammami, in favor of the Universal Declaration of Human Rights.[105] Thus, by limiting the scope of validity of universal human rights with two imperatives – the "constants of Islam" and the "cultural specificities of the Tunisian people," – the draft constitution became ambivalent to say the least. The deafening silence surrounding the freedom of conscience increased this ambiguity. Subjected to the pressure exercised by lawyers such as Ben Achour as well as by civil society associations and forums, the drafting and coordination committee that supervised the drafting of the constitution[106] then removed this ambiguity, at least partially. The draft constitution of 1 June 2013,[107] on which the Assembly was later called on to vote, contained a notable change: The writer had replaced the expression "the constants of Islam" with the more open "teachings of Islam" and removed the controversial passage stipulating "compatibility with the cultural specificities of the Tunisian people."[108]

The ambivalence relative to the hierarchy of the values adopted by the constitution was, however, removed only partially. A major obstacle remained: the one concerning the relations between religion and the state. The Islamist movement, which had ceded on the "constitutionalization of the sharia" and on the "criminalization of blasphemy," became once again in charge by stipulating in Article 140 of the draft constitution that no constitutional reform could

102 Article 4 of the bill.
103 Interview with the dissident Ettakatol constituents Mabrouk and Ben Abdesselam, Tunis, January 2013.
104 The draft constitution of April 2013 is available on the official website of the ANC: http//www.anc.tn.
105 Read the documents of the "Collectif du 18 octobre 2005" on http://www.nachaz.org/index.php/fr/textes-a-l-appui/politique/102-2012-09-11-12-11-20.html (accessed August 7, 2013).
106 Directed by the president of the NCA.
107 The draft constitution of 01 June 2013 is available on the official website of the ANC: http://www.anc.tn.
108 The adoption of the constitution requires a two-thirds majority.

ever question "Islam as the religion of the state." Thus, by attributing a supra-constitutional value to a provision that was "foreign to Tunisian law as well as to the revolution of 'liberty and dignity'," [109] Ennahda removed the secular content from the first two articles of the constitutional project, which now stipulate the following respectively: "Tunisia is a free, independent and sovereign state, its language Arab, its religion Islam, its regime the Republic"; "Tunisia is a civil state founded on citizenship, the will of the people and the supremacy of the law." Yet, what could the adjective "civil" attributed to the state mean if the latter was soon thereafter consecrated to religion? The catch-22 is even more substantial in that Article 5 of the constitutional project designates the state as the "guardian of religion." Articles 30 and 40 then add to the already considerable ambiguity by limiting the freedom of expression, information and publication with a law, flexible on demand, "protecting the rights of others, their reputation, safety and health," and by stipulating the "imperatives of security, national defense and public health." The response of the Tunisian draft constitution to the fundamental question of the polity – a community of believers or citizens? – remains ambivalent.

The second line of conflict concerns the political regime. Two antagonistic political formulas have fought for supremacy since the beginning of the constitutional process, one parliamentary, the other semi-presidential. Ennahda, in the majority after the founding elections, advocated a parliamentary regime that would not protect against the risk of a ruling-party hegemony. By contrast, the opposition and the CPR of President Marzouki, who hoped that one or the other would win the presidential election, pleaded in favor of a semi-presidentialism similar to that of the 5th French Republic. In this system, widespread in the world, in particular since the fall of Communism, [110] the president of the republic, elected by universal suffrage, has considerable prerogatives, such as the dissolution of parliament, recourse to referendums, the conduct of foreign affairs and defense, while the prime minister, in power due to the parliamentary majority, develops the general policies of government. The blockage generated by this antagonism paralyzed the works of the constitutional committee mandated to define the prerogatives of the two poles of the executive. [111] While said committee voted in favor of the formula of a semi-presidential regime, [112] the draft constitution of 1 June 2013, strongly influenced by the "general coordinator of the constitution," the hardline Ennahda partisan Habib Khedher, prescribes a wholly different system of government. In fact, the majority party, which had ceded on the principle of universal suffrage for the election of the president of the republic, decided at the same time to considerably limit the prerogatives of the chief of state for the benefit of those of the prime minister. Article 76 thus specified that the president of the republic is to develop the policies of foreign affairs and defense "in compliance with the general policy of the state." Thus, the prerogatives in Article 76, just as in Article 90, are granted exclusively to the prime minister. Moreover, Article 77 stipulates that the president is able to appoint the governor of the central bank "upon recommendation" of the prime minister and "after a majority vote" of the People's Assembly. The same article specifies that appointments to "higher diplomatic military functions and those relative to national security" attributed to the president of the republic, to be eventually defined by a law, are "subjected to the condition of non-opposition" of the concerned parliamentary committee. In addition, while the parliament is able, pursuant to Article 87, to impeach the president of the republic, although elected by universal suffrage, the latter is only mandated to dissolve the People's Assembly in one specific case: when, following legislative elections, the first candidate designated by the president to form a government fails to build his or her cabinet within four months. Interestingly, the draft constitution grants the prime minister the prerogative to legislate by decree in case of dissolution of the People's Assembly (Article 64). Thus, in that case, the prime minister, no longer holding electoral legitimacy, can hardly hope to accomplish more than the handling of current affairs. In the end, the political

109 Interview with Ben Achour, Tunis, February 2013.
110 Cindy Skach, *Borrowing Constitutional Designs* (Princeton, 2005), p. 120.

111 From the start, Marzouki, President of the Interim Republic, tried to put a loyal partisan, Omar Chetoui, at the head of this Constitutional Committee. Supported by the opposition, the latter revealed himself to be a formidable adversary of Ennahda on this very crucial institutional question. The author was able to attend many closed meetings of this Constitutional Committee in January and February 2013.
112 Participant observation, January 2013. Read the report of the President of the Constitutional Committee on the Legislative and Executive Powers, Chetoui: http://nawaat.org/portail/2013/07/12/التشريع-السلطتين-لجنة-رئيس-الشتوي-عمر/ (accessed August 6, 2013).

system adopted by the draft constitution took over flaws from both the parliamentary and the semi-presidential regime: ruling-party hegemony, parliamentary dictatorship, government volatility, institutional blockage, presidentialism.

These shortcomings are all the more serious in that the draft constitution does not present sufficient guarantees for the independence of the judiciary. Two institutional arrangements, among others, exacerbate the characteristics of this political formula. One, while the practice of the Troika government sanctioned the subordination of judges, the draft constitution does not foresee institutional guarantees for the public prosecution authorities' independence from the Ministry of Justice (in Article 112). Two, while half of the Superior Council of the Judiciary, the body mandated to oversee the independence of the judiciary (Article 111), is composed of members who are appointed and, above all, foreign to the body of judges, the other half is composed of elected and appointed judges (Article 109). Also, more than half of the Superior Council of the Magistrature is composed of designated members.

Last but not least, the "transitory provisions" of the draft constitution were written by Khedher, the Rapporteur of the Constitution.[113] Tightening the screws of the political formula, Article 146 stipulates the following: the "gradual" entry in effect of the Constitution; the non-application of the principle of recourse to the Constitutional Court to verify the constitutionality of laws during its three first years; and the opportunity accorded to the NCA to set up institutions and to legislate during the period between the adoption of the constitution and the elections of the People's Assembly. These institutional arrangements distort *ex post* the approach adopted *ex ante* by the ruling party in view of extending the interim period to a maximum. This approach included: the refusal to set a temporal limit of the NCA in "the provisional organization of the public powers"; the refusal to commit to a precise road map and binding electoral agenda; the distancing of the ISIE, and its replacement by a new, less independent entity; the weighing down of the process of drafting of the constitution; and the protection of the LPR militias.

Intensely problematic, the provisions of Article 146 amplify the already considerable ambiguity and imprecision surrounding not only the duration but also, if not above all, the type of political transition.

113 "Iyadh Ben Achour: Les dispositions transitoires dans leur version actuelle se réfèrent à une nouvelle science inventée par Habib Khedhr," Radio Mosaïque FM, June 11, 2013, http://www.mosaiquefm.net/fr/index/a/ActuDetail/Element/22314-iyadh-ben-achour-les-dispositions-transitoires-dans-leur-version-actuelle-se-referent-a-une-nouvelle-science-inventee-par-habib-khedhr (accessed August 7, 2013).

Conclusions: Which trajectories for which transition?

The shock wave provoked in Egypt by the popular anti-Islamist mobilization of 30 June 2013 and the removal from power of President Mohamed Morsi by the army, three days later, did not fail to shake up Tunisia. Foreseeably, the specter of the institutional collapse revealed itself all the more threatening in that the country had been sliding into a severe crisis of the interim government since October 2012. Occurring while the transition was bogged down in a dangerous impasse, the jolt caused by the bloody crisis that tore Egypt apart ended up, by backfiring, exacerbating a process of radicalization that had been well underway since the devising of the political exclusion instrument and the feat of strength perpetrated in accomplishing the draft constitution. A dangerous power struggle has since begun between the hardline partisans of the government party and the radicals of the opposition.

The affinities between the more radical Ennahda elements and the Muslim Brotherhood are not only ideological, they are also political. From the inaugural show of strength consisting of granting the NCA an unlimited mandate to the manipulation of the draft constitution, from the infiltration of the public administration by partisans to the mass firings of judges, from the impunity of police brutality to the protection of militias, from the scuttling of the first National Dialogue Conference to the sabotaging of the non-partisan government, the politics by Ennahda seriously undermined the effort of reaching the procedural consensus so indispensable for the foundation of democracy in Tunisia. Troubled and struck by panic by the fall of the Islamist government ally in Egypt, Ennahda's dominant hardliners opted for a flight forward and escalation. They also crossed yet another threshold: that of death threats. The mass meeting they held on 13 July in Tunis before some six thousand people in the name of giving "support to the legitimacy of President Morsi" marked a new turning point in the crisis. Atig threatened any Tunisians who might be tempted by dissidence as follows: "Tunisia will be authorized to cause bloodshed on all those who trample on its legitimacy".[114] The opposition, won over by the radicalization, called for the formation of a "national salvation government."

It is in this very tense context that the assassination of the deputy and member of the Popular Front, the Arab nationalist from the left Mohamed Brahmi, took place on 25 July, by a hail of bullets in front of his home. The moment of the homicide of this determined opponent of Ennahda, a follower as it so happens of Hamedine Sabahi (one of the artisans of the fall of the government of the Muslim Brotherhood),[115] was no coincidence: It occurred the day before a popular uprising for which both, the chief of the Egyptian army and the organization of the Muslim Brotherhood, had called. The bloodbath that predictably ensued, receiving global press coverage, could have relegated the Tunisian crisis to a secondary priority. However, far from letting loose, the power struggle between the hardline partisans of the government and the radicals of the opposition became fiercer. While the former defended the *status quo*, pointing to the terrorism that had killed, four days after the assassination of Brahmi, ten soldiers on Mount Chaambi, the latter, blaming the Troika government for the eruption of political violence and the weakening of the state, called for the "dissolution of the NCA" and the formation of a "national salvation government."

Overall, the crisis of the interim institutions was the result of a gradual deterioration of the Tunisian political climate rather than a sudden outbreak of tensions. Tunisia, which achieved neither the "success of the democratic transition" nor the accomplishment of the "religious counter-revolution," finds itself more than ever at a crossroads. The Tunisian trajectory, uncompleted and uncertain, still has many unknowns. Three scenarios take shape on the horizon:

- *Political instability*. The exacerbation of the power struggle between the hardline partisans of the government and the radicals of the opposition favors this fall into the unknown. Two irreconcilable rationales feed this crisis: the *status quo* on the one side and *tabula rasa* on the other. The confrontation of the two approaches could well, as in Egypt,

114 The video can be viewed at: http://www.youtube.com/watch?v=ROpl77OtY8Y (accessed August 6, 2013).

115 Interview with the author, Tunis, January–February 2013.

divide the country into two opposing camps: the hardliners of Ennahda on the one side and the Union for Tunisia (an alliance between secularist political parties formed in January 2013 between, among others, Nidaa Tounes, Al-Joumhoury and Al-Massar) and the Popular Front on the other, the latter two having worked toward a rapprochement since Ennahda decided to implement the instrument of political exclusion and to show force in the drafting of the draft constitution. Politically dangerous, economically ruinous and socially untenable, this scenario could lead to a second revolution, a second transition or a new form of authoritarianism.

- *Emergence of a competitive authoritarian regime*. The hardline partisans of Ennahda and their allies, who envision no alternation of power, are building among others on the control of the government and the administration, the stymieing of the process of adopting a constitution, the enactment of the Draft Law on Political Exclusion, the implementation of an advantageous electoral law, the upsurge of the LPR militias and electoral defection. The degree to which this type of hybrid regime could be realized depends on the tenacity of civil society and the opposition as well as the support of the big powers.
- *Democratization*. The national consensus, defended by the moderates of the opposition and the government coalition as well as by the social partners and civil society actors, is the only one capable of reducing the conflict and of stabilizing the new institutions. The chances for democratization in Tunisia depend on a historical compromise based on: the formation of a non-partisan government; an agreement on the legal aspects of the constitution; the abandoning of the instrument of political exclusion for the benefit of the implementation of transitional justice; an agreement on the electoral law; the dissolution of the militias; and the holding of free and fair elections before the end of the first quarter of 2014. A consolidation of the emerging democracy, a lengthy and reversible process, would then depend on additional institutional factors, such as the existence of a constitutional state, the separation of powers, the protection of individual and public liberties, the institutionalization of a strong party system, the electoral production of majorities, the election of presidents coming from the party system and integrated in the latter.

In order to prevent the concretization of the first two scenarios, German and other European politicians should convince their Tunisian counterparts to resolve the current institutional and governmental crisis by means of the following measures:

- Form a non-partisan government mandated to handle current affairs and to organize, within the shortest delay possible, transparent, free and fair elections in which its members, figures recognized for their competence and integrity, will not take part;
- Reactivate with urgency the National Dialogue Conference of the UGTT in order to arrive at a procedural consensus between the different parties on the regulations of the political game (constitution, political agenda, electoral law, violence, etc.);
- Resume the work of the NCA in order to complete, before the symbolic date of 23 October 2013, the most urgent tasks of the transition, such as the adoption of a draft constitution and of an electoral law;
- Implement an independent commission mandated to shed light on the sponsors of political homicides of Belaid and Brahmi, and publish a report thereon before the end of the year;
- End the political interference into the judiciary by the government;
- Reexamine the administrative appointments effected by the preceding government;
- Strengthen the institutional independence of the new ISIE;
- Fix a binding electoral calendar for the holding of elections before the end of the first quarter of 2014; ensure a heightened international electoral surveillance;
- Accelerate the adoption of the Draft Law on Transitional Justice and abandon the Draft Law on Political Exclusion;
- Dissolve the militias and bring to justice their members involved in acts of violence;
- Prohibit the use of mosques, schools and public administrations for political or partisan purposes.