

# *The double relation between democracy and free elections: The Tunisian and Algerian cases* \_\_\_\_\_

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## **Abstract**

*This article aims to demonstrate the double link between democracy and free elections. There must be free elections in a democratic country; free elections are a fundamental point of democracy. Academic literature has demonstrated the existence and importance of this link. In particular, this paper examines the cases of Tunisia and Algeria with an analysis of their latest national elections and the adoption of their latest Constitutions. This examination will follow a comparative method through a micro and macro-comparison analyzing the legislative and constitutional changes in the two countries and their comparison with the Islamic political system and the constitutional model of the French Fifth Republic that influenced the institutions and constitutional productions in North Africa.*

*The limitation coming from this work may derive from producing an analysis anchored in European political and legal values. The analysis takes into account the peculiarities of the Islamic world and relies on universally recognized values that identify and characterize a democracy. Finally, the investigation of the link between these two institutions seeks to understand a relevant thing. The presence and*

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*circulation of constitutional models without a solid democratic political foundation cannot succeed. We witness in these countries an abuse of the French system that renders them incapable of intercepting and accommodating their populations' demands for freedom.*

**Keywords:** *democracy, political institutions, constitutional model, free elections, constitution*

## **Introduction**

The legal universe is characterized by the circulation of legislative and constitutional models that affect all continents in different ways. In particular, in this contribution, we attempt to look at the dynamics of the circulation of constitutional models involving Europe and North Africa, specifically France, Tunisia and Algeria. An analysis on this situation, however, should make us focus on what the circulation of a constitutional model entails. In this regard, we emphasize that when a country comes into contact with a legislative product of another state (laws or constitutions) and tries to replicate it within its legislation, the final result may not yield the hoped-for benefits.

Knowing and trying to assimilate some laws or institutes and bringing them into the national context can be more harmful than not having them. Behind a law or Constitution, we always have a specific legal, social and political tradition that presents that legislative product as the synthesis of all those factors. The political system, perhaps even a democratic one, supports any legislative output. That is what happened in Tunisia and Algeria where, despite the Fifth Republic French legal and constitutional tradition presence, the re-proposition of some political and social institutions did not have the same result as in France. The lack of a democratic background has prevented North African states from having well-functioning political and administrative structures. In this sense, we have a significant example from the failure of the US mission to import democracy into Iraq after the 2003 US invasion. As Coyne (2007) stated, exporting democracy is a mission that must consider a country's historical background. Democratization is a gradual path where some authoritarian fallout must be anticipated, especially for territories that are not used to democracy.

Analysing the problems related to the direct link between the circulation of models and the assimilation of laws and constitutions will be the key to understanding the double link between democracy and the right to vote. The former is a condition for this right; at the same time, however, the right to vote becomes a way of verifying the conditions and proper functioning of democracy.



This verification will follow a methodology based on diachronic and synchronic comparison through the contemporary institutes and laws analysis between these three countries without sacrificing the study and understanding of their evolution over time. Later, there will be the use of micro-comparison with a specific analysis of the laws of the three countries mentioned and macro-comparison with an examination of national legal systems and traditions.

This work, however, could entail risks of a lack of a proper framework of political and social institutions in Tunisia and Algeria. We have already learned the lesson of Vatikiotis (1991) in examining the relationship between the phenomenon of constitutionalism and the political structure. The legal situation of North African countries has presented some limitations dictated by analysing these political realities with the categories of European public law. As Sbailò (2022) remembers, it will be necessary to anticipate the internal dynamics of the Islamic world that condition the political institutions that we want to study to have a clear and complete idea about the relationship between democracy and free elections in Tunisia and Algeria. Beyond the institutional and political peculiarities of the Islamic countries of North Africa, there are some points that define a democracy. The EU Handbook for Human Rights Education makes two points to describe democracy. The first is the autonomy of the individual: no one should be subject to rules imposed by others. The second, on the other hand, is equality: the ability of everyone to influence political decisions affecting people in society in the same way.

Focusing on the relationship between free elections and democracy is a relevant point in the analysis of a country. The democratic nature of a State has other ways with which it's possible to assess the political status of a state. On this point, we cannot but consider Schedler's analysis (2002). With a reference to Dahl's work, Schedler says that elections are something that we can have also in authoritarian countries. Democratic countries have free elections if these respect seven points: "empowerment", political elections are about citizens wielding power about future decisions makers; "free supply", democratic elections presuppose the free formation of alternatives; "free demand", the free formation of voter preferences; "inclusion", democracy demands universal suffrage; "insulation", once citizens have freely formed their preferences, they must be able to express them just as freely; "integrity", once citizens have given free expression to their will at the polls, competent and neutral election management must count their vote; "irreversibility", the winners must be able to assume office, exercise power, and conclude their terms in accordance with constitutional rules. Regarding the link between democracy and the right to vote, the analysis by Norris, Frank and Martinez (2013) expands on other considerations. Democracy is not only tested by free and effective voting and respect for the will of the people that emerge from the polls. It's also necessary to assess the rules of conduct of the previous phase. In particular, we consider the

rules under which political forces hold debates and whether all parties can register without unfair restrictions (related to gender, ethnicity or minority membership). At last, if the rules on campaigning give fair space to all candidates and freedom of the press in their opinions.

We will try to analyse the Tunisian and Algerian constitutional systems following the theories that we have quoted before.

## **The North-African political and constitutional framework**

North Africa has been and still is an area characterised by strong social and political instability. Over the years, this area has had numerous constitutional changes (simple restyling operations or the adoption of new Constitutions). These changes have marked the institutional and legal history of the countries in the region. Specifically, this scenario started in the dynamics linked to a 'double constitutional cycle' affirmation. That affected North Africa after the primordial phase of political and legal settlement following the decolonisation and independence of the countries in the area. Sbailò (2022) says the two cycles differ in terms of time. The first cycle coincided with the end of the Cold War, facilitated by Soviet-American competition and the desire of the two powers to incorporate allied states into their respective spheres of influence. Indeed, these political and strategic motivations led some North African countries to enjoy legislative-constitutional freedom in favour of the interests of the political and ruling classes. The subsequent end of tension between the two world powers allowed the Western democracies, in exchange for cooperation and economic support for the countries in this area, to put pressure on the ruling classes to initiate more democratic political and social reforms.

Instead, the second cycle began following the terrorist attack of 11<sup>th</sup> September 2001. The subsequent declaration of war on international terrorism by the United States and its Western allies led to the need to promote new cooperation with North African countries. The latter, in turn, took advantage of their new advantage position in international political dynamics: the national political and ruling classes attempted to settle their countries' debt positions permanently and obtain a new possibility of unlimited credit from the Western powers. This changed scenario allowed the North African ruling classes to strengthen their power in an autocratic key.

The recent outbreak of the Arab Spring phenomenon comes at the end of this cycle. Following the social protests began in Tunisia and affected neighbouring countries in different ways and with different outcomes. In a first moment, we witnessed legislative and constitutional changes that led to greater democratization at first and then to growing instability. The basis of these political-constitutional changes, as already mentioned in part, has seen important geopolitical events of a different nature. It is also impossible not to consider the historical-political

peculiarities of the countries involved in the various drafting processes. In this regard, constitutional changes in Mediterranean Sunni Islam have also been influenced by internal dynamics within the Ummah, such as the renewed dialectic between the 'statehood of Islam' and the 'Islamisation of society'. In addition to these factors, North African constitutional production has inevitably been affected by the legal and political traditions of the countries that colonized the area. In this regard, we have witnessed the overlapping of local legal experience with that of European origin, especially the French 'Fifth Republic', the most deeply rooted in North Africa. Indeed, the internal affairs of the Islamic world confronted (and continue to do) the state structures that originated and developed following decolonization. The adoption of the French model in the North African region took place outside the context of the 'checks and balances that characterized the jurisprudential experience of the 'Fifth Republic' due to the interpretation of this model in a tendentiously authoritarian key in Tunisia.

The mediation between local and French legal experience falls within the logic of *din wa dawlah*. This concept recalls that political-religious polarity at the basis of Islam's expansion. The latter fuels a strong geopolitical tension that undermines the state systems of the countries in this area.

After the explanation of these characteristics, we will focus on the Tunisian and Algerian cases. The aim is to understand the current constitutional set-up in these countries. Then, we will look at the political and constitutional passages that have marked the countries' history and the influence of the French model within it. The aim of this analysis is that the Tunisian and Algerian non-free elections represent the end point of a currently autocratic system and, at the same time, the starting point of a liberal decline in the North African countries. We can say that there is a double connection between free elections and democratic accountability in a country. Free elections are a way to certify the democratic nature of a State and its correct functioning. At the same time, free elections are a basic condition that characterizes a democratic system without which we cannot talk about a democracy. Nordlinger (1968) confirms that connection when he explains the transition from an autocratic political system to a democratic one. This transition can work in a not dramatic way if there is a clear national identity, a central government and popular parties can take votes from the entire population.

## **The 2022 Tunisian Constitution and its consequences**

The current Tunisian Constitution was adopted following a referendum in July 2022. President Saied instituted this vote to strengthen his power. Indeed, the new Constitution reinforced the figure of Saied and the role of the Head of State. The

new constitutional text deleted the one of 2014 that affirmed semi-presidentialism and promoted hyper-presidentialism. This referendum came after some particular institutional events. Saied became President of the Republic in the 2019 elections with 72% of the vote. The political and social situation in the country was chaotic and unstable. Saied intervened to restore law and order through the adoption of anti-terrorism legislation (last adopted in 2003) and had to deal with the economic crisis resulting from the Coronavirus pandemic. The lockdown measures had penalised the small national trade (a strong point of the Tunisian economy) and exports causing clashes and demonstrations.

On 25th July 2021, Saied resigned the government and ‘froze’ Parliament. He seized executive and legislative power and waived parliamentary immunity, proclaiming himself the ‘Attorney General of the Republic’. The national army prevented the Speaker of Parliament, Rashid Ghannushi, and a group of MPs from entering Parliament. Following these decisions, Saied also planned to replace some key figures in the Ministry of the Interior and the economic and financial ministries with men appointed by him. That was the prelude to the Article 80 implementation of the Constitution, the state of emergency. After the legally stipulated thirty days, the Head of State extended his exceptional powers until further notice, causing profound discontent among the Tunisian people and public opinion. At first, these supported the President’s measures because they were considered necessary.

These political decisions have strengthened the figure and role of the President of the Republic. That also gave itself the power to decide the institution of referendums. The new political climate explains why the referendum for the new Constitution had a low turnout in relation to the importance of the vote (25%). The new Constitution establishes some significant innovations. Among these, Article 87 states that the President of the Republic exercises the executive function assisted by a government (previously, it was together with the Government). The second relates to the non-reconfirmation of Article 88 of the previous Constitution (the possibility of impeaching the President). The President (Article 67) has the power to present bills with a group of at least ten deputies and no longer with the Head of Government. The President may submit laws independently when they concern treaties and financial rules. In addition, Presidential Bills once again have chronological priority in plenary debate. The other presidential powers concern international treaties. Indeed, Article 74(1) grants the power to ratify treaties and to order their publication to the Head of State. The second paragraph of the same provision recalls the same limits as in the 2014 Charter about international agreements. These need approval by the Assembly of People’s Representatives.

The regulation of decrees has also changed. Thanks to Article 70, President can adopt decree-laws with the authorization of the Assembly of People’s Representatives for a limited time and a specific purpose. Moreover, the President can also adopt



such acts during the recess from the work of the Assembly with its approval in the first possible ordinary session. Finally, Article 80 states that the Head of State can adopt decrees even when the Assembly is dissolved. Also, in this case, the approval would come at the first possible ordinary session. Decrees have been the most relevant manifestation of presidential power: Decree 2021-69 allowed the President of the Republic to remove many holders of various institutional offices; Decree 2021-80 suspended all powers of the Assembly; Decree 2021-70 imposed a curfew on the entire territory of the Republic to limit the consequences of the Coronavirus pandemic; Decree 2021-117 led to the normalisation of exceptionalism. In particular, this decree provided the definitive explication of presidential power in three points. The first related to decrees: these are deliberated by the Council of Ministers, promulgated by the President and not subject to parliamentary ratification. The second saw the government, initially headed by a Prime Minister, subordinated to the power of the Head of State. Finally, the third allowed the President to give himself the faculty to prepare constitutional reform projects.

The current Tunisia's political and legal characteristics are the legacy of a previous government that failed to meet the people and country's needs. The autocratic drift of the Saied presidency, as described by Biagi (2022), affected the non-free and strongly boycotted voting by the population and increased the social distance with the numerous minorities in the country. These thoughts found significant confirmation in the national elections held between December 2022 and January 2023. These elections led to an unprecedented result in terms of popular participation: only 11.2 per cent of the more than 9 million eligible voters went to the polls. In other words, about one million people. The policy adopted by Saied led all Tunisian political parties to side against the President, despite Saied's call to go and vote to seize the opportunity to regain your rights and stop those who ruined the country. It was not enough. The people did not believe him. The percentage of those who took part in the vote is the worst rejection of Saied's performance. The national media claimed it was the lowest turnout of any election in modern history. This result is lower than the 18% recorded in Haiti in 2015 and 19% in Afghanistan in 2019. International observers noted a general climate of indifference as evidenced by few election posters being put up and almost exclusively local programmes.

The absence of democracy spills over into relations with national minorities and the management of internal migration flows. Saied's speech against sub-Saharan migrants alarmed the UN Committee on the Elimination of Racial Discrimination. He described the arrival of the migrants as an attack on Tunisia's Arab-Islamic identity aimed at changing the demographic nature of the country. There have been incidents of arbitrary detention in the Ouardia centre, where some migrants



have been detained for more than eighteen months. Even today, especially in the south of Tunisia, the population is still anchored to the old national assimilation policies. Menin (2020) reports that the Tunisian population still refers to those descended from XIX-century slaves as *oussif* (slave). This minority suffers from poverty, exclusion from the labour market and limited access to higher education. This reality, although Lecocq and Hahonou (2015) remember that Tunisia was the first country of the Ottoman Empire to abolish not only slavery but also the slave trade with decrees of 1841 and 1846.

From a religious point of view, in the south of the country, there are Christian communities made up of Europeans living in Tunisia and Bahai who, several years later, are still waiting for a cemetery to be allocated for the burial of their dead. This concession, however, is a prerogative granted only to communities that profess one of the heavenly religions. Moreover, these communities can't register their civil marriages because they are not yet recognized by the State as a religious group. On the other hand, from a linguistic point of view, it is recorded that the Amazigh has become a linguistic minority following the Arabisation of the country and that the number of Tafaingh speakers, another example of a Tunisian minority idiom, is gradually decreasing; this is now only spoken in a few villages. Another datum testifying to the double link between the absence of democracy and the lack of elections is related to the presence of women among the candidates at the last elections. In 2014, women participants accounted for 48%; this year, only 15%. One reason for this comes from a law adopted by the Saied government. That stipulates a base of four hundred supporters for those wishing to run for office. Women have found more difficulties entering public places, like bars and cafes. These are the ideal spaces for political discussions in Tunisia.

From constitutional and political viewpoints, the current Tunisian situation remembers the country's conditions during the Bourguiba and Ben Ali Presidency. Even in these cases, we had two hyper-presidential forms of government with autocratic governments that had lifetime presidencies in Africa. Mullin and Rouabah (2016) say that the absence of constitutional laws to limit the re-electability and the implementation of the state of emergency as an instrument of repression of social discontent represented a severe democratic crisis for the country. For the first presidency, the emergency state allowed for a general adherence to a liberal 'rule of law', facilitating more 'effective' modes of power when the rule was considered under threat. For the second one, on the other hand, emergency states strengthened sovereign power to the detriment of opposition forces in the country. A low turnout and unrealistic consensus rates compared to the climate of protest in the country demonstrate this double link between democracy and free elections. The absence of democracy prevents truly free and participatory elections; the lack of such elections demonstrates the lack of democracy or its malfunctioning.





## The Tunisian democratic experience after the Arab Spring

The double link between free elections and the democracy of a political system was even more relevant during Tunisia's political and constitutional experience in 2014, following the Arab Spring of 2011. Tunisia was the country that kicked off the Arab Spring, a socio-political event that affected all Mediterranean African states. It is well known that the Tunisian epicentre of this social movement was Sidi Bouzid, 200 km south of Tunis. It was here where the young civil rights activist Muḥammad Bū'Azīzī set himself on fire, exasperated by the numerous administrative bans, police abuses and local officials that forced him into poverty. Subsequently, this episode gave rise to a country-wide uprising. The origin of the Tunisian Arab Spring and the involvement of the entire population are significant to understand how much people expected a political change in Tunisia. The flight of Ben Ali and the formation of a provisional government led to the re-emergence of the party system and the election of a Constituent Assembly. It was the election of the latter that triggered a political-institutional transition. The work of the Assembly highlighted the desire to maintain the semi-presidential form (with a more central role for the Prime Minister alongside a still strong President of the Republic). Such bi-partisanship would have provided a balance, at the top of the institutions, between the secular and Islamic-popular components.

The social and political premises that accompanied the preparatory work for the 2014 Constitution are significant for understanding the new role and position of the President of the Republic. These two elements have changed; we are witnessing a downsizing of the presidential role in favour of the Head of Government. Article 72 is the first evidence of this relevant change. This provision presents the Head of State as the symbol of state unity and the one who ensures that the Constitution is respected. Article 62 (on the presentation of bills) stated that the Head of State retained the power of exclusive intervention only for those relating to the approval of treaties and the finance bill, whereas for other matters, this power was shared with the Head of Government and a group of at least ten deputies. Finally, the new constitutional system recognized the possibility of adopting decree laws to the Chief of Government and no longer to the President of the Republic as in 1959. Article 78 mentioned presidential decrees with which the Head of State could 'only' decree institutional appointments (from the Mufti of the Republic to the Governor of the Central Bank, among others).

A significant political-institutional difference is in the chapter on executive power. Article 71 of this Constitution stated that this power was exercised by the Head of State and the government headed by the Chief Executive. In addition,

Article 91 also changed the ownership of the definition of the general policy of the State. As of 2014, the determination and control of the latter would no longer rest with the President but with the Head of government. The introduction of Article 93 of the Charter changed the relationship between the President of the Republic and the Government. In fact, according to the 2014 text, the Head of Government is called upon to preside over the Council of Ministers, with the Head of State compulsorily present only in exceptional cases (i.e., when matters concerning national security, defence or foreign relations would be dealt with).

Finally, an important novelty in the 2014 Constitutional Text is the provision, for the first time in Tunisia, of the impeachment of the President. This institution, Article 88, provided that the members of the Assembly could, by a two-thirds majority, submit a reasoned motion to terminate the presidential mandate due to a serious violation of the Constitution. Once this majority had been obtained, the Constitutional Court would decide, also by a two-thirds majority of its members, to remove the President from office. Moreover, the same article stipulated that such a conviction would prevent the Head of State from standing in all subsequent elections.

Reporting on the 2014 political and constitutional experience provides significant food for thought on the reciprocity between free elections and democracy. Indeed, the first elections after the flight of Ben Ali recorded some relevant data. First of all, these elections were the first ones by universal suffrage. Moreover, let us consider the presence of 1508 lists in the elections (only 13% of which were declared ineligible). The independent election monitoring body recorded a turnout of 61% (considering the total number of those registered on the electoral lists). We have already mentioned that 48% of the candidates were women. The 2014 elections also showed that 12% of the list leaders and 50.5% of the voters were women. According to the doctrine, the first two statistics represent starting points for Tunisian society and laws towards gender equality. If we focus on the 2014 Constitution, the resulting analysis may be contradictory, but it certifies a growth in national sensitivity to particular social issues.

The preamble to the Tunisian charter emphasized the Arab identity of the state, although, as described by Canepa (2014), racism and discrimination against black people in the country have entered the national debate. Tunisian society is characterized as strongly homogeneous because of the Arab-Muslim majority's presence. But it has a more stratified and ethnically, religiously and linguistically diverse demographic composition.

This renewed sensitivity to this section of the Tunisian population, unthinkable in the previous Ben Ali regime, led to the introduction of Law No 11 of 2018, which punished discriminatory acts and words. With this measure, the government listened to and took on board the testimonies of several rights associations on the lack of rules that would allow black Tunisians to have political careers or be



appointed to high-ranking professional positions. Quattrini (2018) underlines the importance of the new law. It also provided for the establishment of a National Commission to Combat Racial Discrimination, which was responsible for drafting national public policies to combat racial stereotypes and worked to provide up-to-date data on cases of racism against the black and sub-Saharan populations in the country. Subsequently, Tunisia also ratified several texts on non-discrimination. In particular, several UN Conventions aimed at protecting minorities, guaranteeing them access to national and international justice on an equal footing with the majority of the population. Bringing the situations of certain national minorities to the attention of Tunisian political institutions was a sign of the beginning of a significant political change in the country and a social necessity. Indeed, Tunisia, hit by the economic crisis and high unemployment during the pandemic, experienced serious and numerous difficulties on the part of the population. These conditions hit those who had lived on the margins of the social structure until then particularly.

In doctrine, however, some saw a dangerous *pout-pourri* in the 2014 constitutional text with the introduction of Article 6. The wording of the latter has been described as problematic and ambiguous. It focuses on the point that sees the state as the guardian of religion. The law didn't specify the religion to safeguard; the term guardian does not allow one to understand what role the state plays and the boundaries of its action. Bousbih and Yaallahoui (2015) suggest the *pout-pourri* image. They sustain that a constitutional provision has a merely principled function and will find its definition in terms of implementation in secondary laws. That, however, did not prevent the Venice Commission from expressing its concerns about some provisions (including Article 6). The Commission argued that a state that proclaims itself civilized (on this point, see Article 2 of the Tunisian Constitution) should not be competent to determine what is sacred and deserving of protection. Indeed, such an approach could legitimize the criminalization of blasphemy, with a freedom of expression, conscience and thought limitation.

## **The 2021 Algerian Constitutions: the illusion of an improvement after 2016**

In 2019, Algeria emerged from the long political and governmental experience of Bouteflika. The President had declared his candidacy again. This time, the reaction of Algerians forced him to step back and leave the presidential office. These demonstrations led to the birth of the Hirk movement, which received solidarity from the army. The new elections featured five candidates with experience in previous presidential administrations. The lack of effective renewal in the political class discouraged Algerians from the democratic course that could open up

following Bouteflika's resignation. The 2021 national elections saw the triumph of Tebbun (former Minister of the Interior in Bouteflika's previous administrations). Voter turnout was higher than on other occasions, registering 39%. On the other hand, this data demonstrated disappointment; on the other, enthusiasm for a new name on the political scene after almost thirty years since the last time. He wanted to inaugurate the new political course by adopting a new Constitution that the Algerian people would have to vote on in a referendum. The outcome saw the adoption of the new constitutional text with a 24% turnout.

The principal cause of the participatory failure was the opposition to the Constitution. The Hirak movement and the political opposition considered this new Charter unsatisfactory because it still grants too many powers to the President of the Republic. Specifically, Article 85 confirms the direct election of the Head of State (again by direct and secret universal suffrage); Article 88, on the other hand, stipulates in its second paragraph that the President cannot serve more than two consecutive or separate terms, as was already the case in 2016. On the other hand, the reformed Article 91 of the Constitution confirmed the presidential power to conclude and ratify international treaties and granted the Head of State the new faculty to organize early presidential elections. According to Article 101 of the 2016 Constitution, this faculty rested with the National People's Assembly. In addition, the 2021 Constitution grants the President the power of regulation. Finally, Article 97 of the new Constitution regulates the state of emergency differently from the previous constitutional version. In addition to recognizing exceptional presidential powers, this provision imposes a maximum duration of thirty days and the need, for its prolongation, for the approval of Parliament in a united chamber.

The importance of the elections and the expectations behind this Constitution were significant due to the previous 2016 Constitution. That is the reason why our analysis started from the last Constitution. This Constitution was the result of Arab Spring protests in Algeria. The genesis of the Charter shows how the lack of democracy and free elections that continuously legitimized Bouteflika's government affected the characteristics of the new text. Algeria was an exception during the Arab Spring phase because the country did not feel the social and political effects of Tunisia. The reason was that in Algeria, citizens enjoyed the division of profits from the national oil trade; the social-economic situation was better than in Tunisia. The final text of 2016 saw its beginning in Bouteflika's 2011 speech. The President sought to appease the growing popular discontent and announced his intention to deepen the democratic process and strengthen representative democracy. The long-time span between the President's speech and the year of adoption of the new Charter is related to the different levels of social and political sensitivity by Algerians. Indeed, in the wake of the first consequences of the Arab Spring in Tunisia, the government promoted the establishment of a



Commission on Political Reforms in 2011 for fear of losing power. Then, in the absence of popular pressure on the government, there was a freeze on the work until the next reopening. In May 2014, government opened new consultations on the reform that delayed the presentation of the new text in 2016.

The centrality of the government became even more evident during the first demonstrations related to the Arab Spring phenomenon. Besides adopting social measures, such as increasing subsidies, wages and public spending, the government was also able to exert pressure on the judiciary. At first, to be intransigent in judging the violations committed by the demonstrators and then, at a later stage, to urge a more paternalistic and re-conciliatory attitude. As Smith (1996) says, this constitutional text gave the President of the Republic a central role compared to the 1963 Constitution, despite the presence and importance of the Prime Minister and the National People's Assembly. The reform confirmed the President's superordinate position, even in the face of the expansion of the Prime Minister's prerogatives. Article 91 claims that: the Head of State presided over the Council of Ministers, appointed the Prime Minister, could terminate the latter's functions (albeit after consulting the parliamentary majority) and had the power to conclude and ratify international treaties.

The framework of reforms represented also saw an important role played by the Algerian Constitutional Council, which contributed to the consolidation of Bouteflika's power. Beyond the assignation of formal competencies, we have proof of the absence of a system of division of powers. As Bozonnet (2016) reported, that has allowed the *Pouvoir* to continue to exercise its influence throughout the country.

The emergency state regulation was a particular aspect of the 2016 Constitution and its political and social origins. Bouteflika tried to win the protests by annulling the state of exception imposed continuously since 1993. What was supposed to be a natural constitutional act was presented as a concession. Moreover, the regulations on the state of exception (Article 107 of the Constitution) stated that its establishment was decided by the President of the Republic (after consultation with the other state offices, with the Council of Ministers and the High Security Council). During this period, the Head of State could take any exceptional measure aimed at the independence of the country and its institutions, and the consultation mechanism mentioned above was adopted again when the danger was declared to have ceased.

## **The social impact of Algerian no-democratic system**

Today, Algeria is one of the countries to watch about religious freedom because of its lack of respect. The American report on the subject reported that Algeria does not respect religious freedom, especially that of the many Christians living in the

country. We have relevant examples as the closure of about thirty Protestant religious communities throughout the country. These are places of worship, often buildings dedicated to Protestant worship practice, run by religious associations. According to a 2016 decree on the conditions for non-Muslim worship, worshipper are required to apply for a 'permit' to worship in public places reserved for this purpose. Those who profess 'other' religions do not know who issues these permits. When the new Constitution was adopted in October 2020, the NGO Human Right Watch denounced the right to freedom of belief deletion. This right protects and guarantees the freedom to declare oneself a secular, agnostic or atheist Muslim, to observe or not observe the Ramadan fast without fear of prosecution under the Basic Law. The Algerian authorities denied these accusations. The Minister of Justice, Abderrachid Tebbi, called them "unfounded accusations", assuring that "freedom of worship, guaranteed by the Constitution, is practised within the framework of the law without discrimination" and that the State protects this practice "from any ideological or political influence". As for the people on trial, they were, according to him, 'common law cases'.

The only minority that is mostly included and protected in Algeria is the Berber minority. Article 4 of the 1996 Charter classified Tamazight as an official language. The government would work to promote and develop all the language varieties that characterize it. Moreover, as sustained by Karimi (2016), the state established the Algerian Academy of the Tamazight Language, controlled by the President of the Republic, to promote this idiom as an official language. Finally, it is relevant to note something about the last paragraph of Article 4. The application of these provisions must see the use of the organic law. The provision to protect the Algerian cultural identity was also in the subsequent 2016 Constitution, which also elevated the status of the Tamazight language to an official language and no longer just a national one. This recognition was the result of two different factors: the first, a constitution adopted as an antidote to the first signs of the Arab Spring in the country following the events of 2010 in Tunisia; the second, on the other hand, has to do with the consequences of the demonstrations conducted over the years by the Berber population, which fought to obtain better constitutional protections. One thinks in this regard of the first grievances in 1980, the year of the so-called 'Berber Spring' followed, in turn, in 2001, by the events known as the 'Black Spring'. The latter was a major regulatory success. Indeed, in 2002, Tamazight was recognized as a national language.

## **Tunisia, Algeria and democracy**

The descriptive analysis of the laws and constitutions of the two North African countries was useful to provide a legal and institutional framework in Algeria and Tunisia. Indicating what defines a democracy is not easy; we have had several



theories about it in the literature. As argued by Dixon (1993), a democracy can rely on values and principles that guarantee broad citizen participation in the public life of the country; Schmitter and Karl (1991), on the other hand, give more importance to political and constitutional values such as universal suffrage, limitation of government powers and accountability of political leaders.

But democracy is not just the presence of some principles and/or institutions. These two elements should have temporal continuity and stability inside the cultural and political background of a country. In this regard, we recall Weede's thought (1984). The author believes that a country can call itself democratic if it maintains the subordination of military power to political power, the legislature independence, the presence of a free-market economy and the legal protection of citizens' rights for at least three years. This period is synonymous with the strength and resilience of a country's institutions. The 2014 Constitution experience would seem to comply with Weede's theory since Saied's autocratic drift occurred in 2021. However, we note how the Tunisian project collapsed as the Ennahda party made the same mistakes as the previous regimes (corruption and cronyism). These mistakes created such discontent that Tunisians welcomed Saied's authoritarian policies at first. They saw these as the only way to resolve a social situation of serious crisis. Moreover, as we saw in the introduction part about Tunisia, Saied didn't face significant obstacles to cancel the former national institutional organization.

Beyond the theories that have described democracy in different ways, we can say that free elections are the central point for identifying a democratic country. As stated by O Ojo (2007), the presence of a correct and effective electoral law would allow for the full involvement of the electoral body, which would be able to express its preferences in a free and autonomous manner, actively participating in the political and social life of its country. That, however, represents the end point of a democratic country because other conditions must be fulfilled. MacKenzie (1958) lays down four conditions for free elections. A government administration that runs elections honestly and competently; the willingness of a country's political community to accept even adverse sentiments (e.g., non-participation); a developed party system that expresses the country's political and social plurality; and an independent judiciary that knows how to judge and interpret electoral law.

Around the world we have had numerous examples of countries that chose democracy after becoming independent (African countries after decolonization or those in Eastern Europe after the fall of the USSR). The mere choice of a democratic transition does not imply the presence of democracy, even if one identifies a constitutional model to study in order to build one's legislative system. As stated by Di Gregorio (2012), the establishment of the democratic system in a newborn country must pass through the consolidation phase and the danger of a return to the previous form of government. The enthusiasm for democracy can't delete the



preoccupations for its defence. Moreover, the presence of a party plurality in a country is an additional certification of the good state of a democracy. The plurality of parties is a sign of the population's willingness to participate; it indicates that the world of institutions can intercept the various needs of the people and that it is aware of the heterogeneity of the social, human and cultural fabric present in a country. In this way, we see the state descending into the bowels of society.

Another important aspect is the relationship between a democratic system and minorities, i.e., how legislation and legal awareness of these social groups benefit from the presence and stability of a democracy. A democratic (particularly deliberative) system, according to Wheatley (2003), sees a relevant point in the free association of equal citizens. Therefore, ethnic minority groups demanding recognition of their status and effective representation in the institutions and decision-making and deliberative mechanisms of the country find satisfaction in the democratic form. From a macro-comparison perspective, proof of this now comes from the current European social and political context, which is increasingly multicultural due to the coexistence of different languages, cultures, ethnicities and religions. Cavaggion (2017) states that such a heterogeneous society has challenged the classical model of democracy. This questioning has led to a reconsideration of this form of government to involve all subjects belonging to a state. The political and social paradigm shift is only possible in a democratic system with structures and freedoms to question on gaps in representation. That is because the basis of democracy is the people (think about the Greek origin of the name, "power to people").

## Conclusions

The description of Tunisia and Algeria's political, institutional and constitutional set-ups owe their origin to internal political dynamics and the influence of the French constitutional model of the Fifth Republic. The French constitution of 1958 brought strong semi-presidentialism to the country as a consequence of the crisis France was experiencing due to the uprisings in the Algerian colony. The French model has taken root in Tunisia and Algeria for several reasons. Certainly, France's political and territorial ties with the African countries (Tunisia was a French protectorate and Algeria was a French colony) had an impact; in addition, Tunisia also went through a period of crisis following its independence and relied on a strongman who, in the 1959 Constitution, was President Bourghiba. On the other hand, Algeria suffered a period of severe social and political uncertainty following the 1992 elections, the activation of the state of emergency and the civil war beginning. Although Tunisian constitutionalists studied the French text by



translating it into Arabic, as Abbiate (2014) writes, Tunisia was unable to replicate the same institutional set-up as France. The strong role of President De Gaulle has certainly not undermined the system of the division and balancing of powers and has in no way affected the democratic nature of the institutions.

The main difference between the two countries lies in these last points. Barbarito and Fiumicelli (2014) stated that Tunisia did not have a structure of checks and balances in its institutions. The Tunisians reproduced the French political system without capturing the spirit and values. The absence of democratic control within parliamentary and assembly dynamics has led to the rise of political figures who have centralized power in their hands. Let's think about Bourghiba: he had the father of the fatherland title and maintained a continuous presidency, or Ben Ali who continually reinforced his power to the detriment of his opponents. These conditions underlie the lack of free elections due to the fear of losing power on the part of these authoritarian figures. At the same time, however, the lack of free elections represents a condition of non-democracy that is reflected in a country's political and social institutions. The presence and stability of a democratic system would have made it possible to develop mechanisms of greater social involvement as demonstrated by the events of 2014. The presence of a Constituent Assembly, the discussion of minority laws, and the opening to universal suffrage are signs of a living and functioning democracy. On the other hand, a democracy with these characteristics is the condition for the existence of values such as inclusion and participation.

Now that the effects of the Arab Spring have been wiped out and Tunisia is in the grip of Saied's authoritarian politics, what are the scenarios for this country? The events of 2011 that led to the political and social results of 2014 have been politically and constitutionally erased. The dual connection that is the subject of this reflection was further confirmed during the pandemic by Covid-19. The Saied government was able to bend the health and social emergency caused by the Corona-virus to the need to strengthen its power. The absence of counter powers that limit the presidential ones or the lack of fear of not meeting the favors of the population allowed Saied to adopt a state of emergency to overcome the pandemic consequences. Moreover, he prolonged the emergency state without encountering any kind of political resistance. In this case, the French model opted for a state of emergency health, a specific tool that legitimized the exceptional powers of the President of the Republic and the Ministry of Health to what the Constitution recognizes.

Similar reasoning can be replicated for Algeria, considering that Algeria was initially much less influenced by the French legal and political tradition. There were critical relations between the two countries during colonization. Think, for example, of the difficulties of the French colonial legislator in finding a suitable way

to manage, from a purely legislative point of view, the ethnic and cultural diversity present in Algeria. Indeed, the colonial legislator failed in its mission to facilitate the Muslim Algerians in obtaining French citizenship as a right. These lived in the Algerian society of the 1950s, described as dualistic in that it was strongly divided into two factions, colonizers and colonized. Algeria, differently from Tunisia, has not developed a secular spirit in its institutions. Achi (2005) remembers that France allowed Algeria to keep the administration of the Islamic cult in the hands of local institutions. The decree of 27<sup>th</sup> September 1907 recognized the direct action of the Algerian authorities on the recruitment of Muslim religious personnel and the recognition of allowances to ministers of religion for their functions. Algeria's first constitution as an independent country (1963) developed a political-institutional framework far removed from the French model. As Olivero (2003) highlights, the central role belonged to the *Front de Liberation National* party and the President of the Republic represented the values of the party and the revolution that had led to independence. Algeria only came close to the French presidential model after Bouteflika's electoral success and the constitutional revisions from 1992 to 2008. This system accompanied the end of the civil war but did not replicate the French democratic spirit. On the contrary, it fueled the presidential need to maintain power at any cost. The exceptional measures and the application of the state of emergency used to limit the spread of the pandemic were also instrumentalised in Algeria. On the one hand, they were relevant to limit the contagions; on the other hand, they sought to strengthen the establishment as the police arrested numerous protesters who expressed their political dissent on social platforms and in the squares.

Despite this latest blow against democracy, Tunisia and Algeria (as well as the other African countries of the Mediterranean) have recorded the conscious and educated society's affirmation as a legacy of the Arab Spring. Despite this latest blow against democracy, these two countries (as well as the other African countries of the Mediterranean) have recorded a conscious and educated social structure affirmation as a legacy of the Arab Spring. As Sbailò (2021) indicates, these people understood their position and their role within the national political dynamics, showing a greater capacity to criticize the political events that have affected their countries. In this way, we have had the birth of a youth Islamic public opinion that today has become more and more vigorous and is affecting, in a transversal way, the MENA area to the point of representing a phenomenon with which, Inevitably, the governments of the countries of this area will have to confront each other. This social phenomenon is no longer recognized in a single ideological alternative between "Islamic alternative" and "subjugation to the West". It is relevant to focus on the substantive aspects of the democratic order.

This public opinion is in a position to question the autocratic systems in North Africa today, particularly those examined here, which they apply, based on their

political interests, a distorted version of the semi-presidential form of government and French political experience. In France, a section of parliament criticised the political choice of 1958 and the constitutional recognition of excessive powers to the Head of State. In fact, to date, the President's exceptional powers have only been activated six times. That is because France adopted the semi-presidential model by having a system of checks and balances at its core. In Tunisia and Algeria this constitutional tradition never existed. The current emergence of this transversal Islamic public opinion represents a social product that authoritarian governments are unable to stop and why they do not recognize them as the result of their authoritarian policies.

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