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Published in:
Global Policy

DOI:
[10.1111/1758-5899.12291](https://doi.org/10.1111/1758-5899.12291)

IMPORTANT NOTE: You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

Document Version
Publisher's PDF, also known as Version of record

Publication date:
2016

[Link to publication in University of Groningen/UMCG research database](#)

Citation for published version (APA):

Lamont, C. K., & Pannwitz, H. (2016). Transitional Justice as Elite Justice? Compromise Justice and Transition in Tunisia. *Global Policy*, 7(2), 278-281. <https://doi.org/10.1111/1758-5899.12291>

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Transitional Justice as Elite Justice? Compromise Justice and Transition in Tunisia

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Abstract

This article reflects upon the ways in which transitional justice debates and processes impacted Tunisia's transition. It explores key questions such as what demands for justice emerged in the aftermath of the Tunisian revolution? Did Tunisia's transitional justice process reflect these demands? And, did international norms of transitional justice, which emerged from a field of practice that draws heavily upon European, Latin America and Sub-Saharan experiences, but has largely excluded the Arab Middle East, serve to mediate between competing demands for justice in the aftermath of the Tunisian revolution? It will be argued that transitional justice demands in Tunisia reflected a breakdown in the state-society socioeconomic bargain, which had maintained autocratic regimes since independence in 1956; however, due to the elite-centred nature of transitional justice discourses, many transitional justice demands never resonated into mainstream transitional justice discourse. We will argue that international transitional justice entrepreneurs' attempt to import a normative framework that was ill suited to grapple with the complex legacies of socioeconomic marginalization, resulted in a growing disillusionment and disengagement from the state driven transitional justice process on the part of Tunisian society.

Tunisia's 2011 revolution, which witnessed the ouster of Zine al-Abidine Ben Ali, is commonly heralded as the Arab Spring's singular success story in the context of ongoing conflicts in Libya, Syria, Iraq and Yemen, a counterrevolutionary coup in Egypt and continuing repression in Bahrain. However, despite having successfully held national parliamentary elections in October 2014, and a final round of presidential elections in December 2014, Tunisia's turbulent transition bore witness to an elite instrumentalization of transitional justice, resulting in stalled attempts to deal with the legacy of past abuses and polarization among competing political projects that advance disparate visions of a post-Ben Ali state. We argue the political instrumentalization of transitional justice, which was also observed by Subotic in the former Yugoslavia (2009), is symptomatic of transitional justice constituting an elite discourse. And furthermore, this elite discourse is in turn framed by an international normative and legal framework that finds difficulty in giving voice to the marginalized communities that transitional justice aspires to empower.

At the same time, Tunisia's transition has also been marked by a considerable degree of intra-elite compromise between previously repressed opposition movements, such as the Islamist Ennahdha party, and elites within the former ruling party, the Rally for Constitutional Democracy (RCD). Paradoxically, it is this intra-elite compromise, which both explains the apparent success of Tunisia's largely nonviolent political transition and the failure to address many of the

grievances, such as unemployment, that brought about the 2011 revolution in the first place.

This article will reflect upon on how transitional justice debates and processes impacted Tunisia's transition. Questions that will guide this essay include: What demands for justice emerged in the aftermath of the Tunisian revolution? Did Tunisia's transitional justice process reflect these demands? And, did international norms of transitional justice, which emerged from a field of practice that draws heavily upon European, Latin America and Sub-Saharan experiences, but has largely excluded the Arab Middle East, serve to mediate between competing demands for justice in the aftermath of the Tunisian revolution? Here we will argue that transitional justice demands in Tunisia emerged from a breakdown in the state-society socioeconomic bargain, which had buttressed Tunisia's autocratic regimes since independence in 1956; however, due to the elite nature of transitional justice discourses, many transitional justice demands never resonated into mainstream transitional justice discourse. To be sure, we will argue that international transitional justice entrepreneurs' attempt to import a normative framework that was ill suited to grapple with the complex legacies of socioeconomic marginalization (Arbour, 2007, pp. 1–27) coupled with elite compromises that served to weaken transitional justice, resulted in a growing disillusionment and disengagement from the state driven transitional justice process on the part of Tunisian society.

Origins of revolution and demands for justice

The popular narrative that underlies Tunisia's 14 January 2011 revolution begins with the self-immolation of Mohamed Bouazizi, a street vendor, in Sidi Bouzid, a medium-sized city in the country's interior. Indeed, while Bouazizi's self-immolation acted as the catalyst for the nationwide wave of protests that eventually forced Ben Ali to flee, Tunisia's socioeconomically marginalized interior had been in turmoil for decades (Zemni, 2015, pp. 54–55). A decade prior to the what became popular known as the Arab Spring, Sadiki observed the 'catalytic role' of *intifadat al-khubz*, or bread riots, in bringing about the collapse of authoritarian systems that derived legitimacy from the provision of welfare subsidies to their respective populaces. Such systems were referred to by Sadiki as a 'democracy of bread' or *dimuqratiyyat al-khubz* (2000, pp. 71–95).

Under both Habib Bourguiba, Tunisia's first postindependence president, and Zine al-Abidine Ben Ali, the Northern and coastal regions of Tunisia received a disproportionate share of state investment, while the Tunisia's interior and South were left increasingly impoverished. In fact, the bread riots of the 1980s had acted to help hasten Bourguiba's fall and Ben Ali's rise to power. In short, demands for social justice, which would emerge in the form of the slogan 'work, freedom and national dignity' in 2011, and continued to be voiced in 2015, had long resonated in Tunisia's interior.

Furthermore, it has been previously observed that epistemic frames of reference for the study of resistance, such as a focus on civil society organizations or political parties, were one of the reasons many western observers were caught off guard by the rapid collapse of Ben Ali's regime in the face of a bottom up nationwide uprising (Chomiak, 2011). Elite politics missed the sites of resistance to the regime that ultimately mattered, and instead shifted the focus to opposition political parties. Opposition political parties did exist in Ben Ali's Tunisia and they did stand in parliamentary elections; however, many were also part of what was described as a 'façade democracy' in which potential sites of resistance, including Islam, were coopted by the regime (Sadiki, 2002).

In the context of the above, we can make two observations concerning transitional justice in Tunisia. First, given the extensive cooptation that defined Tunisia's *dimuqratiyyat al-khubz*, and the socioeconomic marginalization faced by those who fell outside the state–society bargain, transitional justice in Tunisia – and more broadly in the Arab Middle East – would become an incubator for demands of social justice, dignity and redistribution of wealth that was hitherto concentrated within regime patronage networks. Second, the blurring of the lines between individual leaders and the state meant that transitional justice would also entail a broader break from the past, which would unleash contested visions of statehood and serve to complicate constitution drafting processes. In short, the removal of autocratic leaders did not just provoke a crisis in identity for the discredited regime, but for the state as a whole. Meanwhile, existing normative frameworks of transitional justice were

much narrower, and failed to unpack the state–society bargain that had brought about demands for social justice and dignity and offered little guidance in the context of contested statehood.

Transitional justice: What is visible, what is not?

In the aftermath of 14 January 2011, when Ben Ali fled into exile, a conflict emerged among Tunisia's political elites, who as noted earlier were not catalysts for the revolution in themselves, as to the scope and breadth of transitional justice. As in Egypt, elements of the old regime embraced a narrow transitional justice agenda of limited investigations and a handful of symbolic trials on the one hand, while on the other they attempted to limit the scope of political change in the face of the new political space that had opened up to voice demands for more systemic change.¹ In Tunisia, former ruling elites within Ben Ali's governing RCD, who remained behind, sought to limit political change – and by extension the scope of transitional justice – to Ben Ali's inner circle.

However, the RCD's attempt to cobble together a government under Ben Ali's former prime minister Mohammed Ghannouchi under provisions of Tunisia's 1959 Constitution triggered further protests and resulted in Ghannouchi's resignation on 23 February.² This was followed by a court order dissolving the RCD in March 2011. Yet, the banning of the RCD did not mean that its former membership had been made politically irrelevant. Instead, former RCDists regrouped into a number of new parties that emerged during the course of 2011 and 2012.

After Ghannouchi's resignation in February 2011, the octogenarian Beji Caid Essebsi, another former regime official, who held the positions of Minister of Interior and President of the Parliament under Habib Bourguiba and Zine al-Abidine Ben Ali's presidencies respectively, led a caretaker governing authority up until elections could be held in October 2011. During this period Tunisia established its first transitional justice mechanisms in the form of two investigative commissions expressly tasked with looking to past human rights and financial corruption abuses. However, the human rights commission, also known as the Bouderbala Commission, only had a mandate to investigate abuses from 10 December 2010 until 14 January 2011. Thus, decades of abuses perpetrated under Bourguiba and Ben Ali were left outside the mandate of the commission.

What explains this initially narrowing in scope of transitional justice? To be sure, Ben Ali was not deposed by a cohesive elite-led mass movement. There were no shared objectives held by protesters beyond Ben Ali's ouster and demands for social justice. As a result, transitional justice demands from below remained largely invisible in the months immediately following January 2011. For example, Gray and Coonen chronicled the myriad of abuses inflicted upon Islamist women under Ben Ali, yet observed that during this period of time these abuses remained largely ignored in the national debate on transitional justice (2013).

Transitional justice as a national dialogue

On 23 October 2011, Tunisians went to the polls to elect a new National Constituent Assembly that was tasked with drafting a new constitution. Although Tunisia's Islamist Ennahdha party won the largest share of the vote, it did not win enough seats to govern alone and entered into a coalition with two smaller parties that identified themselves as secular, Ettakatol and the Congress for the Republic (CPR). With the CPR being led by long-time human rights advocate Moncef Marzouki, who was elected by the National Constituent Assembly (NCA) as Tunisia's new president, and Ennahdha's leadership and rank-in-file membership having suffered severe repression under Ben Ali, it is not surprising that transitional justice discourses came to take on a greater importance under the new Ennahdha-led government.

It was at this time that Tunisia's Ministry for Human Rights and Transitional Justice was established under Samir Dilou, who served as the government's Minister for Human Rights and Transitional Justice. Dilou, a strong advocate of transitional justice, used the Ministry to reach out to the international transitional justice practitioner community, namely the International Center for Transitional Justice (ICTJ) and the United Nations Development Program (UNDP), which would later both play a role in Tunisia's national consultation on transitional justice. The internationalization of the country's transitional justice process would thus see an attempt to coordinate and expand the work of what had hitherto been the work of disparate ad hoc bodies. Indeed, in 2012 these ad hoc bodies had their work subsumed by a national dialogue on transitional justice that sought to build on international experiences of transition. Indeed, the national dialogue on transitional justice served to filter local voices into internationally established and pre-fixed normative frameworks. Moreover, the Ministry sought to learn from transitional justice experiences abroad, such as those in South Africa, Eastern Europe and Latin America so as to apply these lessons at home (Samir Dilou interview, 29 May 2015). The effect of this on Tunisia's transitional justice process was that the social justice and dignity demands of the revolution, that centred around access to jobs, unemployment and inequality, which betrayed a strong developmental focus, were filtered into more traditional legal frameworks that centred around violations of civil and political rights such as police abuses and violations of due process.

Thus, despite the initial consensus, and optimism, which surrounded the Tunisian government's push for transitional justice in early 2012, as the national consultation began, this consensus quickly broke down. For one, embedding Tunisia's transitional justice process within a government ministry resulted in some segments of civil society disengaging from the transitional justice process, which was perceived as political project advanced by the Ennahdha-led government more than reflecting demands from below (Houda Chedid interview, 23 October 2012).

Indeed, from the very outset of the transitional justice process in Tunisia, transitional justice debates occurred in a highly charged political context. These pitted former regime

sympathetic elites who sought to embrace Tunisia's transition to liberal democracy, while maintaining the foundation of the Tunisian state embodied in the 1959 constitution, against more radical voices, that included Marxists and pan-Arab nationalists on the one hand, and elements within the Ennahdha movement that sought to bring about a more fundamental transformation of the state. Furthermore, while there was a consensus from the outset for accountability for Ben Ali's family and inner circle, there was no consensus surrounding how far reaching any transitional justice process should be. Early disputes arose over questions of vetting and lustration in relation to civil service jobs and the security services with opposition parties fearing transitional justice would be used as an instrument for Ennahdha to solidify its hold on power.

Thus, rather than giving voice to those marginalized communities that had waged their *initifadat al-khubz* in Tunisia's impoverished interior, transitional justice discourses instead gravitated around questions of elite politics. Proposed pieces of legislation, such as laws on political exclusion, which would have banned former regime officials from standing in elections, provoked fierce political debates among elites and even threatened to bring about a derailing of Tunisia's transitional process in 2013 (Lamont, 2014). The effect of all of this was that transitional justice, an ostensibly impartial international framework, became intertwined in an intra-elite political contestation among Tunisia's many political parties, most of which – with the exception of Ennahdha – did not have any strong constituent base. It is within this context that Tunisia adopted the Organic Law on Establishing and Organizing Transitional Justice on 13 December 2013, which in turn established Tunisia's Truth and Dignity Commission. The Truth and Dignity Commission was given a mandate to investigate abuses going back to 1 July 1955, a date that preceded Tunisia's independence, up until 13 December 2013. Supporters of this law within Ennahdha were not troubled with the practicalities of a Commission, which was given only four years to work with a possible one-year extension, being asked to investigate abuses spanning almost seven decades (Samir Dilou interview, 29 May 2015).

Beya Jouadi, an Ennahdha deputy in the National Constituent Assembly and member of the Commission on Martyrs and Injured from the Revolution, stated that in her view the Truth Commission's most important task was to 'reclaim national memory and rewrite history' (Beya Jouadi interview, 26 September 2014). The Ennahdha deputy speaker of the assembly was even more ambitious in her description of the Truth and Dignity Commission. For Labidi, the Commission was to 'cross the bridge between a divided and united society, a society in turmoil and society that was serene and at peace in mind' (Labidi interview, 26 September 2014).

Compromise justice and elite politics in the new Tunisia

During 2013, and 2014, Nidaa Tounes emerged as both the leading challenger to Ennahdha and a refuge for former RCDists. It was founded as a broad movement with the

express purpose of challenging Ennahdha, and was unified by the broad banner of defending Bourguibist modernist imaginings of the Tunisian state. Drawing on the symbolism of Tunisian statehood, fear of Islamism and instability, and Tunisian nationalism, Nidaa Tounes won Tunisia's parliamentary and presidential elections in 2014. The latter being won by the party's leader and former official in both Bourguiba's and Ben Ali's governments, the 88-year-old Beji Caid Essebsi.

Although Habib Essid, Nidaa Tounes' prime minister, proposed a government that would include Ennahdha, an act that constitutes another example of Tunisia's intra-elite consensus politics, the question of what this means for the transitional justice process launched under the preceding government remains to be answered. However, it is apparent that despite the Commission on Truth and Dignity beginning its work at the end of 2013, one of the key drivers of the revolution – demands for social justice, which stem from the country's interior remains unaddressed with escalating protests in Gafsa during the first half of 2015 providing just one example of growing social unrest.

In short, despite groundbreaking provisions within the Organic Law on Establishing and Organizing Transitional Justice such as its provisions on gender-based violence and a broad definition of what constitutes human rights abuses that includes socioeconomic abuse, both Nidaa Tounes and Ennahdha, in the spirit of intra-elite compromise, have curtailed earlier expectations surrounding transitional justice and instead have embraced a discourse of national reconciliation, which aims to forestall attempts to prosecute former elites for alleged economic abuses. According to President Essebsi, his vision of national reconciliation is favorable to transitional justice because, 'transitional justice cannot condemn the whole world. . . We must stop settling our accounts with the past. The page must be turned on prosecutions and it must be ensured that Tunisians who have money that can be recovered can invest in Tunisia' (*Paris Match*, 2015).

In addition to this, the criminal justice system remains ill equipped to prosecute the handful of cases relating to human rights abuses during the revolution that have come before it. Acquittals of senior officials, and an aversion toward 'settling accounts with the past' voiced by leading figures in Nidaa Tounes, have fueled confidence among former members of Ben Ali's inner circle that they can return to Tunisia without fear of prosecution. Finally, there is also an inherent tension between the Truth and Dignity Commission's six-decade mandate to investigate past abuses and two former ministers of interior now holding the office of the president and prime minister respectively. In the case of the former, there has already been a clear signal sent that the Tunisian presidency does not intend to provide the commission with access to presidential archives, an act that has prompted the Truth and Dignity Commission to file a lawsuit against the presidency (Soudani interview, 29 May 2015).

Conclusions

Tunisia's compromise justice, which saw Ennahdha and Nidaa Tounes forgo exclusionary politics, has helped Tunisia avoid

levels of political violence that has marred transitions elsewhere in the region. Yet, at the same time, Tunisia's compromise justice also reflects a political consensus at the elite level that was achieved through the instrumentalization of transitional justice processes and a narrowing of transitional justice that was conditioned by international normative frameworks of transitional justice that privileged civil and political rights violations over socioeconomic grievances. How Tunisia's new government under Essebsi and Essid addresses outstanding socioeconomic grievances and a broader legacy of structural violence inherited from Bourguiba and Ben Ali, will serve as a test as to whether or not transitional justice in Tunisia will move beyond an elite discourse and give voice to the marginalized.

Notes

1. For a description of how this took place in Egypt see Reem Abou El Fadl (2012)
2. Mohamed Ghannouchi served as prime minister of Tunisia from 1999 until 2011. He is of no relation to the Ennahdha leader Rachid Ghannouchi.

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