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Centre for the Study of
Violence and Reconciliation



TUNISIA
The Colonial Legacy and
Transitional Justice

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The Colonial Legacy and Transitional Justice

Authored by Laryssa Chomiak (Consultant)




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ACRONYMS

CPR – Congress for the Republic (*Congress Pour la République*)

ISIE – Electoral Commission (*Instance supérieure indépendante pour les élections*)

ICTJ – International Center for Transitional Justice

IVD – Truth and Dignity Commission (*Instance Vérité et Dignité*)

NCA – National Constituent Assembly

PCOT – Tunisian Communist Workers Party (*Parti communiste des ouvriers de Tunisie*)

RCD – Democratic Constitutional Rally (*Rassemblement constitutionnel démocratique*)

UGTT – General Union of Tunisian Workers (*Union Générale des Travailleurs Tunisiens*)

UNDP – United Nations Development Program

UNHCHR – United Nations High Commissioner for Human Rights

I INTRODUCTION

Following the 2011 Revolution ending over five decades of dictatorship, Tunisia embarked on a comprehensive transitional justice process to investigate a broad range of state violations against its citizens, including false imprisonment, torture, assassination as well as social marginalisation and economic exclusion. Significantly, although Tunisia gained independence from France on 20 March 1956, the transitional justice process will cover crimes from 1955 to 2011. A year before independence, 1955 is viewed by many Tunisians as the year in which Tunisia’s first President Habib Bourguiba organised an intra-nationalist party coup d’état, with French colonial assistance, ushering in 56 years of authoritarian rule. By broadening the scope and time of the investigation, Tunisia’s transitional justice process has opened the possibility of investigating state abuses rooted in political struggles over how independence was achieved during the late colonial period.

For many Tunisians, linking the transitional justice process to 1955 is symbolic. This study analyses the key details and developments of the political struggle between the national independence movement’s (Neo-Destour party) founding leaders, Habib Bourguiba and Salah Ben Youssef, which culminated in the triumph of the “Bourguibist” over “Youssefist” model of state-building, upon which the foundations of the post-colonial Tunisian state hinged, from independence in 1956, to the 2011 Revolution. That leadership struggle (and its outcome) profoundly divided Tunisian society between those who supported Bourguiba’s state-building process and those who contested its legitimacy. Transcending ideological and religious commitments as well as class, competing notions of state sovereignty and modes of economic development define this division. Tunisia’s contemporary transitional justice process dates back to the late colonial period in order to unpack the forms of violence that the Bourguiba (1956-1987) and Zine el-

For many Tunisians, linking the transitional justice process to 1955 is symbolic.

Abidine Ben Ali regimes (1987-2011) utilised to build its exclusionary state, and in doing so to deconstruct the country’s longstanding narrative of modernity, progress, development and democracy.

The paper begins with a discussion of how colonial rule politically, economically, and socially transformed the country in ways that would shape the nature of the Tunisian nationalist, anti-colonial movement. This section places special emphasis on the years immediately preceding independence, during which the ideological tensions within the nationalist movement erupted into intra-party violence, which impacted post-colonial institutions. Supported by colonial institutions – the foundations of the post-colonial Tunisian state – Habib Bourguiba ejected opponents to his modernisation strategy from party and state. Section two focuses on the debates surrounding the period of time covered by post-dictatorship transitional justice. Section three places those debates on to a larger platform, highlighting how transitional justice discussions serve to remind observers of the long-term processes behind dictatorship and reconciliation.

II THE FRENCH PROTECTORATE: SHAPING THE ARENA

Tunisia's colonial legacy (1881-1956) is deeply embedded in the country's economic, political, and social fabric. France occupied Tunisia in 1881, forcing the *beylical* regime¹ to sign the 1881 Treaty of Bardo and 1883 La Marsa Convention. While both accords underscored the authority of the Tunisian ruler, or *Bey*, they established a Paris-nominated French Resident General with paramount authority over diplomacy, defence and taxation. French authorities quickly occupied key posts in the majority of the *Bey's* ministries, beginning a rapid overhaul of the ways in which they functioned – especially in the cases of the Ministry of Finance and Ministry of Justice. Whereas the former was fully controlled by the new administration, the Ministry of Justice was bifurcated into a French and Tunisian system. The seeming duality of the legal system, however, was for show. Whereas the Tunisian legal system primarily dealt with cases involving family code – which continued to be adjudicated by Islamic law – the French legal system was used to protect settler interests as well as to enforce the Resident General's political demands, and thus buttressed an illiberal system of rule *by* law, not rule *of* law.² Though all colonial regimes are authoritarian by design, the legal system allowed Tunisians to appeal administrative decisions that contravened Protectoral law. This did not go unnoticed by the nascent nationalist movement (see below): four of the five founding members of the Neo-Destour party were lawyers trained at French universities. The French maintained traditional regional and local authorities in the countryside, although the Resident General named civil controllers to oversee provincial politics and security. France was eager to represent the Resident General and administration as a continuation of the status-quo, however, the eighty-year Protectorate fundamentally re-wired power, society, and economy in the nation in ways that would structure post-colonial politics, with important implications to various claims made onto transitional justice.³

While the Protectorate maintained a veneer of traditional power structures, the Resident General and his administration effectively transformed state-society relations, especially at the regional and local level. Centralising the system from the top-down, the French protectorate eliminated nearly half of the regional administrative districts while multiplying the number of sub-divisions and *beylic*-named local auxiliaries. To oversee the regional and local corps, the Resident General created the Native Administration Control Service, headed by the civilian controller, who also oversaw newly established municipal councils. The civilian service was initially organised according to a two-track system (similar to Justice), legally separating the rules and administration of French and Tunisian cadres. Under this system, Tunisian nationals were legally prohibited from occupying high-ranking administrative posts. While the law was relaxed in 1920, it still legally barred Tunisians from serving as high cadres in key administrations such as the Ministries of Finance, Justice, or Interior. French nationals continued to occupy top positions in the civil service, and were dually accountable to Resident General and French ministries from which they were detached for career advancement. Largely limited to clerical positions, Tunisian cadres were expected to simply apply decisions

¹ The Tunisian *Bey*, or governor, ruled the *beylic*, or governorship, of Tunisia in name of the Ottoman Sultan. Though officially the Sultan's representative, in reality Tunisia's *Beys* had been hereditary since the early 17th century, first under the Muradid and then the Husainid dynasties.

² See: Nada Auzary-Schmaltz, Ed. 2007. *La justice française et le droit pendant le protectorat en Tunisie*. Rabat: Connaissance du Maghreb.

³ For a good overview of the colonial period, see: Kenneth J. Perkins. 2004. *A History of Modern Tunisia*. New York: Cambridge University Press. Also see Lisa Anderson. 1986. *The State and Social Transformation in Tunisia and Libya, 1830-1980*. Princeton: Princeton University Press.

made higher up in the Jacobin, colonial-driven administration, or risk being dismissed for insubordination.⁴ Prior to occupation, notable families, local elites, religious leaders, and craftsman guilds maintained a significant degree of autonomy in local political and economic management however, French reforms swiftly brought them under the Resident General's centralised administration, promoting a culture of control – a top-down administrative culture that would continue in the post-colonial period. The administrations, in turn, would be used to push for a re-organisation of the modes of production.⁵

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The French Protectorate changed the political, economic, and social order. To buttress its hold on Tunisia, the Protectorate encouraged merchants and administrators to immigrate, making forcefully confiscated land available to the colonial market. Between 1892 and 1915, close to one-fifth of arable land had been transferred to French settlers and agro-business, encouraging rapid rural migration to Tunisia's cities, and creating a mass of cheap labour. Development

of the railway system underscored the foundation of the colonial economy: the expansion of French industries in the coastal cities and the exploitation of agriculture and phosphates from the interior regions. First linking Tunis to Eastern Algeria (1880), the network was later expanded to link the coastal cities on the Sahel⁶ with the capital (1884-1899), and finally working to integrate key agricultural regions (1901-1912). While many Tunisians living in the interior were recruited as permanent labourers on

colonial farms, many more, especially those that were displaced, were forced into agricultural day labour or unskilled manufacturing where they were largely excluded from syndical leadership positions.

While there had always been regional disparities, the pre-colonial economy was a decentralised, integrated system. It linked the countryside to rural villages and towns – themselves linked to port cities, which in turn had engaged in trans-Mediterranean trade, connecting Tunisia to Naples, Tripoli, and Cairo. Colonial economic development broke that system, accelerating regional inequalities, and impeding local and rural reinvestment in multiple ways. Rural towns had once served as important market centres for vibrant interior trade. However, colonial expropriation shifted these markets to urban areas, which caused rapid depopulation and devastated these rural economies. In port cities, manufactured and/or imported goods replaced an economy for locally produced goods, especially textiles. Riches from agriculture and (later) phosphate production not transferred to Marseille or other international markets were invested in Tunis, and to a lesser degree in key coastal cities such as Bizerte, Sfax, and Sousse. The reconfiguration of the economy during the colonial period set the blueprint for the economic exclusion of the rural regions that has defined the post-colonial period. The colonial emphasis on a centralised and export-oriented economy meant that coastal centres were more developed than rural regions. This set in place a model of uneven development that benefited the coastal regions at the expense of the rural hinterland. Created during the Protectorate, these processes would continue into the post-colonial era, generating longstanding grievances among Tunisians excluded from the development model.

⁴ See: Victor Silvera. 1953. *La réforme des assemblées locales en Tunisie: conseils municipaux et conseils de caïdats*. Paris: Librairie Générale de Droit et de Jurisprudence; and Lilia Ben Salem. 1994. "Les ingénieurs en Tunisie aux XIXe et XXe siècles" *Revue du monde musulman et de la Méditerranée*. 72(1): 60-74.

⁵ Robert P. Parks. 2011. "Local-National Relations and the Politics of Property Rights in Algeria and Tunisia." Ph.D. Dissertation, University of Texas at Austin.

⁶ The Sahel is a coastal region, running on Tunisia's eastern littoral from just south of Hammamet to just north of Sfax

To usher its transformation of Tunisia, the Protectorate required an increasing number of administrators. While technical bureaucracies responsible for public services, infrastructure, and industry largely excluded Tunisians, the colonial government required a large number of low-level Tunisian clerks and administrators trained in a number of Franco-Tunisian schools, such as the Sadiki College and Lycée Carnot. Though Tunisian access to these schools was limited – according to the 1949 census, 94% of French school-aged children were enrolled compared to 12% of Tunisian children⁷ – the Franco-Tunisian schools nevertheless trained an elite class of Tunisians, who would form the leadership of the national movement in the Neo-Destour party.⁸

Access to French education – especially higher education opportunities in France – introduced Tunisian elites to novel modes of organisation (i.e. political parties, labour organisations, civic groups) and political thought. While some Tunisians rallied to new French educational opportunities, others shunned it, instead enrolling at the Zaytouna University, where they were schooled in Islamic law and tradition. The leadership of the nationalist movement drew from elites trained in both systems. As a result, nationalist discourse could simultaneously employ French constitutionalism and ideas of the Enlightenment against what they viewed as an illiberal and illegal occupation, while attacking French governance as an anathema to Islamic values. Broadly speaking, the bifurcated education system created two seemingly opposed world perspectives – one drawing from the secularism of the 3rd and 4th French Republics, the other from Islamic law – each represented by factions within the nationalist movement. These cleavages would become more pronounced following independence, and in many ways, remain to this day.

The reconfiguration of the economy during the colonial period set the blueprint for the economic exclusion of the rural regions that has defined the post-colonial period.

The effects of economic dislocation transformed modes of social and political organisation, marked by the creation of the Neo-Destour party in 1934. Founded by Habib Bourguiba and Salah Ben Youssef,⁹ the Neo-Destour party attracted young men who received their secondary education in the Franco-Tunisian schools, who went on to postgraduate studies in France, and who were frustrated by continued socio-economic and political inequalities under the Protectorate: in 1939, only 5,500 of 14,000 administrative posts in the Protectorate were held by Tunisians – posts that offered few career advancement opportunities.¹⁰ Breaking from previous elitist modes of political organisation, the Neo-Destour's founding leadership came predominantly from the coastal Sahel region, and believed that only mass mobilisation could ensure political and economic development in preparation for independence. Extremely popular from the outset, by 1937, the Neo-Destour party had close to 28,000 members and four hundred party branches, densely concentrated in Tunis, the Cap Bon Peninsula, and especially the Sahel¹¹ – areas that received disproportionate investment during the Protectorate (and post-colonial) era.

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Building on previous failed efforts to create an autonomous union for Tunisian workers, in 1946, Farhat Hached founded the General Union of Tunisian Workers (*Union Générale des Travailleurs*

⁷ Nouredine Sraieb. 1993. "L'idéologie de l'école en Tunisie coloniale (1881-1945)" *Revue du monde musulman et de la Méditerranée*. 68(1): 249.

⁸ Nouredine Sraieb. 1995. *Le Collège Sadiki de Tunis, 1875-1956: enseignement et nationalisme*. Paris: Éditions CNRS.

⁹ Other original founders include Bahri Guiga, Mahmoud El Materi, and Tahar Sfar, all of whom studied at the Sadiki College and Lycée Carnot, and spent time with Bourguiba and Ben Youssef while in France for graduate studies. Guiga, Sfar, Bourguiba, and Ben Youssef were trained as lawyers, El Materi was a medical doctor.

¹⁰ Laryssa Chomiak and Robert P. Parks. 2016. "Tunisia" in Ellen Lust, ed. *The Middle East* (14th edition): 816.

¹¹ Clement H. Moore. 1970. *Politics in North Africa. Algeria, Morocco, and Tunisia*. 1970. Boston: Little, Brown and Company: 70.

Tunisiens, UGTT).¹² The most venerable union in the Arab world, the UGTT played a major role in mobilising workers in support of expanded rights. Many founding UGTT members were directly linked to the Neo-Destour party. However, while membership in the two organisations frequently overlapped, as did important policy positions, the UGTT was founded to support worker interests, and its leadership was keen to maintain independence from the party. By the mid-1950s, UGTT membership was close to 150,000, or half of the Tunisian workforce.¹³

Predicated on authoritarian administrative and racial practices, enforced by the colonial judiciary and police forces, the French Protectorate sought to crush the two organisations – the Neo-Destour and UGTT – through both legal and extra-legal means. Colonial authorities launched three major crackdowns on the Neo-Destour in 1934, 1938-1942, and 1953-1954, in which party leaders were either arrested, charged with sedition, imprisoned, or forced into exile. Indeed, Bourguiba spent more than 10 years in prison between 1934 and 1956 and many years in self-imposed exile. The UGTT faced similar, if not worse repression, as its leadership was frequently arrested and its militants were victims of violent anti-union crackdowns.

By the late 1940s, the internal tensions provoked by Protectorate politics had come to a head, instigating a series of crises between the French and Tunisian nationalists and labour, on the one hand, and within the national movement, on the other – with very important implications to the process of decolonisation and post-independence politics.¹⁴ In 1945, Bourguiba fled Tunisia for Egypt, handing over day-to-day operations of the Neo-Destour party to co-founder, friend, and ally Salah Ben Youssef, promoted as party Secretary General. Under Ben Youssef's guidance, the Neo-Destour expanded membership to outside of its traditional territories – the Western-educated Tunisians from Tunis and the Sahel region who formed the core leadership of the party. This included integrating Tunisians from the interior and South, especially Ben Youssef's home region, the island of Djerba, as well as shopkeepers and artisans. This intensified ties with the UGTT and its membership base, including leaders of more traditional sectors of society, most prominently religious leaders and students from the Zaytouna University. Worried by Ben Youssef's increasing popularity, as well as the growing size of the Neo-Destour party, French authorities sought to create division within the party, pitting Bourguiba against his secretary general. In 1949, the French authorities sent Bourguiba a message indicating that Ben Youssef was a threat and that he could return to Tunisia, which he did in the same year.

In 1950, Bourguiba formally proposed a re-negotiation of the Franco-Tunisian relationship, winning a Tunisian-dominated *beylical* government headed by Bourguiba ally M'hamed Chenik, and represented by several high-ranking Neo-Destour cadres, including Salah Ben Youssef as Minister of Justice – a move meant to remove him from day-to-day party leadership activities. Though the agreement increased autonomy, it was viewed as a sell-out to many in the Neo-Destour, including minority Leftists and religion students from the Zaytouna University, who demanded immediate independence. In response, Bourguiba encouraged allied party youth to violently confront his critics in street clashes, while he called for the formation of a Neo-Destour-linked student union (see footnote 12). Unable to secure more autonomy from the French, and facing significantly dangerous pushback from within his party, the

¹² The 1940s was marked by a proliferation of sectoral organisations, which were more closely linked to the Neo-Destour party than the UGTT including the Tunisian Union of Industry, Trade, and Handicrafts (*Union Tunisienne de l'Artisanat et de Commerce*, UTAC; ca. 1948), the General Union of Tunisian Farmers (*Union Générale des Agriculteurs Tunisiens*, UGAT; ca. 1948), and the *Union Générale des Étudiants de Tunisie*, UGET; ca. 1952).

¹³ Moore 1970: 175.

¹⁴ For an excellent summary of the Neo-Destour party during the Protectorate period, see: Clement H. Moore. 1965. *Tunisia Since Independence: The Dynamics of One-Party Government*. Westport: Greenwood Press.

Neo-Destour hardened its position in late 1951. The Protectorate responded in early 1952, obliterating the Neo-Destour: most of its key leaders, including Bourguiba, were arrested and imprisoned, whereas those who could, fled into exile. Salah Ben Youssef escaped to Cairo and subsequently raised Pan-Arab attention to the conflict.

With the Neo-Destour lacking leadership, Ferhat Hached and the UGTT collaborated with Neo-Destour militants in a campaign of disruptive violence targeting infrastructure and colonial settler outposts. Colonial violence targeting militants only ratcheted the national movement's response, and violence increasingly took a tit-for-tat nature: in late 1952, Ferhat Hached was assassinated. Increased violence, especially organised in the West and South of the country, led to greater media coverage on Tunisia in France, neighbouring French Algeria, and the international arena via the United Nations. Under growing domestic and international pressure, in July 1954, French authorities began informal negotiations with Bourguiba, whose incarceration was transferred to outside of Paris to allow visits from Neo-Destour delegations based in France. With the Algerian War of Independence on November 1st of the same year, the government made increasing overtures towards Bourguiba to cease violent action in Tunisia in return for a substantial devolution of autonomy to the Tunisian *beylical* government. The offer divided the Neo-Destour party into the Bourguiba's partisans, who favoured a more reformist approach of internal autonomy that would lead a pro-West and pro-modernisation country to independence; and a radical bloc led by Salah Ben Youssef that favoured continued violence until full independence was achieved, and full control over national sovereignty for citizens and the country's national resources.

Bourguiba was released from prison and returned to Tunisia on 1 June, 1955, two days before France and the *Bey* signed a new treaty. Ben Youssef, who also eyed power, returned to Tunisia in September 1955, sparking a series of events that led to intra-party violent confrontation, pitting the Bourguiba and Ben Youssef camps – the latter drawing from a Neo-Destour militant base primarily from the West and South, as well as from religious schools and the Communist party. Worried that the context would explode, France chose to support Bourguiba, whose positions increasingly backed a pro-Western stance, as Ben Youssef's was increasingly linked to Pan-Arabism and socialism. Doing so, the Protectorate government accelerated transfer of security forces to a pro-Bourguiba *beylical* government. While both factions were armed, using the full force of the colonial repressive regime (i.e. the legal system and colonial militias), Bourguiba struck against the Ben Youssef faction and quickly asserted authority. In January 1956, Ben Youssef fled to Libya, and was ultimately murdered in Frankfurt in 1961.

Some Tunisians view Bourguiba's victory as the country's first coup d'état and see Salah Ben Youssef and his supporters as the first victims of state crimes in post-colonial Tunisia. Using the same violent repertoire as the colonial government, Bourguiba's post-independence authoritarian regime (1956-1987) would use the judiciary, Ministry of Interior, and extra-legal methods of oppression against its opponents, including Leftists and later Islamists. As in the Protectorate system, the executive named key posts in the national administration, and a top-down culture of control was omnipresent. Large parts of the colonial judiciary were left in

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¹⁵ See: Éric Gobe. 2015. "L'Organisation de la profession d'avocat en Tunisie: Du model français et de son adaptation aux contextes colonial et post-colonial." In Jean-Phillippe Bras, Ed. *Faire l'histoire du droit colonial cinquante ans après l'indépendance de l'Algérie*. Paris: Éditions Karthala

¹⁶ Public Islamic foundation land, close to 150,000 hectares, was incorporated into the State Domaine. The 1.45 million hectares of private foundation land was distributed to the descendants of the original founder.

place (including colonial-era morality and anti-sedition laws). Unlike the colonial system which sometimes pitted Resident General decisions against French and Protectorate law, allowing room for legal challenge, the post-colonial Ministry of Justice (and judge corps) were directly beholden to the presidency. Judges who did not uphold regime policy were sanctioned or disbarred.¹⁵ The techniques of using the judiciary to rule by law were hardened, coupled with legal and extra-legal violence that would be perfected by the Ben Ali regime (1987-2011).

Two months following Ben Youssef's flight, France abrogated the Treaty of Bardo, ending the Protectorate. Bourguiba organised a Constituent National Assembly five days later, securing the election of his faction to power, which formed a government led by Bourguiba as Prime Minister, Minister of Defence, and Minister of Foreign Affairs. Bourguiba moved to quickly consolidate power. Having purged the pro-Ben Youssef camp in the Neo-Destour party, Bourguiba set about taking control over the religious establishment. In a series of 1956 and 1957 decrees, he abolished religious courts, liquidated Islamic land foundations, or *waqf*,¹⁶ and brought the Zaytouna University firmly under government control. The move disgruntled former allies from within the nationalist movement who had hoped that an independent Tunisia would re-assert its Islamic values – a group that had widely supported Salah Ben Youssef in his showdown with Bourguiba only a year before. On 25 July, 1957, the government proclaimed Tunisia a Republic with Bourguiba at its head, removing the royal family that had ruled for two and a half centuries. Unlike Bourguiba's decision on religious institutions, the proclamation of the Republic was widely popular. Compared to Morocco, where the monarchy became a symbol of the independence movement, under Bourguiba, the Neo-Destour party represented a new, modern political order, which characterised the royal family as an outdated institution that had worked closely with the French. Finally, in 1963, a single party regime was declared, banning the Tunisian Communist party, which had been founded in 1934, the same year as the Neo-Destour party. Within eight years of wresting independence from France, Bourguiba had seized total control of his party, of state institutions, and subsequently eliminated all groups that questioned his politics during the Protectorate period: the royal family, parts of the religious establishment, and the political Left – groups around which opponents would rally during both the Bourguiba and Ben Ali regimes. While Bourguiba's relationship with the UGTT would remain ambiguous – its role in the national struggle could not be ignored – he worked throughout his presidency to have his men named in leadership positions.

Bourguiba's political project for independence was defined by cooperation with France to negotiate a series of steps, from internal autonomy to total independence, within the framework of a Western-allied, modern nation state. Initially the Tunisian and French governments

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negotiated a scheduled, long-term settler land buy-out agreement. Between 1956 and 1961, 250,000 hectares of colonial land were purchased by the Tunisian government – close to 150,000 of which was redistributed to party cadres who had supported Bourguiba in his 1955 showdown with Salah Ben Youssef.¹⁷ Conflict over continued French military ownership of the port of Bizerte, along with French airstrikes on Algerian nationalists in Tunisian territory, convinced Bourguiba

¹⁷ Moore, 1965: 142.

¹⁸ See: Mira Zussman. 1992. *Development and Disenchantment in Rural Tunisia: The Bourguiba Years*. Boulder: Westview Press; and Stephen J. King. 2003. *Liberalization Against Democracy: The Local Politics of Economic Reform in Tunisia*. Bloomington: Indiana University Press.

to use the land as a bargaining chip. An August 1961 law decreed that all directors of modern-sector agro-capitalist farms needed to have Tunisian citizenship. Three years later, in 1964, Bourguiba decreed the nationalisation of the remaining 600,000 hectares of settler land. Using that land, the regime initially tried to enact a far-reaching redistributive program of forced agricultural and industrial cooperatives in the 1960s (1964-1969), partly in order to manage expropriate settler land and liquidated *waqf*, and partly as a political manoeuvre to sideline Leftist opponents who looked to neighbouring revolutionary Algeria as a socio-economic model. The socialist program, however, encountered intense political opposition from the upper-echelons of the Neo-Destour party – Bourguiba’s core support group – and was abruptly ended in 1969.

The new economic model (1969-2011) was based on free-market principals, though the regime tightly controlled access to new markets through the selective and political distribution of credits, as well as construction, distribution, export, and import licenses to key political and economic elites (who would become the captains of industry). The new strategy promoted an export-driven economy – the basis of which had been created during the colonial period. Whereas the socialist drive attempted to use state capital to redistribute development monies to the agricultural interior, the new policy perpetuated colonial-era wealth accumulation in major cities and port-towns.¹⁸ Under Bourguiba, liberalisation was measured, and when possible negotiated with the UGTT. However, when negotiations broke down, the regime cracked down on the union, violently disbursing strikes and demonstrations and attempting to co-opt factions to promote a new regime-friendly leadership.¹⁹ Policies such as these – continued into the Ben Ali period (1987-2011) – encouraged corruption from within the administration and reinforced the social and regional inequalities inherited from the colonial period, generating opposition from various groups in society.

Bourguiba was unable to deal with Tunisian resistance to this strategy from within (Salah Ben Youssef, Leftists, Zaytouna students) and outside of the Neo-Destour party (religious establishment, Communist party, Pan-Arab movements). Consequently, he relied on legal and extra-legal methods of co-optation, coercion, exclusion, and violence to punish his opponents during the early to mid-1950s. The new regime effectively used a centralised, top-heavy administration and dependent judicial system – through institutions and governing strategies inherited from the colonial regime – to co-opt (and sometimes create) regime-dependent political and economic elites.²⁰ Though violence was often used against opponents, extra-judicial killings were rare. Bourguiba and his successor, Zine el-Abidine Ben Ali, would continue to use this repertoire to define exclusionary political and economic centralisation and violent marginalisation of opponents throughout their rule. By dating the transitional justice process to 1955, the Truth and Reconciliation Committee is seeking to publicly unpack these defining contentious moments.

Policies such as these – continued into the Ben Ali period (1987-2011) – encouraged corruption from within the administration and reinforced the social and regional inequalities inherited from the colonial period, generating opposition from various groups in society.

¹⁹. See: Christopher Alexander. 2010. *Tunisia: Stability and Reform in the Modern Maghrib*. London: Routledge.

²⁰. For a detailed analysis on how the Ben Ali regime created a preferential market for allies, see: Bob Rijkers, Caroline Freund, and Antonio Nucifora. 2014. “All in the Family: State Capture in Tunisia.” *World Bank Policy Research Working Paper*. WPS No. 6810. Washington, DC: World Bank. For a nuanced discussion of the Bourguiba and early Ben Ali period, see: Eva Belin. 2002. *Stalled Democracy: Capital, Labor, and the Paradox of State-Sponsored Development*. Ithaca: Cornell University Press.

III THE 14 JANUARY 2011 REVOLUTION AND THE DEBATE AROUND TRANSITIONAL JUSTICE

Established on 9 June 2014, the Truth and Reconciliation Committee springs from a contentious post-Revolutionary debate about the role of former regime members in a democratic Tunisian polity, as well as the date of when an authoritarian regime was created. Though created after the 2011 Revolution, the necessity of a Truth (and eventually Reconciliation) process has been long discussed by dissidents, democrats, and human rights activists excluded from and repressed by the former Bourguiba and Ben Ali regimes, including Pan-Arab movements, Islamists, Leftists, and Youssefists. While the majority of Tunisians agree that colonialism was a terribly violent and illegal system, very few calls have been made to extend the transitional justice process to the colonial era. However, the final year of colonialism has been included in the discussion, as it was in 1955 that the French authorities assisted Bourguiba in his showdown with Salah Ben Youssef – an act viewed by many as a coup d'état from which 56 years of authoritarian rule sprang. In short, while the transitional justice process incorporates the final year of colonial occupation, the motive is to call into question the abuses and violation of rights set into place by founding President Habib Bourguiba and his successor Zine el-Abidine Ben Ali, both of whom espoused “Bourguibism.”

Debates about transitional justice revealed deep-seated political divisions within Tunisia, and remain unresolved. At one level, the debate divides those calling for a systematic inquiry into state crimes committed since 1955, and those who want to ‘turn the page’ in the name of ‘national unity’ and move forward. At a second level, there is a contentious debate surrounding political inclusion and exclusion, and to what extent members of the Bourguiba and Ben Ali regimes and the Neo-Destour/RCD²¹ can participate in a post-2011 democratic regime. Currently underway with a mandate to examine state crimes committed since 1955, issues of inclusion, exclusion, and prosecution of former Neo-Destour/RCD members and state cadres remain problematic.

Formal institutions for transitional justice can be dated to immediately follow the 14 January, 2011 Revolution, and have no precedence in Tunisian colonial or post-colonial history. Under immense pressure from the streets, Ben Ali's former Prime Minister Mohamed Ghannouchi

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(1999-2011), decreed the creation of three reform commissions on 18 February, 2011:²²(1) the National Commission for the Investigation of Bribery and Corruption; (2) the National Commission for the Investigation of the Facts of Abuses Recorded during the Period from 17 December, 2010;²³ and (3) the High Commission for the Fulfillment of the Revolutionary Goals, Political Reform and Democratic Transitions, commonly referred to as the Ben Achour Commission.²⁴

²¹ Following Zine el Abidine Ben Ali's 7 November 1987 coup, the Neo-Destour party was re-baptised the Democratic Constitutional Rally (*Rassemblement constitutionnel démocratique*, RCD).

²² Christopher K. Lamont and Héra Boujneh. 2012. “Transitional Justice in Tunisia: Negotiating Justice during Transition” *Croatian Political Science Review* 49(5).

²³ 17 December, 2011 was the day produce vendor Mohamed Bouazizi set himself on fire in Sidi Bouzid, unleashing waves of protests culminating on Ben Ali's 14 January 2011 flight.

²⁴ Led by legal scholar and lawyer, Yahd Ben Achour, the Commission effectively functioned as an interim government until the 23 October 2011 legislative elections for a National Constituent Assembly, NCA.

While some trace the three commissions' origin in Ben Ali's last televised speech, in which he set forth a roadmap to investigate human rights violations and corruption, and to implement political reform, ascribing these reforms to Ben Ali gives very little agency to Tunisian citizens, or to the political chaos during the transition period. First, calls for an investigation into human rights abuses, corruption as well as demands for political reform have been made by human rights activists, regime opponents, and dissidents since the Bourguiba-Ben Youssef showdown in late 1955. Second, as Lamont and Boujneh observe, transitional justice during the ten month period following the Revolution and Tunisia's first free and fair elections was *ad hoc*, and its policies lacked coherence. Indeed, Ghannouchi decreed these commissions only following two massive protests (*Kasbah 1 & 2*) demanding his immediate resignation and dissolution of the RCD party as remnants of the Ben Ali system, and could equally be viewed as a (failed) calculated attempt to appease the crowds to keep his post. Finally, ascribing the committees to Ben Ali fails to note that criminal prosecutions were initiated against those responsible for the violence during that period, including the President and members of his family in *absentia* and high-ranking members of various security services.

A more ordered movement toward an institutionalised transitional justice process ensued following contentious debate in the National Constituent Assembly, elected on 23 October, 2011. Those elections brought to power a coalition government of Islamist, Leftists, and secularists to power, commonly called 'The Troika'. Led by interim President Moncef Marzouki, a long-term human rights activist, son of a Ben Youssef supporter, and founder of the Congress for the Republic (*Congress Pour la Republique*, CPR; ca. 2001), the government was dominated by members of the Islamist party Ennahda (ca. 1981) and led by Prime Minister Hamadi Jebali, a former political prisoner, while social democrat Mustapha Ben Jaafar, head of Ettakatol party (ca. 1994), was named Speaker of Parliament.

The new coalition agreed on the necessity of establishing a transitional justice process, nominating former Ennahda dissident and political prisoner Samir Dilou as Minister of Human Rights and Transitional Justice. Tasked with leading an inclusive national consultation process to dually reveal the spectrum of state crimes under dictatorship and propose a draft Transitional Justice Law, the Ministry worked closely with international organs²⁵ and Tunisian civil society organisations. However, despite their shared experiences of dissent and as victims of political exclusion and state crimes, the Troika could not agree on the parameters of the transitional process, revealing decisive hitherto unseen political fissures and schisms that in many ways mirrored the clash between Bourguiba and Ben Youssef, as well as difference in state-building expectations during the late-colonial era.

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The contentious debate over the exclusion of RCD party members and individuals holding public functions who were complicit in state-led abuses against citizens, had already become heated during discussions on Tunisia's electoral law prior to the October 2011 elections. Indeed, the Electoral Commission (ISIE) created by Decree Law 27 on 18 April, 2011 legally barred participation of former regime officials, including those who held RCD party leadership functions within the last decade, and those who publicly endorsed Ben Ali's fifth mandate re-election in 2014. Despite this

²⁵ Specifically, the United Nations High Commissioner for Human Rights (UNHCHR), the International Center for Transitional Justice (ICTJ), and the United Nations Development Program (UNDP)

extra-constitutional transitional-period decision, the long-awaited 17 December 2013 *Organic Law on Establishing and Organizing Transitional Justice* omitted provisions defining political exclusion. Rather, the National Constituent Assembly (NCA) approved a supplementary article to the law's final version establishing a "committee for the purification and reform of public institutions". The committee would include five members of the Truth and Dignity Commission (*Instance Vérité et Dignité*, IVD), a novel body mandated by the Transitional Justice Law, which in the absence of electoral restrictions would allow for an investigation and disqualification of members deemed powerful in both the Bourguiba and Ben Ali regimes. By the end of 2016, the IVD received 62,458 cases and to date three public hearing sessions have been held, with the next scheduled for 11 March, 2017.

Introduced in April 2014, Article 167 of the new Electoral Law proposed a wide-ranging list of former regime officials and supporters that could be excluded from political life. The debates surrounding the article revealed deep splits within the NCA on the one hand, and the Troika on the other. While Interim President Marzouki and his CPR party and many Ennahda members favoured Article 167, former RCD cadres, and members of the newly created Bourguibist Nidaa Tounes party virulently opposed the law. Indeed, Nidaa Tounes leader and former Bourguiba Minister, Beji Caid Essebsi, likened political exclusion to the stripping of nationality. On a different level, while Nidaa Tounes and other Bourguibist-leaning parties did favour an investigation into state crimes committed under the Ben Ali regime, they felt the investigation should only go back to 1987. Many Islamists and some Leftists favoured an investigation spanning not only into the Bourguiba regime, but also into the final years of the Protectorate. While ultimately, the IVD has been tasked to uncover abuses beginning in 1955, to the surprise of many even some Ennahda deputies voted against Article 167, revealing a new fissure in Tunisia's political landscape as the Islamist party was gradually moving towards national unity and consensus politics rather than the radical initiatives that had characterised its positions during the Ben Ali regime and the period immediately following the 2011 Revolution.

Political splits over the temporality, and the scope political exclusion, highlight the divisions over the position, centrality, meaning, and process of the transitional justice process. While one side views the transitional justice process as key to unpacking, understanding, and debunking Tunisia's post-independence narrative of modernisation, development, and Westernisation, the other, at best, views it as a barrier to national unity and moving forward.²⁶ This is clearly

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evident in the current government's failed 2015 Economic Reconciliation Bill, which proposed to forgive economic crimes and corruption committed by civil servants and businessmen under the previous authoritarian regimes in exchange for closed-door confession and paybacks. For proponents, fear of retribution inhibited important capital reinvestment into the flagging post-Revolutionary economy. For others, such as the *Manish M'sameh* (I Won't Forget) social movement, proposals such as the 2015 Economic Reconciliation Bill was part and

parcel of a concerted effort by some to turn the page on state-violations, as a comprehensive investigation of the genealogy of state-led violence and corruption in Tunisia would reveal its roots in competing political projects.²⁷ Moreover, those projects date back to the anti-colonial independence struggle and the triumph of the Bourguibist paradigm, revealing the multiple forms of violations upon which its success hinged.

²⁶ Such as the contentious debates over the proposed economic reconciliation bill and ensuing protests and growth of social movements challenging it.

²⁷ See Laryssa Chomiak. 2016. "The Revolution in Tunisia Continues" Middle East Institute. <http://www.mei.edu/content/map/revolution-in-tunisia-continues>

IV TUNISIA'S LATE COLONIAL PAST, AUTHORITARIANISM, AND TRANSITIONAL JUSTICE

Tunisia's history of political centralisation hinges on the repression of actors and forces that challenged Habib Bourguiba's paramount position in the Neo-Destour party during both the late Protectorate era, and the post-independence modernisation project.

The legacy of the political, economic, social, and cultural institutions that were bequeathed by the French authoritarian colonial state, and constructed by the anti-colonial, nationalist Neo-Destour party is one of continuity that has defined institutional change for over five decades. Though Tunisia's first President Habib Bourguiba (1956-1987) had initiated liberal economic reforms while institutionalising authoritarian political processes and practices, he justified autocracy with the necessity of building a modern nation-state and rapidly advancing socio-economic reforms. Bourguiba's authoritarianism was reflected in a monolithic party and French model-based state structure imposing Western secularism, buttressed by the gradual co-optation of other political, social, and economic institutions, and repression of political opponents. Habib Bourguiba's post-independence state-building exercise of modernisation and Westernisation – referred to as "Bourguibism" – was rooted in a politics of exclusion, marginalisation, as well as illiberal elimination of inter-party conflicts beginning with the 1955 intra-party showdown, and later declaration of the single party state. Following those cues, Ben Ali's political project directly expanded the Bourguibist project into a new era of 'development' and 'economic miracle story', while targeting many of the same 'enemies of the state'.

Zine el-Abidine Ben Ali seized power from Bourguiba on 7 November 1987, ostensibly in order to establish a democracy and ending Bourguiba's 'Presidency for Life'. Instead, he built the foundations for one of the most repressive modern political systems. Shortly after coming to power, Ben Ali co-opted key economic actors, especially from the expanding private sector, instituting a legacy of neoliberal economic reforms which consolidated rather than loosening his grip on power.²⁸ Ben Ali nurtured and advanced the authoritarian political framework that he inherited from his predecessor, while promoting an image of political and economic reformer and important partner in the "War on Terror" to the West following the imposition of the draconian 2003 anti-terrorism law. That law expanded the regime's legal definition of terrorism, buttressing the regime's system of rule *by law*, while further limiting citizens' recourse to justice. Despite domestic societal challenges and criticism from the domestic and international human rights community, Ben Ali coated an increasingly robust version of authoritarian rule with liberal democratic rhetoric.

In his twenty-seven-year rule, from 1987-2011, Ben Ali severely restricted political space by outlawing opposition parties, primarily the Ennahda, the Tunisian Communist Workers Party (PCOT), other Leftist dissidents, and Pan-Arab political movements – groups also targeted by

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²⁸ See: Emma Murphy. 1999. *Economic and Political Change in Tunisia: From Bourguiba to Ben Ali*. London: Palgrave; Greg White. 2001. *A Comparative Political Economy of Tunisia and Morocco*. New York: SUNY Press; Eval Bellin. 2002. *Stalled Democracy: Capital, Labor, and the Paradox of State-Sponsored Development*. Ithaca: Cornell University Press; Stephen J. King. 2003. *Liberalization against Democracy: The Local Politics of Economic Reform in Tunisia*. Bloomington: Indiana University Press; Melani Cammett. 2007. *Globalization and Business Politics in Arab North Africa: A Comparative Perspective*. New York: Cambridge University Press; Stephen J. King. 2010. *The New Authoritarianism in the Middle East and North Africa*. Bloomington: Indiana University Press.

Bourguiba, first under the suspicion that they might be linked to Salah Ben Youssef, then as autonomous opposition movements in their own right. He purged the government of dissenting voices during his first five years in power, and reinforced his personal control of state institutions, especially the judiciary, to consolidate power and facilitate widespread corruption. Generalised political oppression and criminalisation of dissent hardened with the passing of controversial anti-terrorism legislation in 2003, which allowed a systematic persecution of Ennahda and a total clamp down on religion in public space. By the early 2000's, virtually all *dissent* within Tunisia was eliminated with the opposition exiled or in prison. Though in many ways copying Bourguiba's post-1955 consolidation of power, Ben Ali extended his repressive system of control into the most mundane forms of everyday life.²⁹

Stakeholders supportive of Tunisia's comprehensive approach to transitional justice believe that the process is the first and most central step to unpacking, understanding, and debunking Tunisia's miraculous narrative of modernisation, development, and Westernisation. Because Tunisia's centralised state-building and authoritarian consolidation process – dating from independence to the 2011 Revolution – was rooted in the politics of repression using a repertoire of exclusion,

By investigating state crimes dating to the late colonial period, proponents stress the necessity to challenge Tunisia's one-sided history through the examination of victims across political orientations, religious affiliation, geographic and economic marginalisation, and exclusion.

elimination, forceful co-optation, marginalisation, forceful obedience, and gratuitous public displays of state violence, proponents of a comprehensive transitional justice process have favoured beginning the process in 1955. By investigating state crimes dating to the late colonial period, proponents stress the necessity to challenge Tunisia's one-sided history through the examination of victims across political orientations, religious affiliation, geographic and economic marginalisation, and exclusion.

29 Beatrice Hibou. 2011. *The Force of Obedience: The Political Economy of Repression in Tunisia*. Cambridge: Polity Press.

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