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Islamic Constitutionalism and Forms of Government of Tunisia, Morocco, and Jordan

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Introduction

The area of Middle-Est and North Africa is today the theatre of the major challenges to global security and stability (Talbot 2017, p. 7). In this precise region, there are concentrated a multiplicity of issues of various nature: the presence of radical Islam, the contrast between Sunnis and Shiites, the Libyan crisis, the migration plague, to name but a few (Talbot 2017, p. 7). These are the reasons why the dynamics of the MENA area have recently been at the core of the most compelling debates and insidious analysis. Some problematics related to the configuration of this specific area had ancient roots, as are the academic discussions related to them. Then, the impact of the 2011 uprisings fostered the emersion of a new multiplicity of themes to be faced. This research seeks to answer an old question, in light of a more recent series of events. The aim is to verify the existence of an "Islamic Constitutionalism", through the analysis of the latest events in Tunisia, Morocco, and Jordan starting from the year 2011. The Islamic Constitutionalism is considered as a specific connotation of Constitutionalism in presence of countries with a prevalent Muslim majority. Specifically, it has been defined as "all the provisions derived from the sources of Islamic law related to the organization of the Islamic polity" (Longo 2013, p. 2-41). Subsequently, by adopting a comparative approach, the thesis investigates the constitutional and institutional implications of the Arab revolts in the three Countries.

Firstly, an overview of the notion of Constitutionalism is provided. By retracing the development of the various theories of Constitutionalism throughout the history, the research individuates the main features of this doctrine, which specifically lie in the principle of separation of powers, in the protection and inviolability of fundamental human rights, in the limitation of power. Once the notion of Constitutionalism is clarified, the research proceeds by individuating elements of the latter within the Islamic paradigm.

What emerges is that it is possible to talk about an Islamic Constitutionalism starting from the XIX century at the dawn of the independences 'recognition from the colonial powers. In this first phase, the newly born Arab-Muslim States activated a Constitutional process mainly based on the attempt to find a collocation for *Sharia within* the architecture of the institutional system. The priority here seemed to be the creation of a State on Islamic grounds, in order to ensure the Islamic identity despite the influence of the foreign model

of codification (Longo 2013, p. 2-41). It is at this very point that one of the most complex questions arose: what is the relationship between Sharia and Constitutionalism? A question that inevitably opens the ground to further debates, since the answer might be strictly connected to the notion and the nature of *Sharia* itself. Even though the opinion of the scholars is not univocal, most of them do not exclude *a priori* the compatibility between Islamic law and the western conception of Constitutionalism (Baldwin 2007). Moreover, the research provides a set of elements that highlight similarities between the Islamic and the western political thought. It is worth noting that a deeper analysis even detects traces of Islamic Constitutionalism at the time of the first Muslim Community. Specifically, in reference to the Medina Charter of 622 C.E. (Faruki 1971). By having determined the existence of Islamic Constitutionalism, the main features of the latter can be individuated. These lie in the consensus of the *Ummah* (the Islamic community), in the principle of *wakala* (representation), in the protection of human rights. All the just mentioned elements represent fundamental principles that can "support Constitutionalism in the Islamic world" (Esposito, Voll 1996).

The second part of this thesis focuses on the comparative analysis of Tunisia, Morocco, and Jordan's institutional system to then determine the existence or not of a democratization's process after the 2011 revolts. To this purpose, by reconstructing the history of each Country from the moment of their independence, it is reported the framework and the factors that eventually unleashed the protests.

By following the red wire of the history, the analysis shows the peculiar dynamics within which the considered States' institutional systems emerged: the three examined Countries since their independence have been caught between strong religious traditions and secular pushes, and between inheritances of the colonial phase and incentives towards innovation (Oliviero 2003, p. 554-574). The ideological fracture that characterized the Arab societies during this phase strongly divided the leadership's policy between the option of sustaining modernity or tradition with a direct impact on the constitution-making discourse. In particular, the latter revealed itself to be a tortuous process of changes, often characterized by discontinuity since it has experienced periods of acceleration followed by backward steps. It is within these very dynamics that the roots of the Arab revolts can be retraced (Mercuri, Torelli 2012). Overall, the evolution of the MENA's Countries has been historically characterized by the acceptance or the net rejection of democratic features. In

some cases, the reception of a more democratic model resulted to be only partial, leading the entire system toward periods of paralysis or abuse of the constitutional rules. The events of 2011, although occurred trough different modalities from one Country to another, led the leadership of the three States to the awareness that democratic reforms were the only alternative for the stability and legitimacy of their respective regimes. Indeed, starting from this point, Tunisia, Morocco, and Jordan seem to be engaged in a new constitutional process, oriented (or apparently oriented) toward the absorption of more democratic standards (Dalmasso, Cavatorta 2013, p. 230-240).

The third part of this thesis focuses on these constitutional changes. Considering the reforms adopted by Tunisia, Morocco, and Jordan after 2011, a comparison between the different branches of the State is provided. The comparison shows that the changes brought in the three States were focused on the same aspects: the increase of representativeness and civil society's participation, the enlargement of the conceived human rights, the guarantee of judicial power independence, a higher level of transparency in the electoral process. At the same time, there have been some dissimilarities in the way through which the reforms have been conceived and adopted. It emerges that if in Tunisia it was activated a process from the *below* (through popular protests) with the consequent reshaping of the whole system, in Morocco and Jordan the process was initiated from the *above* (by initiative of the Monarch) resulting in a transition of the system (Groppi 2015, p. 189-220). Then, the comparison proceeds by highlighting how the reforms took roots in the political and social tissue and what hindered their effectiveness. What emerges is that despite the changes brought, both *interna*l and *external* factors – common to all three Countries- affected the realization of a more democratic context. The first internal factor is related to the conformation of the Party system of all the three States and the features of the Political Parties themselves. Being the former highly fragmented and the latter often reflecting the tribal aspects of the society. The second internal factor is related to the preservation (even after the 2011 reforms) of the King's powers mainly (but not only) over the executive branch (Biagi 2014, p. 4-18). As far as the external elements are concerned, the first one refers to the geopolitical framework in which the three Country are set: Tunisia and Morocco within a region characterized by instability, Jordan in between an unsteady area marked by ongoing conflicts on one side, and the bastion of stability and rigidity as it is Saudi Arabia,

on the other side. It is within this context that a further external factor emerges: the lack of a regional driving force that would have incentivized the democratic transition or offered a model to be followed, in this direction. Instead, the Arab League, because of several reasons does not appear able to play such a role. Among the mentioned external factors, also the recent emergence of radical Islam had an impact on the trajectory of the three States' political system (Mansouri, Armillei 2016, p. 156-173).

Finally, the thesis will conclude that it is exactly considering all the analyzed challenges that one should evaluate the relevance of the constitutional process of Tunisia, Morocco, and Jordan. The value of the latter has not only to be seen in relation to the other MENA's Countries (since these processes can serve as a model for the region) but also as a first answer to the broader debate over the Muslim societies' compatibility with the democratic progress. In this regard, Tunisian experience represents a precise example of "a Constitution of a Constitutional State" (Groppi 2015, p. 189-220), while in Jordan and even more in Morocco the constitutional amendments and the reforms of 2011 undoubtedly created fertile ground for the activation of Constitutionalism and democratic process (Gallien, Werenfels 2019). Recalling the relationship between Democracy and Constitutionalism: the former poses the accent over popular sovereignty, the latter over the limits of the exercise of power. If Democracy is the Government of the majority, the respect of the fundamental principles of a Constitution is necessary to limit the governmental activity which otherwise would turn into a tyranny of the majority (Esposito 2007).

In ultimate instance, and considering the just provided theoretical clarification, a set of considerations will lead to talk about an *evolving* Tunisian democratic transition, a *democracy-learning* process in Morocco, and lastly, a *first step* undertaken by Jordan toward democratization.

I Constitutionalism and Forms of Government's Features

1.1 Setting the Scene: Definition and Historical Development of Constitutionalism

Since the nineteenth century, scholars' interest in the possible intersection of Islamic law and Constitutionalism has intensified. Before providing a definition of Islamic Constitutionalism, the analysis will proceed by illustrating the wider concept of Constitutionalism according to the Western legal tradition. In order to provide a clear picture of its main features, a historical reconstruction of its development is needed.

The concept of Constitutionalism is, in fact, the result of the evolution of political, and legal thought, since the XVII century. It can be defined as a cultural, political, and philosophical movement aimed at the production of constitutional documents based on liberal democratic principles (Viola 2009, p. 247-255). The definition of Constitutionalism is related to the juridical and political doctrines that pursue the objective or the idea of limitation of power and guarantee the individual's autonomy. In the words of Thornhill Constitutionalism is the "enlightenment belief that political institutions obtain legitimacy if they enshrine constitutional laws translating abstract notions of justice and personal dignity into legal and normative constraints for the use of public and private power" (Thornhill 2011). By looking at the origins of Constitutionalism, it seems to directly refer to those constitutional doctrines that shaped the bourgeois revolutions in Europe in the XVII and XVIII centuries. These inspired the radical transformation of the political order both in the old and in the new continent, hence it was a phenomenon geographically located in a particular area of the world. This transformation, resulted then, in the overcoming of the traditional forms of domain and the affirmation of sovereign power's limits (Matteucci 1997). The limitation of power as the primary objective of Constitutionalism ideology arose from the political and philosophical thought of the modern age. Taking a step backward in history, it is worth noting that considerations on the containment of the political power were not unknown by the Greek ancient world. In particular, the study of the political community architecture of that time was oriented towards the research of the best form of government (Bobbio 1976, p. 201-211). The observations of Aristotle, as well as Solon and Cleisthenes' reforms in the VI century, helped to mature the idea of a *Polis.* A *Polis* well-

ordered, no longer anchored to a transcendental foundation- as it was until then- but opened to the active citizens' participation (though only of those male citizens, whose could take part in political decision-making). Moreover, on the bases of the Aristotelian thought, the *Polis*-as the expression of a more sophisticated social aggregate-must have a constitution that allows the individual to conduct an existence oriented towards the pursuit of happiness (Crisafulli 1970). Following the reasoning of the ancient scholar, the ideal constitution is the one that succeeds in optimizing the advantages of the different forms of government, countering the threat of their respective degeneration: Monarchy into Tyranny, Aristocracy into Oligarchy. Later, Constitutionalism was the object of Polybius and Cicerone's studies, which elaborated the idea of a mixed constitution built on the limitation of powers (Bobbio 1976, p. 201-211). Within this reasoning, constitutions appear as "devices of order and stability that tame the human propensity to violence and unreason" (Blokker 2017). This idea will create the premises for the development of modern Constitutionalism intended as a tempered power through the equilibrium among social groups. This perspective also implied a reciprocal control of the political institutions that would find application in a society based on equal rights of citizenship.

By keeping following the wire of Constitutionalism throughout history, we come across the so-called medieval Constitutionalism (Vile 1967). In the Middle Age, the political assets were characterized by the coexistence of two centres of power, both with a pretense of universality: The Empire and the Papacy, which exercised their respective authority within the feudal society. In the same period, the idea of limiting the absolute power was matured by several scholars among whom, Tommaso d' Aquino. In his opinion, the best constitution was that one based on the collaboration between nobility and population, on the legislative process as well as on the 'election' of the Monarch.

The concept of Constitutionalism keeps being developed then, when "the demand for freedom from the arbitrary rule" started to shape the minds of the men of the post-Renaissance era (Crisafulli 1970). At the time, the model of a mixed constitution was seen by Machiavelli as the remedy to the existent conflicts between the aristocracy and people that were threatening the Republic of Florence. It was during this historical period that the concept of a government founded on a check and balances mechanism-aimed at regulating the social conflict- started to be better delineated (Viola 2009, p. 247-255). The path of Constitutionalism saw then, the conceiving of the firsts Constitutional Charters,

promulgated in North America, France, and some other European Country. While in Britain, starting from the promulgation of the Magna Charta in 1215 to the development -in the following centuries- of a limited Monarchy and parliamentary representation, the principles of Constitutionalism have already been conceived (Carrozza 2013, p. 1-49). There, starting from the age of the Tudor in the XVI century, a constitutional doctrine based on the cooperation between the King, the Lords and the Commons, became the logic of the political power's exercise. If Constitutionalism represents the set of principles that characterize a form of government called *constitutional*, then it can be said that the first form of Constitutional State was the one conceived in Britain in 1689. Although it was not a smooth and painless process -since a civil war exploded- it was right after the so-called Glorious Revolution that the King and the Parliament accepted a Declaration that defined the limit of the royal power. However, the idea of a constitution as supreme Law will mature later, with the rebellion of the English colonies against the Motherland in the XVII century (Carrozza 2013, p. 1-49). If one imagines the modern European State as a two sided figure, we can notice on the first side the XIV century European tendency of concentrating power and, on the second one, the parallel trend of limiting that power, providing limits and guarantees and introducing the element of participation and consensus through the representative assemblies. This is the double vocation of constitutionalism, as it has been defined by Fioravanti, detectable in two forces simultaneously in act: resistance and participation: Two elements that would shape the modern Constitutionalism (Fioravanti 2008).

The American constitutional experience would start in reaction to the Britain tradition and resulted, in fact, in a written constitution -unlike England- as well as in the separation of powers, federalism, and a presidential government. The conditions of the modern Constitutionalism are even more precisely retraceable in 1776. In that year one of the first Constitutional documents of the American revolution, the Bill of Rights of Virginia, that codified the individual rights at the bases of government, was promulgated (Carrozza 2013, p. 1-49). The idea of a constitutional government that came into being in the American experience resumed the theme of a government limited by the Law, although projected in the wider spaces of the federation.

Finally, the full maturation of this process will be reached in France because of the 1789 Revolution. In fact, the most known definition of Constitutionalism is the one that

identifies it with the separation of power, as it was stated by the *Déclaration des droits de l'homme e du citoyen* of 1789 (Bobbio 1976, p. 201-211). Specifically, Article 16 of the same dictates that "Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution." (*Déclaration des droits de l'homme e du citoyen* 1789). In harmony with this definition, still today, Constitutionalism is meant as the tripartition of the State's power as Montesquieu conceived it.

As it was argued by Carl Friederich in his *Constitutional Government and Democracy*, "While absolutism, in all of his forms, foresees the *concentration* of the power's exercise, Constitutionalism, foresees the *distribution* of the power's exercise."(Germino 1979, p. 19-31). To endorsing this identification of constitutionalism with the concepts mentioned above, there have also been prestigious minds, such as Locke, Montesquieu, Kant. Finally, it can be argued that although Constitutionalism moved its first steps through the events that characterized Europe during the revolutions of the XVII and XVIII centuries, it has been concretized in each State in a peculiarly and differently way. (Carrozza 2013, p. 1-49).

However, despite the differences in which it has been articulated, some common and functional characteristics can be detected. First, the constitution, as a set of legal norms deriving from a political decision and not presumed as given by God. Second, these norms are meant to regulate the exercise of power, and the regulation envisages limitations. Third, the preference for a rigid Constitution as the supreme law and as such any acts incompatible with it cannot be legally valid. And finally, the people as the only source of power (Rosenfeld, Sajò 2012). Precisely all these elements, if all present, determine the existence of Constitutionalism. Thus, Constitutionalism and Constitution appear to be one the precondition of the other: without the achievement of the former, the latter would have never been conceived, reducing in this way Constitutionalism to a mere set of descriptive principles. (Carrozza 2013, p. 1-49). At the same time, how could a constitution have emerged if a debate over the exercise of the political power would not have been developed? The questioning of the power's holders (which implied the demand for a limited government) and the consequent Revolutions in Britain and then in France, was the *conditio sine qua non* for the emersion of the modern Constitutionalism (Carrozza 2013, p. 1-49). Moreover, as Dieter Grimm pointed out, the revolution "was needed as a

breakthrough for this idea, not as a pre-condition for the constitutions which followed" (Grimm 2012).

The reconstruction of the Constitutionalism's path drives then the analysis to the XIX century. In fact, the liberal State's experiences re-elaborated the key themes -of the modern constitutional ideology- and oriented them towards the consolidation of the middle-class hegemony. The theory of the political power limits was re-visited by the liberalist approach with a function of enlargement of freedoms and private sphere protection. The role and the content of the liberal constitutions reflected a vision of a civil society characterized by the recognition of the economic liberties and civil rights. These features conjugated with the principle of nationality, which is born with Romanticism, will become the dominant themes of the modern Constitutionalism (Vile 1967). The latter, in its turn, would find in the national State, the adequate dimension in which being realized. Thus, the epicentre of the liberal State's constitutional setup became the representative assemblies, as the authentic institutional *locus* of the bourgeois hegemony. The functioning frame of the assemblies finally was the political representation based on a free mandate (Burke 1774) in net contrast with the binding mandate. So that now, all the debates related to the guarantee of the citizens' rights, had to take place within the parliamentary discussion. At that point, in the liberal system, constitutionalism identified and intertwined itself with parliamentarism (Carrozza 2013, p. 1-49).

In XX century's Europe, the enlargement of the electoral suffrage and the birth of organized parties led to the openness of the political process to the participation of the masses. The impact of democracy, as well as the development of the social movements, seemed to question the heritage of Constitutionalism and overload the Constitution with the task of political unification of society now even more pluralistic, fragmented and complex. In fact, in the aftermath of WWI, the entrance of the civil society's dimension in the scenario of European Constitutions brought with it all the factors of conflict that are intrinsic in the nature of the civil society itself (Carrozza 2013, p. 1-49). Starting from this point, the same Constitutions would be subject to an enlargement of civil, political, and social rights foreseen, because of the enlargement of the social basis. These became factors of containment and integration of the pluralism's dynamics. It can be argued indeed that the complex question of constitutionalism-democracy relationship deeply rooted in this "phase" of Constitutionalism's evolution (Viola 2009, 247-255). From this

very question, between the two World Wars, it has emerged the common thread of constitutionalism of liberal and democratic inspiration. In fact, the two World Wars led to a conception of the constitution as the supreme regulator and guardian of the democratic process which in its turn is meant to realize the constant compromise among the pluralistic and diversified views stemming from the society (Carrozza 2013, p. 1-49).

After having retraced the main steps of Constitutionalism's evolution, the definition of a constitutional State appears brighter. The latter summarises all the transformations offered by Constitutionalism within the pluralistic democracies. It led to the creation of a model that subsequently spreads thanks to International Conventions and the ferment of the supranational integration processes. It has been argued that this model, based on popular sovereignty, the tripartition of the State's powers and explicit constitutional contents -as human dignity and individual rights- opened the ground to the full affirmation of the Constitution's supremacy. Specifically, through the development of the institutions responsible for the control of constitutionality.

Thus, the elaboration of the constitutional State represents the landing place of a complex and troubled itinerary, started, as it has been said, with the bourgeois 'revolutions. This had meant that the constitution does not impose itself as the expression of State sovereignty and its limits and, that it envisages the coordination of distinctive spheres: the private, the public and the State's one (Viola 2009, p. 247-255). The passage to a Constitutional State would have resulted then, in the reformulation of Constitutionalism in a dimension able to answer to the demands of a pluralistic society. Hence, pluralism became the qualifying element of a constitution's effectiveness. Overall, it seems that Constitutionalism had spread significantly at the beginning of the XXI century and that from there a common constitutional heritage in Europe has been delineated on a global scale. It has, in fact, inspired the transition that accompanied the passage from authoritarian States and the process of decolonization of several European, Asiatic, African, and South American Countries (Carrozza 2013, p. 1-49). But it is in the last three decades that we can witness a large-scale diffusion of *constitution-making* process inspired by Constitutional principles. So that now it is possible to provide a definition of the term "Constitution", which, according to Dicey is the complex of norms that "determine the distribution and the exercise of the sovereign power, or the members of the sovereign power and the relation among such members" (Dicey 1889). The adoption

of constitutional texts had interested most of the European Countries as well as societies characterized by delays in the process of secularization, modernization and development and it has invested, above all, the sphere of human rights. Despite the just mentioned achievement by some States, it should not be underestimated that, realities of tensions and marginalization are still in place even in those geographic areas that may appear immune from that (Barberis 2012, p.5). Moreover, not all of these constitutions enjoy the same normative strength or effective value in terms of supremacy concerning other laws. This depends on factors that are extra-constitutional: as the ones that derive from the historical and cultural contexts, the features of the social structure and the deep-rooted religious traditions (Viola 2009, p. 247-255).

To summarize, on the one hand, it has been said that Constitutionalism consists of the entrenchment of the *separation* of powers principle and the protection of fundamental rights, to impede the arbitrary use of public powers; nevertheless, the modalities of dividing power appear historically different and sometimes these have followed distinct logics one from another. On the other hand, Constitutionalism has been defined as the *limitation* of power, but here too, the historical solutions have been diverse in each reality (Bobbio 1976, p. 201-211). The historical path and the developed features configure constitutionalism as the technique of freedom, meaning the juridical procedure through which the exercise of the individual rights it is guaranteed to the citizens. At the same time, it refers to a condition in which the State is built in order to make the same unable to violate those rights. Moreover, if the techniques may vary depending on the traditions and development of each country, the idea of citizen's freedom remains the ultimate goal, on which the techniques are based and organized (Carrozza 2013, p. 1-49).

1.2 Islamic Constitutionalism

The concept of Constitutionalism in Western legal tradition acquired a significance able to overcome the strict meaning of its etymology. The themes related to it, such as the rule of law, the safeguards of human rights, the limitation of power, bear a consistent semantic burden that leads the same to be conceived as universal: "concepts that are truly fundamental should not be of local relevance" (Bahlul 2005). Starting from this point, the analysis will investigate the meaning of Constitutionalism in the Islamic political thought,

if any. It is particularly complex to retrace the roots, the scaffolding, and a precise trajectory of Islamic constitutional path throughout history. This mainly because it assumed specific and dissimilar features across the Middle East and North Africa. Each one of the Arab Countries can be considered as a distinct reality within this multiple dimension that is the Islamic system, depending on the type and intensity of contacts with the West, and the school of Islamic political thought that has taken root in each specific area (Abdalhadi, Gahad 2015). Given the variety and the peculiarities of the Islamic world, as Professor Corrao argued, one cannot look at political Islam as a monolithic reality. Moreover, the complexity of the matter is exacerbated by the fact that the historical contacts with the West often provoked, contradictory reactions in the Arab States: on the one hand, the pursuit of integration, on the other, the rejection of any form of contamination. Some of them distanced themselves from the Western system to stress the Islamic cultural diversity (Corrao 2014, p. 209-210). Starting from this point and to provide a clearer picture of the matter, an overview of Islamic Law's sources appears necessary. This would help to understand what Islamic Law is, the place that it has in society, to finally retrace if there is ground to talk about Islamic Constitutionalism.

First of all, the science of the Islamic Law, *ilm'al-fiqh,* is divided in written sources: the holy book of Islam, the Quran, and Sunna (the Tradition, based on the Hadith, traditions, and sayings of the Prophet), and oral sources, which are the Consent and the Analogy. While, the branches, *Furu,* comprehend the Public Law, the Criminal and part of the Private one. Second, the Quran, by being the word of God, revealed through the Archangel Gabriel to Muhammad, is immutable, infallible, and universal (Gouda 2013). It consists of general and specific rules. These rules usually deal with matters related to family, commercial or criminal law, while the generals, among other areas, address the matter of constitutional law. Third, because of their general nature, the activity of interpretation is needed before a rule is applied to a specific case. The interpretation is entrusted to the so-called *mujtahids,* literally "those who study hard" or "those who exert themselves intellectually" whose exercise clarifies the *ijtihad,* the interpretation (al-Hibri 1992). The Sunnah, comprising the *Hadith,* refers to the actions and sayings of the Prophet and is used to "supplement Quranic laws and helps to interpret them" (al-Hibri 1992). Finally, the Quran, the Sunna, and the Hadith constitute the Sharia and so "the body of Islamic law" even though several laws conceived by the Islamic Jurisprudence

are now part of the Sharia as well. As Laysh pointed out, the latter is a set of jurist laws or judge-made law (Laysh 2004, p. 85-113). These laws are developed by using two further sources, already mentioned: consensus and reasoning -through analogy- from which rulings are derived. This activity of extrapolating rules of conducts from the legitimate sources is carried on by the jurists and the *muftis* -the jurisconsults-who answer with legal tools to specific questions related to the Islamic law (Carrozza 2013, p. 1-49). By looking at the development of the Islamic constitutionalism's characteristics, it will appear clear that this concept is nevertheless recent. In fact, it refers to a philosophy that spread in the XIX century, when, in the aftermath of the independence from the colonial domination, the priority was to set up a State on Islamic grounds (Arjomand 2007). From this very approach, it emerges the first main dissimilarity between the Western perspective and the Islamic one in terms of constitutional doctrine. The discrepancy lies in their respective aims: the former is oriented at limiting the public powers and making them accountable to each other, the latter seeks to find a collocation for the Sharia, within the architecture of the State system (Longo 2013, p. 2-41).

Starting from the period of independence, in the mid-twentieth century, it is possible to individuate a classification of the constitutional phenomena in the Islamic context, on the bases of *models.* These refer to the relation that elapses among the constitutions of the examined Countries and their respective role models. This relation, obviously, emerges in different historical phases that in their turns have characterized the Constitutional path of the Islamic Countries (Canal, Forgues 2000). As it has been said, the legal systems considered here, prevalently refer to those that came into being after the process of decolonization. Although, before the colonial phase, some constitutional experiments have been already made, although different from the European ones. Among those, the Ottoman Constitutional project of reforms. The first document granted by the Sultan has been the *Hatti Sharif* of Gulhane in 1839, with which the Tanzimat- the process of reforms- started. It aimed at the re-organization of the State and the beginning of codification based on the European model. This has been followed by the *Hatti-Humayun* in 1856, through which the formal equality of the citizens has been affirmed for the first time, in parallel with the recognition of the religious nationalities or *Millet*, as free-standing communities. This process culminated with the adoption of the first Constitutional Charter of the Ottoman Empire in 1876, the *Kanun-i-Esasi*. Within the

latter, the principles of the parliamentary government and the equality among citizens have been combined with Islamic practices: The Sultan, for instance, is recognized as the Head of the Muslim Community. This combination is in fact, the proof of the attempt of not abandoning the Islamic identity despite the introduction of a foreign model of codification. In the same period, it was conceived the first codification of the Ottoman civil code, the *Mejelle (*Laysh 2004, p. 85-113).

All these changes that took place in the early days of the XIX century have been both the consequence of the Western pressure and the desire of auto conservation of the Ottoman leadership in preserving the fate of the Empire in the face of the crisis it was going through. This process set in motion -for the first time- the subordination of the Shariatic Law to the State's one (Castro 2007). It must be said that the Tanzimat reformers showed resistance to the full-fledged Constitutional and parliamentary rule. In fact, the latter would inevitably bring within the central government non-Muslim elements, that, instead, the rulers were trying to keep out. The Young Ottomans, instead, refused the absolute print of the Tanzimat and pushed for constitutional rule. However, these circumstances appear crucial in the development of the future Islamic political discourse, since they allowed the emersion of a first and embryonal political confrontation.

With the fall of the Ottoman Empire, at the end of WWI, some of the Arab Countries became nation States, while others, saw their sovereignty limited by the UN mandates of French and Britain. But starting from this period until WWII, Constitutionalism witnessed a forward thrust towards the laicization of the law, and the Ottoman legislation was gradually substituted by a national legislative activity (Castro 2007). This phase has been characterized by a high reception of the western normative models and by the implant of new juridical conceptions. Historically, this permeation of the Western print within the Arab "Constitutional discourse" happened because of the physical presence of the European powers in this area, already intensified after the signature of the *Entente Cordial* between United Kingdome and France in 1904. In this way, the two established their respective areas of influence: Egypt and Sudan to the former, Tunisia, Algeria, and Morocco to the latter. As it has been said, the presence of foreign powers in the administrative system of the colonies fostered and eased the exchange of knowledge as well as the maturation of a new thinking among the Muslim citizens. To the point that some exponents of the middle-class absorbed the European approach to the political life,

by claiming a more active role and the recognition of political rights. Eventually, also encountering the opposition of the more conservative factions. However, the cultural and political ferment that the contacts with the Europeans led to some Constitutional experiments in the area of North Africa. Hence, even though several legal systems rose subsequently to WWII, various examples already existed before, such as in Egypt, Syria, and Jordan.

The above-mentioned classification, as it was sustained by Olivero in his *Paesi del Mondo Islamico* (Carrozza 2013, p. 1-49), divides the Constitutions of the Arabs Countries in two groups in relation to their *liberal* or *socialist* model of derivation. The first one, comprehends almost all the constitutions adopted in the aftermath of the State's independence. These Constitutions were influenced by the fundamental Charters of the old colonial powers, and mostly by the English and French model. The acceptance of liberal elements led to the reception of some fundamental institutes, already consolidated in the West: the national sovereignty, the separation of powers, minorities guarantees (Carrozza 2013, p. 1-49). In this regard, it can be mention, for instance, the case of the Moroccan constitution of 1972 in which it has been affirmed the national sovereignty doctrine while the King embodied the supreme representant of the nation. On the same track, the Tunisian Constitution of 1959 in its preamble, recognized the separation between the Legislative, the Executive, and the Judiciary (Castro 2007). The second group, instead, refers to those constitutions that manifested the adhesion to the principles of socialism and the concentration of powers in the hand of the national leader. The unification between State and Party was useful in simplifying the organizational structures as the centralism did. These kinds of constitutions presented common characteristics: the revolutionary dictatorship as a form of government, the submission of the State's powers to the law, the single-party identification with the State's organization (Carrozza 2013, p. 1-49). However, after independence, the constitutions that were inspired by liberalism have been the object of a radical change: in most of the States, an in-depth process of rejection of the liberal model gradually took shape, accompanied by a rapid concentration of power in the presidential Executive. The failure of the imported constitutions produced a series of constitutional texts with the unique purpose of legitimizing the leadership rather than being a real attempt of reforming. Thus, the just

delineated political and Constitutional framework clearly expresses the limited and complex affirmation of Constitutionalism in the Arab context in this phase (Bahlul 2007).

In several cases, the gap between the adoption of liberal-democratic principles and their effective transposition is deep and net. Those cases often constitute façade democracies which foresee the constitution as a mere instrument of government rather than a set of values. It is from this very point that the debate- which still exists today- arises. In fact, the type of systems just reported, might lead to think about the Islamic principles as antithetic to the nature of constitutionalism itself (Faruki 1971). This assumption makes it even more clear that the constitutionalism's challenge of the XXI century is to accommodate these principles, without suppressing them, but within the logic and values of Democracy (Esposito 1996).

To make this possible and workable, it is now necessary to pose our self a key question: What is the relationship between Sharia and Constitutionalism? A question that inevitably opens the ground to further debate, since the answer might be strictly connected with the nature of Sharia itself. In his *In Search of Islamic Constitutionalism,* Hosen points out that there are two lines of thought over the argument (Hosen 2004, p. 1-10). The opponents of Islamic constitutional law sustain that Sharia perfectly meets the necessities of the *Umma* -the community- hence, constitutionalism is not needed. Moreover, Sharia is God's Law, therefore above any human-made Law, and it already offers a system of government. The counterargument is that Islam -and so Sharia- does not have a relationship with Government administration, hence neither a Constitution should. In fact, "it would be misleading to enforce the Sharia through a constitution" (Hosen 2004, p. 1-10). Both assumptions even though differently one from another, make no possible to individuate a relationship between Sharia and Constitutionalism. It follows that the former cannot be placed above or outside the latter. The connection between Islam and Constitutionalism can also be analysed on an etymologic plan. Some of the terms that usually described constitutionalism- the rule of law, *Etat de Droit*- own their translation in Arabic. For instance, the equivalent of the former is *hukum al-qanun,* while the latter can be translated with the word, *dawalat al-qanun.* Instead, *Constitutionalism* seems not to have a proper equivalent in the Arabic language (Bahlul 2007).

However, as argued by Bahlul, one should not exclude on these bases and *a priori* that the Islamic political thought and the Western one present similarities. Two main arguments support his assumption. The first one refers to the cultural tradition of the two realities- Islam and the West- whose both have been influenced by a monotheistic faith. Hence, it can be said that despite the doctrinal dissimilarities, the two "speak the same religious language" (Baldwin 2007). The second one, finds the two political traditions as both objects of the Greek's political thought influence, although they differently assimilated it. Even though the discussed points are not enough to claim that the notion of Constitutionalism does exist within the Islamic political thought, Bahul, Al-Turabi, and other scholars believe that a comprehensive constitution is laid down within Sharia itself. Others, such as Faruki, even retraced elements of Constitutionalism at the time of the first Muslim community (Faruki 1971). Specifically, concerning the Medina Charter. The latter presents "the first constitution of democracy in the history of constitutional rule" (Khatab, Bouma 2007) inspired by the principles of the Quran and Sunnah, aimed at ensuring justice and equality within a multi-religious society, by safeguarding the maintenance of peace, the respect of property and the freedom of religion and movement (Khatab, Bouma 2007). Furthermore, it fixed the pillars of the Islamic political thought: *Tawhid*, the Unity of God, the prophethood, the caliphate, instituted rights and obligations of the Umma and provided the scaffolding of the future caliphate (Faruki 1971). More specifically, since *Tawhid* refers to God as Master of the Universe, it follows that He is also sovereignty's holder of his Kingdome. Hence, here lies the deepest difference between the Islamic constitutionalism and the Western one, in which, instead, only the people detain the sovereignty. A counterargument is proposed by Esposito and Voll, and other scholars such as Ghannouchi, Bisharah, whereby the Islamic legacy might provide a set of fundamental principles that "can support Constitutionalism in the Islamic world" (Esposito, Voll 1996). In this respect, one can also cite the "multivalent thinking" of Glenn, whereby a comparison between the two legal traditions is it possible also just because, "all traditions contain elements of others, thus there are always common elements and common subjects of discussion" (Glenn 2000). Therefore, he claims that a secular legal tradition is compatible and commensurable with a religious legal tradition, as the Islamic one (Glenn 2000). A further counterargument is the one provided by the modern Islamic theorist, Mawdudi, who believes that an Islamic constitution "already

exists, and that is only awaiting efforts to codify it based on its original sources, which are identical with the sources as Sharia"(Mawdudi 1975). Among the principles that may recall a constitutionalist print on the Islamic system: consensus, consultation, limitation to the arbitrary exercise of power (Mawdudi 1975).

The consensus of the Ummah was established in parallel with the foundation of the Islamic State. It is collocated right behind the Quran and the Sunnah on the bases of Muhammad's statement whereby the community would never agree upon an error. From here the concept of infallibility of the unanimous opinion of the *Ummah.* The *raison d'etre* of *Ijma*, the consensus, lies in the absence of a church, or ecclesiastic hierarchy as well as councils within the Islamic reality (Arjomand 2007). Thus, in order to solve the doubtful theological or juridical question, Muslims rely on the principle of infallibility of the consensus, as the expression of the Community, or representants. It must be said that the value and the admissibility of this principle various between Sunnis and Shiites. Precisely, the latter, conceives *Ijma* as the opinion of the *Imam.* However, the principle of Ijma shows that Islamic laws "rest their legality on the consent of the community" (al-Hibri 1992) making the whole system of government sufficiently flexible and compatible with a democratic structure. The feature of flexibility is also retraceable in the activity of interpretation and implementation of the Quran "to produce laws suitable to a certain epoch and society"(al-Hibri 1992). The same activity may be individuated in the promulgation of the amendments foreseen in some Western constitution- such as the US one- (al-Hibri 1992) with the aim of better clarifying and supplementing constitutional principles. The concept of *Ijma* might demonstrate that "Islamic political thought is rescued from the charge of autocracy by the need of the rulers to consult widely and to govern on the basis of consensus" (Esposito, Piscatori 1991). As far as the Islamic principle of Consultation is concerned, the latter has been part of the Islamic "logic" since the very beginning. Although the legislative, the executive and the judiciary powers were all held by the Prophet, the messenger of God, He used to consult his companions concerning several matters, and he urged the community to do the same (An-Na'im 2008). The Quran itself mentions the consultation by communicating to the Prophet the importance of this principle in an imperative form: Muslims must take their decision, of public or political concerns through consultation. "It is up to the people to enunciate legal opinions for what they need of detailed legislation, through independent reasoning" (al-

Hibri 1992). The Consultation was, in fact, the method with which the Caliphs were appointed in ancient Islam. At that time, the employed logic of governing was defined by a specific formula: “There can be no government without men, no men without money, no money without prosperity and no prosperity without justice and good administration” (Arjomand 2007). This concept of government called the “Circle of Justice” was the ideology upon which the ancient Islamic society entrusted those in power the maintenance of justice and equilibrium (Arjomand 2007). Such ideology makes it even more clear that the Muslim community was not concerned about theoretical or juridical legitimacy but rather with popular legitimacy, being the latter, the standards that rulers had to follow to gain political support from their subjects (Arjomand 2007). Starting from this point, several scholars have found in the consultation mechanism a feature like one of the democratic systems, which obviously, does not mean that the two are identical. By seeking to retrace elements of Islamic constitutionalism within the legal sources of Islam itself, it is useful to follow this reasoning: The principle of sovereignty in Muslim reality does not rest properly in God but in the law by God. This means that sovereignty is of the Law, which limits and regulates the governmental power (An-Na’im 2008). One of the means used to limit power is consultation, and that may recall democracy in its widest sense, increasing the similarities between the two systems, or at least do not make a priori Islam adverse to democracy. Furthermore, the fact that Sharia provides only “broad basic principles” (al-Hibri 1992) keeping silent on several issues might open the door to “human legislation” which -for definition- it is not absolute (Esposito 1983). Thus, from this reasoning, it emerged that: “in Islam, people legislate over people as people legislate over people in a democracy."(Esposito 1983). On these bases, the unique difference appears to be that in Islam, people legislate on the bases of the spirit of Sharia. The legal implication of these arguments is that Islam cannot be assimilated to an absolute or authoritarian form of government since it is a government limited to a Constitution with defined borders and features” (al-Hibri 1992). In order to identify traces of Constitutionalism within the Islamic paradigm, one should also inquire if the latter foresees or non-foresee one of the forefronts of Constitutionalism’s principles: the separation of power's principle. In this regard, it needs to be said that it is incorrect to identify the head of the State as an absolute ruler. He is in fact, subject to the consensus of the community, the authority of Sharia as well as to the support of the *ulama* and

mujtahids according to the principle of *wakala*- representation- (Arjomand 2007). Islamic Constitutionalism employs this concept: the head of the state represents the Ummah by virtue of a representation's contract, thus, the principle "endorses the republican substance of the Islamic system and many of the necessary ingredients of a democratic approach to governance"(Kamali 2014). In this regard, the opinion of Wahba al-Zuhailyis that the separation of power mechanism in the Islamic system is not only validated in functional terms-because of the presence of the consensus and ijtihad- but it appears among the constitutive principles. In the word of Wahba al-Zuhaily "both the Islamic and western democracies reject despotism and consider the people as the locus of authority in political and government affairs." (Kamali 2014). Professor Mohammad Hashim Kamali in his *Separation of Powers: An Islamic Perspective*, focused on the abovementioned arguments to point out that the separation of power is neither un-Islamic nor anti-Islamic, although the principle in question is not a pillar of the Sharia, but eventually a "sub-theme of judicious policy"(Kamali 2014). This very reasoning opens the ground to the delineation of Islamic society as based on the concepts of good governance and public interest. A society in which the political authority is held by the community and the exercise of this authority is set by the Constitution, through which people impose the degree of power's limitation. Obviously, these assumptions imply a view of the separation and limitation of power, not as a monolithic concept. But rather, as the subject of various forms and dimensions according to the degree of democratization, or development of a State (Arjomand 2007). However, in this regard, there is a counterargument, proposed by Bahul, which makes leverage on the connection between constitutionalism, separation of powers, and democracy. In his opinion, these elements have found their co-existence in the West society within the secularist system, so how then, can Islam be compatible with Democracy if it is not secular? Democracy implies the guarantee of equal rights and opportunities regardless of race, sexual orientation, ethnicity, and religion (Bahul 2005). On the one hand, however, it would be unthinkable that a Christian or a Jewish might hold public offices within an Islamic system of government. Taking the just mentioned case as an example, can be Islam considered compatible with democracy? And if Constitutionalism requires Democracy and Democracy presupposed secularism, it means that constitutionalism as well implies secularism, which instead is rejected by Islam. Standing from this point of view, Islam appears not assimilable with both Democracy and

Constitutionalism (Bahul 2005). On the other hand, democracy is defined by equality, representation, majority rule, and not with secularism. In this view, the latter is a philosophy among many others, at the exact antipode of religion when it comes to regulating society. Islam, in the same way, can be conceived as a different type of philosophy, with its own conception of citizens' rights and obligation, as long as people's rights are guaranteed (An-Na'im 2008).This reasoning might lead to think about Constitutionalism as realizable according to the peculiar features and perspective of rights and obligations. This can create space for a unique type of Constitutionalism: the Islamic one, which is for some aspects similar, for others dissimilar to that one of the West. Considering the above reflection, it appears that, on the bases of the Islamic political thought, two dimensions of sovereignty can be individuated (Abdalhadi, Gahad 2015). The two proceed not individually but hand in hand. For instance, the existence of Judicial sovereignty does not exclude the contemporaneous presence of the executive one, which is embodied by the will of the Community. To conclude, the democratic element here lies in the power of the people to choose their own ruler giving voice to their will (Abdalhadi, Gahad 2015).

As it has been said before, one of the features of Constitutionalism is the rule of law, whose determinant element is the protection of human rights. Thus, here the analysis will briefly refer to the notion of Constitutionalism of the latter within the Islamic system. Undoubtfully several divergences exist between the Shariatic approach and the contemporary idea of human rights. It can be taken as an example article 18 of the UN Declaration of Human Rights, the one that establishes the freedom of thought, conscience, and religion. Indeed, a considerable group of Muslim jurists condemns apostasy as a punishable act, even with death (An-Na'im 2008). In this regard, the study of Gouda, whose core is the human rights' protection, leads to a clear assumption: "Islamic constitutionalism is significantly inconsistent with many modern legal principles particularly concerning human rights"(Gouda 2013). However, his point of view does not exclude the possibility of making Sharia coping with contemporary Western legal thought. At the same time, this consideration opens the ground to the broader debate over a re-interpretation of Islamic sources aimed at developing laws based on human rights 'safeguard and the rule of law, as a way of harmonizing the Islamic system with modern-day constitutionalism (Gouda 2013).

1.3 Forms of Government

The just elucidated debate over Islamic Constitutionalism is functional to face the core of this thesis. By having acquired knowledge of the features of the Islamic system, it will be possible to analyse the institutional framework of Morocco, Tunisia, and Jordan. The choice of examining these Countries is justified by the fact that three States might be an example of a compromise between the Islamic paradigm and a functioning institutional setup. The first useful step is to analyse the concept of "form of government". The latter is conceived of as the complex of juridical rules, either written or consuetudinary, that characterizes the distribution of political power among the constitutional organs (Bobbio 1976, p. 201-211). Those are at the apex of the State apparatus and enjoy a condition of equal sovereignty and mutual dependence. Among those, the Parliament, the Government, the Head of the State. The identification of the forms of government, separately from the concept of forms State, has been emerged only with the affirmation of the liberal State (Amato 2006). In fact, at the time of the Absolute State, the exercise of power was characterized by a monocratic concentration in the hand of the Monarch, and no inter-organic dynamic existed. Among the various definitions, the one provided by Mortari identifies the form of government with the organization and exercise of the supreme authority of the State (Lanchester 1990, p. 814). But since the ancient times, various criteria of forms of government classification have been elaborated. Aristotle, for instance, distinguished among the good ones -monarchy, aristocracy, and politeia- and the degenerated ones, as tyranny, oligarchy, and democracy (Amato 2006). However, with the advent of constitutionalism, the form of government has been directly related to its essential prerequisite: the separation of powers. Thus, the different models of governmental have been classified by referring to the degree of separation, which helped to determine forms of government with rigid separation -constitutional or presidential monarchy- or with flexible separation, for instance parliamentary. (Elia 1970). Furthermore, there has been made a distinction between monistic or dualistic models depending on the existence or non-existence of a relation of supremacy or equilibrium between the executive and the legislative. The former refers to the parliamentary form of government with the assembly prevalence or directorial governmental, in which there is a relation of supremacy among the organs. While within the second type, there can be individuated the constitutional and presidential monarchy or the classic parliamentary one

(Elia 1970). However, the most used criteria are those that refer to the type of relations among government and parliament, specifically under the profile of the existence of a relationship of confidence as well as to the head of the state's role. The classification that focuses on these elements identifies four categories of forms of government: parliamentary, presidential, semi-presidential, directorial (Sartori 2004). Furthermore, within the doctrine, it has been proposed to distinguish the forms of government based on the relationship between the electorate, political parties, and executive power. From this point, it has been elaborated a distinction among mediated and direct democracy (Galeotti 1984) or of Westminster type or consensual (Lijphart 1999). To summarize, the just mentioned classifications are useful to comprehend an important profile of the form of government- at least the democratic ones- the *modus operandi* of the popular investiture. In the opinion of Elia, it is sustained that the analysis of the forms of government of a democratic state should not be based on the pure and simple relationship among the constitutional order, because one cannot ignore the general political context in which the relation between executive and legislative is inserted. In other words, the concept of the form of government cannot be based on a static perspective built upon the written constitutional dispositions (Elia 1970). On the contrary, the perspective that should be used needs to be dynamic and to take into consideration the consuetudinary norms as well as the conventions, the electoral system, the party system. Hence, in the analysis of Elia, the forms of government, from static models become dynamics, deeply conditioned by the number of parties, their interrelations, the conventional rules as well as by the electoral mechanism of the representative assemblies. In the light of the above, Elia identifies six forms of government: the parliamentary one with a rigid two-party system, with a tempered multi-party system, with an exasperated multi-party system, presidential government, government with presidential and parliamentary components, directorial government (Elia 1970). His view, as elucidated in his *Governo (Forme di)*, stems from the idea that the study of the forms of government should not prescind from the analysis of the party context. In fact, he sustains, it is within the latter that the organization of the relationship between executive and legislative are determined. In this way, the author demolished a fixed point of the constitutional and dogmatic doctrine by assuming that the party system affects the functioning of the form of government (Pace 2010). Following this reasoning, it appears that the number of parties in competition heavily influences the

functioning of the relative form of government. Whether rigid, tempered, or multiparty-the party system has an incidence in the choice of the Premier, in the formation of the cabinet, in the duration of the executives and legislatures as well as in the capacity of realizing the political line of the majority (Pace 2010). Even more decisive is the potential of coalition among parties, that might determine a bipolar or multipolar logic of the form of government. Systems that have a considerable number of parties, trough coalition's agreements, could operate in the same way of bipartite systems or of tempered multi-party systems. Even the ideological polarization might have a strong impact. The latter can oscillate between the two extremes: the convention *ad excludendum* toward one or more political forces which are a priori excluded from direct responsibilities of government or the recognition of equal legitimization of all the parties to govern. This last mechanism would be in harmony with the concept of alternation and correct dialectic. Here, the relevance of the party system is not only connected to the architecture of the form of government but even more broadly to Democracy: the risk of a deficit in the quality of representation could turn a crisis *within* Democracy into a crisis of Democracy herself (Elia 1970)

The historical steps that have led to the passage first from the Absolute State to the constitutional monarchy and then to the parliamentary government -especially in Europe- or to the presidential and semi-presidential one have produced different results depending on the geographical, cultural and political context (Barberis 2012, p. 5).In particular, the presidential form of government may be transposed both in a Monarchy and in a Republic. Within the former, the function of the head of the State is assumed by the King, while, within the latter, it rests with an elected President by a temporal mandate. At the center of the system, there is a unique power, the one of the Parliament, directly elected by the people and that exerts the legislative function. What characterized the parliamentarian model is the existence of a confidential relationship between the government and the parliament itself. The former holds the executive power, and it is a permanent emanation of the latter, from which it must obtain and maintain confidence (Pinelli 2006). The power of the parliament here is counterbalanced by the one of the Head of the State, among whose functions there is the early termination of the legislative body and the holding of new elections. At the same time, the Head of the State does not participate in the determination of the political line. This decisive role rests in fact, with a parliamentary

majority constituted by the parties or coalitions of parties that won the elections and hence, most of the seats in the parliament (Pinelli 2006). The presidential form of government has been traditionally defined as “pure" when three conditions are jointly satisfied. First, the direct popular election of the head of the State for a precise time duration. Second, the impossibility for the parliament to install or remove the government, given the lack of confidential relations between the two. Third, the power of the president to guide the governments nominated by him. Thus, governments are a presidential prerogative, since the latter exerts the power of nominate and substitute the members of the executive according to his discretion. With the term semi-presidentialism, it has been defined as a model that was originally constructed on the bases of the V French Republic experience (Rinella 1997). However, the theoretical scheme gradually was detached from the original model to be then applied to other constitutional experiences. Throughout time, this form of government acquired its own scientific autonomy with various facets depending on the framework of applicability. First, semi-presidentialism foresees the executive power sharing between the head of the State and a Prime Minister. This feature determines a structure of dual authority built upon two defining criteria: The President is independent of the Parliament, but he cannot govern either on his own or directly and, the Prime Minister is tied to the Parliament through confidence constraint and the sustain of the parliamentary majority. This peculiar structure allows several equilibria and mutable assets of power within the executive, as long as the autonomy of each executive component exists (Amato 2006)

During the XX century, even though the physiognomy of the public powers remained unaltered, the relationship between the same changed in the substance as well as in the democratic experiences of the West (Elia 1970). Specifically, for what concerns the downgrading of the legislative power, or the growth of the administrative dimension and the role of the executive, as well as of the judicial participation to the creation of the Law. Finally, the principle of separation of powers has been developed throughout the time and depending on the reference framework, for instance, separation-balancing (Beaud 2012, p. 47). It is then, from these concepts that it is interesting to investigate over the development of the contemporaneous forms of government of some of the Arab Countries, by examining the evolution of their own political and constitution balance and the events that lead to the complexity of their institutional arrangements. Those have been

historically characterized by the acceptance or net rejection of the democratic features and principles matured in the West. As it has been said, the constitutional texts, approved subsequently to the independence proclamation, were inspired by the principles conceived by the French experience and had delineated unbalance systems, because of the concentration of power in the hand of one organ, the king in the case of Morocco, the father of national independence in Tunisia (Oliviero 2013, p. 554-574). This reception of western model resulted as only partially with the inevitable consequence of often leading these governments towards episodes of paralysis, or on the contrary, towards an instrumentalization of the new constitutional rules. These considerations highlight how the relationship between principles and cultural values, social interests, and institutional arrangements, result particularly varied in the examined area. The latter, in fact, is caught between religious traditions and secular ones, as well as by influences of the colonial era, and recently by incentives towards innovation. Moreover, this connection between principles and culture assumed new shades subsequently to the events that interested the area of North Africa and the Middle East in 2011 (Rizzi 2011).

Almost ten years have passed since the young Tunisian Mohammad Bouazizi set himself alight as a protest, against the police that had seized his merchandise. That desperate act gave birth to the complex and heterogeneous movement improperly defined as Arab *springs*. Through the several regions of Tunisia until other Countries of North Africa and the Middle East, it declined itself in different ways within the various systems (Quirico 2011). The most relevant effects have been taken place in Tunisia, where the protests led to the fall of one of the most long-lived Arab regimes, the one of Ben Alì in charge for 23 years. However, his fall did not make the path of Tunisia towards democracy less troubled, given the contraposition between the Islamic and the secular forces. The provisional governments that followed had the only result an institutional and constitutional impasse that has been summarily resolved with the adoption of the 2014 Constitution (Sarsar 2013). Very different was the path of Morocco, where the popular protests have been polarized around the demands of the "*Mouvement 20 fèvrier*". The latter called for deep institutional reforms and the adoption of a democratic Constitution accusing the security system of the Monarchy, its patronage practices, and the financial oligarchy predominance. Even though the protests were not directed to the King himself, to preserve the status quo and the legitimacy of the Monarchy, he launched a

Constitutional reform, that has been ratified on the first of July 2011 (Tamburini 2011, p. 155). However, the examination of the constitutional and political path faced by these Countries will provide us the elements to evaluate the degree of application of the check and balances principles and the constitutional ones (Touzeil, Divina 2012, p. 29).

The path undertaken by Morocco and Tunisia has alternated steps forward towards the democratization of decisional processes and of the State's institutional structure with the adoption of mechanisms aimed at favouring the concentration of power. This concentration has generally taken place around the monocratic organs. A path that has been developed since independence until the more recent Constitutions in the early years of the XXI century, to be then influenced by the Arab revolutions (Fiumicelli, Barbarito 2014). The passage from the *pars destruens* of the riots, so the destabilization of the various regimes, to the *pars construens*, the construction of a new democratic system, led to the emersion of a series of contradictions (Fiumicelli, Barbarito 2014). This process has also been characterized by attempts of maintaining an institutional framework in line with the conservative traditions of these Country, as the re-emersion of Islamic models. Both the fundamentalists and the moderates sustained the latter. The outcome of this complex evolution leads to an ever-changing situation that in its turns lead to a period of constitutional impasse (De Michelis 2012). From the interpretation of the complex political reality of these Countries, it emerges that in the period running from the independence and the revolts of 2011, the area of North Africa witnessed a proliferation of Constitutional Charters. However, in most of the cases, the same Constitutions appear emptied by their deepest significance: the guarantee and programmatic function (Longo 2013, p. 2-41). Conversely, those result subordinated to the instances of the regime in charge and aimed at legitimizing the leader. As it will emerge from the historical excursus of Morocco and Tunisia, both Countries adopted a form of government tendentially presidential or semi-presidential rather than parliamentary. The choice was justified by the intent of ensuring the power to the executive, represented by the King or the President of the Republic (Mohsen-Finan 2013, p. 105). The increasing marginalization of the Parliament relegated to an auxiliary role with respect to the executive as well as the marginalization of the Judicial power-conceived as embodying a mere administrative function- led to the transfiguration of the paradigms used as a reference. Regarding this, it has been talking about a system "presidential in the form" but "presidential in the

substance" or about "Islamic neo-presidentialism" (Oliviero 2013, p. 554-574). The latter aimed at highlighting the presence of an institutional structure characterized by an uncontrolled strengthening of the executive and by a preeminent permanence of the President devoid of the check and balances system (Oliviero 2013, p. 554-574). A further constitutive element retraceable in these constitutional experiences refers to the choice of the single-party system, as it happened in Tunisia with *Néo Destur* and in Morocco with *Istiqlal* (Baudel 1986, p. 10-51). From a historical perspective, the end of the 80s represents an inversion of tendency concerning the dynamics until now depicted. The end of the bipolarism, in fact, pushed the Maghreb Countries towards a slow process of democratization and important constitutional revisions. These fall within the so-called "third wave of democratization" phenomena (Huntington 1991). In this regard, there seem to be three guidelines within which the new constitutional cycle moves. The first one regards the tendency of strengthening the relationship between executive and legislative, by foreseeing confidence instruments that make the former accountable to the latter (Sbailò 2012, p. 801-835). Then, the aim became to ensure effective independence to the judiciary, by strengthening the autonomy of the judges, and to foresee a control of constitutionality over the laws. The final step is then, the introduction of the multi-party system, opening the way to political pluralism. The new path undertaken by these Countries does not seem to have led towards real democratization. On the contrary, it contributed to the maintenance of the status quo and the consolidation of authoritarian regimes (Sbailò 2012, p. 801-835). The Arab revolutions then were boosted by the request of democracy and political freedom, demands that have come up against government assets resistant to change (Ciranda 2012). The emersion of this clash resulted in most of the States the incapacity of realizing the passage from the protest to the legislative proposal. Even though the path that seems to have been taken by some governments is oriented towards the realization of a more modern and secular state, but always inspired by Islamic values (Andò 2013, p. 41). Specifically, the attempt is to create the appropriate framework for the achievement of a free and pluralistic democracy by defending at the same time the cultural and religious identity. In this view, the western model remains an important benchmark. The tendency seems the one of "democratizing on paper" by strengthening the prerogatives of the Prime Minister and the mechanism of confidence

that tied the latter to the Parliament but without being able to avoid the concentration of power in the hand of the monocratic organs (Mohsen-Finan 2013, p. 105).

II From the Arab Revolutions to the Constitutional and Democratic Transition

2.1 Towards the Arab Revolutions

Despite the launch of Constitutional experiments in the XX century, some elements, or the lack of them, hampered the realization of a complete Constitutional transition in the MENA area. These have even eased the development of authoritarian forms of power as it happened in Egypt with Mubarak, in the Tunisia of Ben Ali, in Libya with Ghedaffi. Among these elements: the lack of national identity, the presence of ideological fractures within the leaderships of the MENA's States, the instrumentalization of the national sentiment, the existence of a military bureaucracy. In which way, all these elements conditioned the Constitutional and democratic transition process in the considered States? Firstly, the national identity is considered a necessary condition in the State-building process. However, some of the Arab States, as Jordan and other Gulf Countries, have been created as mosaics of different languages and ethnicities, whose borders have been defined by the colonizer Countries (Campanini 2009). This reality has inevitably impeded the birth of a unique national sentiment. The same reality had also legitimized -throughout the time- the adoption of repressive measures by the political organs to contain the advance of auto-determination's demands of the nationalist groups. Secondly, the ideological fracture that characterized the Arab societies during this phase strongly divided the leadership's policy between the necessity of sustaining modernity or tradition. The alternation of these contradictory necessities influenced then, the adopted Constitution, impeding the formation of an internal conscience able to launch a real process of constitutional transition (Vatikiotis 1993, p. 109). Thirdly, during the XX century, the nationalist sentiment has been utilized as a political instrument to mobilize the population toward specific anti-western objectives. It is worth to mention then that in the Islamic systems nationalism has been developed subsequently to the State birth, contrary to what happened in Europe, where nationalism was the precondition to the formation of a State apparatus. Once emerged, the nationalist's ideologies became a tool

to legitimize political choices through religion -since sovereignty was conceived as derived from God- as well as through the Arab ethnicity's identity. Finally, the presence of military bureaucracy and the lacked a genuine political process turned into an endemic instability that even strengthened the affirmation of the military power as the answer to a decadent system (Vatikiotis 1993, p. 109). The just mentioned dynamics are the framework in which Constitutionalism of the Arab-Islamic area developed. Here, the analysis of Constitutionalism of the last two centuries can be faced by referring to classificatory criteria. These criteria highlight some peculiarities of the discussed systems by the individuation of "cycles" and Constitutional models (Romano 2012). The cycles refer more to the historical trend, while the models stress the influence of the western system on the Islamic Constitutional phenomena. In this regard, De Vergottini individuates four cycles and through them, he shows that the difficulties faced in adopting the European principles will lead in the XX century to a complete rejection of the same (De Vergottini 2004). The first cycle refers to the phase of integral adoption of the Constitutional texts provided by the colonial powers between the end of WWI and the 50s. Within this wave, there are the Charters of the 20s of Egypt, Jordan as well as the Charters of those States that gained independence in the 60s: Morocco and Tunisia. These first Constitutional texts contained all the classical principles of the western Constitutionalism: the national sovereignty, the representative democracy, the separation of power, a presidential or semi-presidential form of Government (De Vergottini 2004) The second cycle interested the same systems that since the 60s, with the begging of the decolonization, have rejected the liberal model. Here, many of the institutes that have been abolished during the colonial phase, were restored (De Vergottini 2004). For instance, the principle of separation of power is replaced by a concentration of power in the hand of the presidential executive in a system characterized by the presence of a dominant party (Morbidelli 2000). The third cycle occurred around the end of the 60s, and it is defined by a *total* rejection of liberal Constitutionalism in favour of the socialist ideology and an economy controlled by the State (De Vergottini 2004). That was the time of Nasser in Egypt or Bourguiba in Tunisia, champions of Pan-Arabism, and Arab Socialism, which aimed at a top-down reform of the State and society (Fouad 2012, p. 56-65). These changes have been more evident in those States that absorbed the influence of the Soviet Union and where a convergence of State-party has been realized. The phase

of the so-called Islamic resurgence, starting from the 70s, called into question the role of religion as the primary source of the public power's legitimation (Oliviero 2003, p. 554-574). In these years, the very Constitutional model was questioned, determining a constitutional setup crisis. The fourth and last cycle begun with the dissolution of the Soviet system and has been characterized by a return, although limited, to the liberal principles. The Constitutions adopted in this timeframe are the consequence of a constituent power aimed at de-legitimizing the antecedent system. The separation of power and the guarantee of individual freedoms are recovered, even though their application remained limited (De Vergottini 2004)

The above described constitutional developments of the MENA region are the direct reflection of the social and political changes that concerned this area starting from the end of the colonial phase until the most recent years. A process of changes that has been tortuous, and convoluted, characterized by discontinuity since it has experienced periods of acceleration immediately followed by sudden stops, and backward steps. Within these very transformations, the roots of the Arab revolutions can be retraced.

The Arab revolutions have to be seen as the result of a series of factors that occurred in the same lapse of time. As Perthes argued, among the triggering elements there has been an explosive demographic increase (from 1970 to 2010 the population of the area of MENA nearly tripled) accompanied by a deep economic stagnation that lasted for years (Volker 2011, p. 24). The changes that occurred within the civil society, starting from the end of the XX century, also played a pivotal role in the outbreak of the revolutions. A renewed cultural turmoil, due to the end of education as a monopoly, the consequent rise of new and foreign universities, the role acquired by the media, led to a profound changing movement within the Arab society (Corrao 2017, p. 96-135). In fact, as Amin pointed out, the birth of a new educated and cosmopolitan generation found itself facing a lack of opportunities and a huge discrepancy among its aspirations and the shortage of possibilities, which exacerbated the frustration of the youth (Amin 2011). This will be a crucial factor in the revolt of 2011. Meanwhile, the impact of the increasing usage of social media resulted in the facilitation of a dialogue between different and often contrasting political views, increasing the demand of political participation and firing up the political debate. "They help to construct a bottom-up narrative against autocratic

regimes, weakening the regimes' control of the political narrative" (Aarts, et al. 2012). In a short time, the media became an alternative source of information, a tool to overcome the barriers of censorship and avoid the risk of a wiretap from the controlling and repressive State (Corrao 2017, p. 96-135). Inevitably, the role played by the media had a twofold outcome: on one side, boosting and making the political dialogue more active and lively, on the other has been instrumental to spread and sending an image of the West as a warmonger and violent, by broadcasting the scenes of the wars existing in various areas. The result was an increasing mistrust and opposition of the public opinion toward the Western Countries which eventually turned into hostility that reached the apex with the events of 9/11 (Corrao 2017, p. 96-135). The consequent invasion of Iraq by the United States only led to an escalation of violence by the Arab regimes. The just mentioned social changes, which soon had a massive impact on politics were not the only triggering factor of the 2011 breaking point. Starting from the year 1990, the attempts of the Arab State actors of liberalizing the economy were not sustained by progressive political reforms (Plakoudas 2017). Then the ongoing economic crises, the failure of the economic reforms and the lacked liberalization of the market even reinforced the privileges of the elite on one side and, the sentiment of frustration of the middle class on the other. The high level of unemployment, corruption, the unequal distribution of wealth gradually cemented the discontent within various social strata (Sika 2012, p. 8-14). The slogan that echoed on the streets of the City of Cairo in January 2011 was "bread, freedom and dignity" (Nurullah Ardiç 2012, p. 15-18) symbolising the political oppression no longer accepted by the younger generations (West 2011). The demands for political liberalisation did not refer only to free and fair elections but also to "the abolition of the oppressive security apparatus and the end of human rights violations, the exclusion of the military from civilian affairs, the respect of political liberties, the elimination of corruption and cronyism and, finally, the protection of the rights of minorities" (Noureddine Affaya 2013, p. 50). It is worth to mention that the protests per se did not determine the collapse of the authoritarian regimes. In fact, the sustain of the international community to the insurgents and the neutrality of the army acted as a catalytic element in overthrowing the dictatorships in question.

The capacity of frontally contesting the political elite, whose legitimization derived from the independence process, represents the end of an epoch dominated by the fight against

colonialism. The overthrow of the rulers, which gained consensus by proposing the first anti-colonial rhetoric, tells us that this epoch was ending forever (Mercuri, Torelli 2012).

2.2 The Case of Tunisia, Morocco and Jordan

Tunisia

The recognition of independence on 20th March 1956, did not mean for Tunisia the withdrawal of French military contingent from the territory (Grimaud 1995, p. 23-35). The situation took several months before being stabilized. The "Supreme Fighter", as Bourguiba was defined, enjoyed wide consensus within the population, apart from the opposition of Ben Youssef, who was critic toward the "partial independence" granted by France. The first intent of the new leader Bourguiba was to gradually turn Tunisia into a modern State, through a series of social, judicial, educational reforms (Camau, Geisser 2003) Among the first actions of his government, there has been the approval of the *Code du Statut Personnel* in 1956. The document stated that among the primary objectives, the Code would have developed a modern concept of family and emancipated women. This policy of westernization, as it was perceived in the most internal areas of the Country, was not easily welcomed and a series of conflicts arose. The clashes against the new reforms reached the peak with the assassination of the leader of the opposition, after which the protests have been violently repressed (Camau, Geisser 2003). In 1957 Bourguiba with a *coup d'état* deposed the Tunisian monarch, who until now had mostly maintained a nominal power. Bourguiba proclaimed himself Head of the Tunisian Republic. A new Constitution was adopted and the same will survive until the end of Ben Ali regime (Moore 1965, p. 69). In this Constitution, the separation between the legislative and the executive was not clearly defined: Article 47 recognized to the President the possibility of not considering the opinion of the assembly. While Article 52 attributed only to the Head of the State, the power of promulgating laws. Finally, in 1959 elections Bourguiba was the only candidate, and he won 99,8% of the votes (Salem 1984, p. 165). The 70s have been characterized by the planned economic development: Bourguiba adopted a *dirigiste* and socialist model that soon was doomed to fail and when this happened, his leadership appeared no longer able to maintain the necessary cohesion among the population. One of the reactions was to strengthen even more the role of the

President through the 1975 Constitutional amendment: The Presidency was set for life and it was introduced the automatic succession mechanism, whereby the Prime Minister would have directly succeeded the President (Azaïez 2000, p. 94). At the beginning of the 80s, an economic, social and political crisis, whose anticipations were already present in the previous decade, begun. Soon the aggravation of the crisis required drastic governmental measures to solve the situation. One of these measures was a huge increase in the bread price that eventually determined a profound discontent among the population (Alexander 2010, p. 49). The manifestations against the Government's actions exploded in 1983 in all the territory and ended one year later with a massive intervention of the armed forces. The result of these last events was a great loss of authority by the State itself. This was a clear demonstration of the failure of the system, and of the marginalization of the civil society from the institutions. If in Morocco, the State has been monopolized by the Monarchy, in Algeria by the NLF and in other Country of North Africa by the military power, in Tunisia, the power was centralized by a man that had proclaimed himself President for life (Azaïez 2000, p. 94). The attempt made by Bourguiba of modernizing the Country during the two decades after independence did not lead to the hoped results. It is within this framework that Islam appeared the only answer to the twofold issue of collective identity and social inequality (Salem 1984, p. 165). In fact, despite the President's attempt to build a secular State, when the socialist ideals failed, he found himself to face the birth of a new Islamic movement: the *Mouvement de la Tendance Islamique.* The latter was founded by Rashid Ghannushi, Abdelfattah Morou and, Fadhel Beldi. This movement between the 1981 and 1987 witnessed a period of extraordinary capacity of mobilization, whose aim was transforming the Tunisian society in conformity with the Islamic principles (Hermassi 1995, p. 106). The year 1987 determined the end of Bourguiba's government and the beginning of Ben Ali leadership (Debbasch, Camau 1973). On the 7th of November 1987, Ben Ali, took the oath in front of the Parliament, giving rise to the so-called "new era". Despite an initial acceleration of the economy, an increase in the exportations and employment rate as well as a liberal *overture*, the strengthening of the power in the hand of the President, led the population to call into question the State elite. Ben Ali soon stepped away from the initial purposes of restoring democratic principles, making his democratic rhetoric only apparent in the eyes of the citizens but not in those of the

International Community. In fact, Tunisia was perceived as respectful of the democratic practice and the leadership was able in this way to obtain international consensus, although internally acting in the opposite way (Lamloum, Ravenel 2002, p. 139-140). Since 1994, for instance, few deputies of the opposition have been allowed to enter in the Parliament in order to show a semblance of pluralism. In those years, the fear of presumed ties with the Algerian *Front Islamique du Salut* and the isolationism of Tunisia during the Gulf crisis, allowed the President to eradicate the Islamic movement and establish a police state. The control over the institutions was even reinforced through manipulation of the Constitution. For instance, the Constitutional revision of 1997 (n.97/65) inserts the possibility of submitting to referendum all the projects of law having "national relevance" and hence also Article 39 which forbade the President to be elected at the end of the third mandate. In this way, Ben Ali could be elected five times. These manoeuvres on the Constitutions, the police omnipresence, the repressions, the imprisonment of the opponents, the control of communication only exacerbated the discontent among the population (Mercuri, Torelli 2012). By the end of the 90s, after a decade of repression at the expense of the Islamists -mainly supported by the middle class and some minors' Tunisian parties- a sort of awakening of the democratic sentiment emerged. In the 2000s, several manifestations took place at the hands of some key sectors of the society (students and unemployed), accompanied by strikes of the public office, the textile and tourism industry. The acme was then reached in 2008 with the riots' explosion in the mining region of Gafsa. The Gafsa popular movement lasted six months before being sedated by the repressive machinery of the power (Gozlan 2011). The just elucidated historical reconstruction shows that behind the martyrdom of Mohammed Bouazizi in the 17th of December 2010, there are years and years of Democracy's promises never maintained, the illusion of an economic recovery that never fully took place, hopes of social equality and better standards of life never achieved.

Morocco

In 1934 the first Moroccan national movement, the *Comité d'action marocaine* (CAM) brought together all the young activists' cells. Almost ten years later, from the ashes of this movement, the first Moroccan political party was created, with the name of *Parti de l'Istiqlal (PI)* (Santucci 2006). One of its first actions was the subscription of the Manifest

of Independence, through which the nationalists asked the end of the French protectorate and the recognition of independence under the leadership of Mohamed ben Youssuf, later His Majesty Mohamed V (Belkassem 2014). The clashes with the colonizers will continue until the 50s, when the king was exiled by French in Madagascar, contributing in further legitimize in the eyes of the society, the figure of the Monarch. The neo-nationalist party sustained by all the Moroccans even asked the support of the US and Great Britain to the independence cause. After ten days of negotiations, the French - weakened by the conflicts in Algeria and Indochina- gave in to the pressure of the nationalists and allowed the return of the King (Santucci 2006). A first declaration between the French and the Moroccan representatives was then signed, laying down the foundations of the new State. On the 7th of December 1955 the King confirmed his intent of establishing a Constitutional Monarchy based on the separation of powers. Through a Royal decree it was created the *Conseil National Consultatif,* whose members would have been chosen by the King himself in consultation with the first independent government. One year later, the independence of the new State of Morocco was proclaimed (Mezziane 1985). The first three Government after the declaration were exclusively guided by the *Bekkai,* political leaders of the Istiqlal Party. These leaders tried to eliminate the opposition from the political scene and establishing a patronage policy mainly against the Berber's component of the population, who demanded a role of greater importance within the government. The latter was in fact, composed mostly by Arab French speakers. Under popular pressure, in 1958, the King entrusted the guide of the executive to a member of the Left-wing, creating the first socialist government (Monjib 1992). The 60s have been a key decade for the Moroccan political and constitutional development. Mohamed V was replaced by King Hassan II and the referendum of 1962 approved a new Constitution. The document guaranteed wide powers to the Monarch, launched a bicameralism and multiparty system and declared Morocco a Constitutional, Democratic and Social Monarchy. Article 6 declared Islam as the State religion and changed the figure of the King, from "*Imam des Musulmans et le défenseur de la religion*" (art.6 of 1908 Constitution) to the title of *"Commandeur des croyants* (art.19 - 1962) *"inviolable et sacrée"* (art.23). The crown would be now transmitted through direct descendants starting from Hassan II himself (art. 20) (Moroccan Constitution 7th December 1962).

Already in these years, the Constitution is defined as Octroyée, a definition that will be utilised later, by the movement of 20 February during the Arab revolts of 2011. The adoption of the 1962 Constitutional text exacerbated the fracture between the nationalists, conservators and monarchists, and the exponents of the progressive left-wing that criticized the central power (Fougère 1964). The main claims of the opponents were related to the lack of popular participation in the political process, and the low degree of democracy. In 1965 in order to contrast the opposition Hassan II adopted a forceful policy that even led to the suspension of the Parliament and the Constitution. At the beginning of the 70s, the country was shaken by two attempts of coup d'état aimed at deposing the King and establishing a Republic, both at the hands of army's exponents, both destined to fail. Right from these events, it followed a constitutional revision that reflected the Monarch's apparent intent of openness toward the opposition. The reformulation of Article 43, in fact, determined the representation's proportion of the factions elected at *the Chambre des Représentants* (Bendourou et al. 1993). Thus, for Morocco, the 80s started as the years of the social and political pressures on the crown, also through the emersion of movements based on the Islamic contestation, mostly influenced by the Iranian revolution. Some of the leaders of these groups will indeed, play a significant role in the mobilizations of 2011. However, these pressures resulted in the approbation of a constitutional amendment in 1996, aimed at democratizing the Country. On the bases of this amendment, the bicameral system was decided to be articulated by the *Chambre des Représentants* elected by direct universal suffrage for five years and the *Chambre des Conseiller*s, elected by indirect suffrage for nine years. The Legislative and the electoral law were thus, deeply reformulated (Bendourou, et al. 1993). The intent here was a rapprochement to the citizens also under the request of the International Community as a precondition to release funding by the latter. At the same time, this legislative intervention would have protected the Monarchy from the risk of other insurgencies (Storm 2007). Hassan II was then succeeded by his son Mohammed VI. The new King was immediately acclaimed with enthusiasm not only by national and international analysts and scholars but also by the Moroccan population (Abney 2013). During the first months of his Kingdome, he showed a willingness to break with the past, reconnecting the crown to the citizens, modernize and liberalize the Country through social and rural development and

a plan of resources' reallocation. In this way, he succeeded in launching the image of a modern and popular ruler (Hashas 2013).

However, despite the expectations, a real process of democratization did not follow, disappointing the hopes of the population: the delay in the modernization program even made worst the economic situation, already afflicted by years of crisis (Vermeren 2011). The year 2003 will be a hard and decisive one for the Crown's stability: five simultaneous suicidal attacks provoked the death of more than forty people and a huge number of injured in several symbolic places of Casablanca at the hands of radicalized groups. Undoubtfully, these attacks testified that the poverty and the unemployment were exposing mainly young people to the influence of the radical Islamism in which the frustration and discontent flowed and eventually founded hearing and answers. Similarly, to what did his father, Hassan II after the coup d'état of the 70s, adopted oppressive measures of security. This meant the attribution of greater power to the security forces and a reinforcement of the public order's need (Amar 2009). It is within this historical framework that the seeds of the so-called Arab Spring will sprout up. Before the 2011 revolts, Morocco was for several years engaged in a dynamic of social and constitutional reforms, whose main actors have been the King, the political parties and the youth of the various social movements (Balleria 2011). The analysis of the economist Ahmed Azirar is helpful in framing the social, economic and political scenario within which the Movement of 20 February, who mainly led the 2011 protests, emerged. The scholar individuates a series of factors that were crucial in boosting the resentment of the Moroccan population (Azirar 2011). Under an economic point of view, the Structural Adjustment Program of the years 1983-1992 resulted in a decrease of the public investments, growth of the unemployment rate and poverty, and in the reduction of the free public services. As far as the social dimension is concerned, the lack of a proper educational system, and the disparity of means and infrastructures devoted to education between the urban and the rural context acted as triggering elements. But also, the political context characterized by closeness and censorship which in its turn generated a sentiment of non-representation alimented the frustration of the civil society. Moreover, the lack of an independent public opinion allowed the ruler class to impose its own political line thanks to the control exercised over the mass media. This led the population, mostly the rural one, to the instinctive acceptance of the tradition, religion and a sacralised

and undisputed political power (Azirar 2011). Such circumstances opened the door to the February 20 Movement, articulated in local groups in more than 90 cities and towns. The latter was led by youngers, mostly activists of human rights associations or no-governmental parties (Mouna 2018, p. 2-18). Despite the variety of actors converged in the Movement-whether independent or politically affiliated with parties- they all rallied around the same demands: a real democratic Constitution, emanated by a constituent assembly democratically elected. But also, the dissolution of the Parliament, the demise of the current Government and the institution of a transitional one. Among the main, requests there have been then, an effective separation of powers, an independent Judiciary, the guarantee of a life in dignity for all the Moroccans, the increase of salaries (Sater 2007).

Jordan

The State of Jordan was born in the XX century from the territory once called Transjordan. The latter included a portion of land stretched between the Jordan River and an arbitrary line that ran through the Arabian Desert. It has been part until 1919 of the Ottoman Empire, then defeated in the First World War. As several other territories of this area, Jordan fell under the influence of Britain, who was interested in maintaining control over those strategic lands because of their closeness to the Suez Canal. After WWI, a mandate of the League of Nations recognized the British rule over this territory, allowing them to connect the Indian colony to the areas surrounding Suez (Robins 2004). It was only in 1929 that the first step towards self-government was made by Transjordan and Britain with the creation of a legislative council, the one that ten years later will become the Council of Minister. However, the acquisition of further sovereignty by the Arab State was recognized only in 1946 through the Treaty of London, on the bases of which Transjordan became a Kingdom. Finally, in 1948 a second treaty eliminated the last restrictions of Jordan sovereignty. Abdullah ibn Hussein al-Hashimi was proclaimed King and Transjordan acquired the name of Hashemite (from the name of Abdullah's tribe) the Kingdom of Jordan. When in 1947 the United Nations voted in the partition of Palestine in two distinct States -one Arab and one Israeli- the reaction of the Hashemite Kingdome, Iraq, Syria, Lebanon and Egypt to the UN resolution determined the explosion of the first

Arab-Israeli conflict, at the end of which, Jordan obtained part of the territories on the West Bank of the Jordan river. The 6000 km of West Bank annexed to the State of Jordan were then occupied by the Israeli forces during the Six-Day war in 1967 determining the Jordanian official renounce to this territory (Robins 2004).

Under the new King Hussein al-Hashimi, the Constitution of 1952 replaced the Organic Law granted under the British rule. The Constitution defined the Country as a Constitutional Monarchy, still recognizing to the King the right of appointing and dismissing the Prime Minister as well as the Cabinet and the High Chamber of the Parliament. The text also allowed the King to dissolve the Parliament and to legislate through decree and provisional laws. In this framework, the governmental institutions enjoyed very limited powers. The King could also appoint the members of the Senate, who have the task of approving legislation previously voted by the lower Chamber of the Parliament. The power of the Monarch seemed to penetrate not only within the institutions, or the legislative *iter* but also within the State security forces (Robins 2004). In 1953 the son of Abdullah, Hussein replaced his father and became the new King, whose reign will last until 1999, making Jordan the country that we know today. Under his Kingdom, the Country witnessed a growth of citizens' living standards thanks also to the modernization of the economy and the efforts made to make the latter less dependent on foreign funding and aids (Robins 2004). King Hussein has also been committed to promoting peace in the region of Middle East. For instance, he played a key role in promoting the draft of UN Security Council Resolution 242 aimed at intimating Israel's withdrawal from all the territories occupied by the latter during the Arab-Israeli war of 1967. Hussain is also remembered for having convened the Madrid Peace Conference which dealt with the future of Palestinians (Robins 2004). Thus, King Hussein has played a pivotal role in the Jordan process of democratization, by promoting democracy, the respect of civil liberties, and human rights. These steps forward in the democratization process have been mainly a consequence of the 1989 Jordan uprising, erupted after the Government announcement of an increase in the price of primary goods. The decision was taken in order to meet the terms of a World Bank loan to the benefit of Jordan, given the period of crisis and austerity the Country was going through. However, if the World Bank intervention, on the one hand, would have to help Jordan to recover, on the other, it contributed to make the Arab State's economy even more artificial and dependant on

foreign assistance (Cowell 1989). The demonstrations broke out on April 17, 1989, in the city of Ma`an, and a day after they started to spread and include most of the cities of southern Jordan to then reach Karak, Tafileh, and Salt (Al Shalabi 2011, p. 91-104). It can be argued that starting from this point and under the reforms 'initiative of King Hussein, the Jordanian process of democratization started to move his first steps as an answer to the citizens' discontent and the economic collapse. At the time of the King's death in 1999, his son Abdullah II took the crown. King Abdullah II intended to follow the path initiated by his father, by speeding the reform process -both economic and political- in terms of liberalization and democratization. However, as Satloff argued, what Abdullah lacked was time: to fix the economy; to clean up the political system; to restore unity to the Hashemite family; to affirm the strategic decision toward peace with Israel; to define Jordan's strategy vis-a-vis "Palestine" and the Palestinians; to build new alliances in the Gulf; and to nurture among Americans an interest in the survival of Hashemite Jordan that outlives their memories of his father" (Satloff 1994). In fact, despite the ruler's effort in rescuing the sort of the Country on the brink of collapse, the beginning of the global crisis led the Jordan public debt to increase, eventually exacerbating the discontent among the population. On the 14th of January 2011, on the wave of the Tunisian revolutions, strikes and protests took place in Amman and other areas of the Kingdom under the guidance of the left parties and sustained by the Muslim Brothers, the main opposition bloc in the Country.

2.3 Constitutional Process After the Arab Revolution in Tunisia, Morocco, and Jordan

Tunisia

The 2011 revolution represented a turning point in the Tunisian political system after a half-century of an authoritarian regime. As many scholars observed, what differentiated the Tunisian revolt from the ones that subsequently invested the Arab world, has been its organic nature: "people were fighting against marginalization, and for justice and dignity without discernible political or ideological leaders" (Rousselin 2015). Moreover, the popular movement was completely civilian since the army did not take part in it and was even perceived as his guarantor. Right after the fall of Ben Ali's regime, the Tunisian

elite agreed on focusing on the democratic transition. The priorities of these processes would have been free elections and the beginning of negotiations to draft a new Constitution. The "Jasmine Revolution" whose triggering factor was the economic and social inequalities resulted in the dismantlement of the old political order and the intent of building a new one. The need for economic reforms was entrusted to a "second phase" in a sort of continuity with the economic and social policies of Ben Ali. Moreover, the collapse of the previous regime and the chaotic circumstances under which this happened, inevitably created a political vacuum. This made the necessity of creating new institutions even more urgent (Roy 2013). In the aftermath of the revolt, in accordance with Article 57 of the 1956 Constitution, the head of the Parliament -at that point dissolved- became interim President. Then the latter entrusted Prime Minister Ghannouchi with the task of forming a new Government. Despite the immediate reaction by the State apparatus, the clashes started to be concentrated between the transitional Government and the "revolutionary" opposition. The former advocating the priority of the constitutional continuity, the latter demanding a clean break with the past. The same even gave birth to the Council for the Protection of the Revolution (CPR) aimed at acquiring a decision-making role, replacing the old institutions. A few days after its creation, the demonstrators obtained the resignation of Ghannouchi and his cabinet in favour of a new one headed by Béji Essebsi, previously minister under Bourguiba's regime (The Carter Center 2014, p. 21-56). A new transitional organ was created from the basis of the CPR, the High Authority for the Realization of the Objectives of the Revolution: Political Reform and Democratic Transition, then defined as the High Commission. One of the first objectives of the post-revolution period would have been Tunisia's first competitive election. However, the High Commission was soon criticized because of its lack of representation of the youth sector of society as well as of Tunisian most internal regions. This is the reason why its composition was then enlarged from 72 to 155 members. Among those, there were political parties, trade unions, young figures of interior provinces, representants of Tunisian Diaspora in France (Mersch 2014). The President of the High Commission immediately called for the creation of a National Constituent Assembly with the aim of drafting the Constitution. In the same circumstances, the one of 1959 was partially suspended with a decree-law. Thus, in the aftermath of the revolution, the Government remained the only executive and decision-making authority. Conversely, the

High Commission detained the legislative power. One of the Government's first actions was to create a body entrusted with the organization of the elections. This new organ was established in April 2011 and took the name of *Instance Supérieure Indépendante pour les Elections* (ISIE) (The Carter Center 2014, p. 21-56). Specifically, its main goal was to organize and monitor the National Constituency Assembly elections and guarantee a "democratic, pluralistic, fair and transparent electoral process" (Decree Law no. 2011-27, Article 2). The elections took place on October 23, 2011. It has been utilised a proportional system with closed-list and 19 parties obtained seats in the Constituent Assembly with Ennahdha winning 89 of 217 seats. Moreover, the new electoral law fostered the candidacy of women (Decree Law no. 2011-35, Article 16), which also obtained representation, with 40 of them representing the Islamic Party Ennahdha. The latter, having reached the highest number of seats, immediately proposed a power-sharing agreement with secular parties of the previous Government's opposition. The new Government coalition, called Troika, was headed by the leader of Ennahdha, Jebali. The Constitution drafting process started on February 2012, six constituent commissions were put in place in order to draft, follow and discussed article by article the new Constitution features (Al-Ali et al. 2014). The process saw the conception of four drafts that have been discussed and revisited by the six Commissions in order to solve the emerging problematics from time to time. During this phase, the National Constituent Assembly even activated an online consultative mechanism to let citizens participate by making suggestions. After the last draft was approved by the competent organs, the Assembly adopted it with an overwhelming majority of 200 votes out of 216 and the same entered into force the 10th of February 2014 (The Carter Center 2014, p. 21-56). It is worth to remind that the period in which the constitutional text has been developed was characterized by frequent tensions and delays which often even threatened the outcome of the entire process. Obviously, the lack of a clear road map in establishing deadlines and precise steps, as well as the absence of a judicial review mechanism and a proper Rules of procedure, created several obstacles. Not to mention the domestic framework in which the process was carried on: economic crisis, the perception nurtured by the public opinion over the assembly's inefficiency, the political violence, the frequent shifts in alliances (Roy 2013). All these elements made the constitution-making process an uphill climb. In the light of the just listed elements, the aim achieved by Tunisia results even

more considerable. The text significantly improved during the two-year period, toward more clarity and a high level of protection of human rights and economic and political liberties. In particular, there have been some key aspects which were discussed and reviewed with respect to the previous Constitution: the human rights' field, the role of religion and the judiciary. The final version of the Constitution conceived the creation of a Commission appointed to guarantee the respect for human rights and individuate potential human rights' violations. Moreover, these are mentioned in the preamble as noble and supreme, while Article 39 refers to the State's duty of providing the culture of human rights starting from the free public education context. Article 49 prohibits any amendments that might threat freedoms listed in the Constitution (Dalmasso, Cavatorta 2013, p. 230-240). This chapter has been, in fact, the most dynamic and evolutive. The final draft listed all the fundamental rights, as the freedom of expression or gender equality (The Carter Center 2014, P. 21-56). As far as the role of religion is concerned, it has been object of debates within the political parties and the civil society. At the core of the debate, the desire to preserve the Islamic identity of the majority of Tunisians and the orientation toward a secular nature of the State. In light of the above, the main difficulty was the one-off ensuring equality among citizens regardless of their religion while maintaining the connotation of a Muslim country. Since the beginning of the constitutional process, political parties agreed on not to make direct reference to Sharia and to conserve the first article of the previous Constitution. The latter defines Tunisia as a free, independent and sovereign State and states that its religion is Islam, its language is Arabic, and its form of government is a Republic (The Carter Center 2014, P. 21-56). With the introduction of a new article, the concept of Islam as the State religion, was decided to be one of the inviolable provisions, hence, not amendable. At the same time, it was established that Article 2, that refers to the civil nature of the State could not be amended too. At that point, some representants of the civil society raised a problem of contradiction: how could it be possible to define a State civil and Islamist at the same time? Some exponents of Tunisia political parties believed the State should be the guardian of religion, while others believed that the choice of practicing whatsoever religion should be left to each person. In the end, a compromise was found, and Article 6 became a sort of mid-way between the two positions. "The State protects religion, guarantees freedom of belief and conscience and religious practices, protects the sacred,

and ensures the impartiality of mosques and places of worship away from partisan instrumentalization. The State commits itself to the dissemination of the values of moderation and tolerance." (Art. 6 Constitution). In relation to the provisions of Article 6, a relevant role has been attributed to the judiciary in the activity of interpretation in case conflicts arise.

The observation of the constitution-making activity and the consequent achievements in terms of democratic transition, make clear that the entire process has been conducted in a spirit of openness to compromise. The Tunisian political actors demonstrated their engagement in dialogue and consensus-building on several occasions as well as their commitment to move forward with the democratization of the country. The political dialogue mostly carried on under the umbrella of the National Constituent Assembly, has been pivotal in solving the various political deadlocks. The work of the latter, in fact, paved the way for a re-establishment of democratic institutions also by empowering the rule of law and raising the level of protection of human rights (Rousselin, Smith 2015, p. 11-36). The attitude of the Tunisian political elite toward the process of constitution-building might even represent a constructive example for other countries engaged in the same path. It has been the tireless attempt of the political parties and the NCA members in overcoming divisions and the constant search of consensus, to represent the strength of the Tunisian model (Bockenforde 2015, p. 24-35). As far as the outcome of the process is concerned, the landing point has been a Constitution that expresses a high level of toleration toward the religious aspect, stronger protection of human rights, an enlargement of the freedoms conceived. The new Constitution also created a solid ground for the establishment of the rule of law and ensured an independent judiciary, hence in strong contraposition with the text of 1959. In the end, even though the transition phase cannot be considered finished yet, the adoption of the new Constitution represented a key step in moving away from authoritarianism. From a theoretical point of view, the experience of Tunisia led some scholars to talk about "post-Islamism" as a movement based on the coexistence of religion and, at the same time, citizen's rights. A movement which is neither anti-Islamic nor secular, as Bayat explains (Bayat 2011) but a process in which realism substitutes ideology, democracy replaces jihadism, and the Islamic identity keeps developing "beyond normative concerns" in the attempt of re-secularize religion (Roy 2011). This attempt seems to be made by combining faith and individual rights. As

it happened in Tunisia, it cannot be said the process of democratization led to a decline of religion but rather to a secularization of the framework in which the latter unfolds. This might also explain why, a revolution boosted by "liberal" ideals ended with the electoral success of Islamic forces (Mongin 2011). By referring to the study of Stepan, it emerged that the Tunisia Constitution was able to accommodate contradictory needs through a model that the author defines "twin toleration". On the bases of the latter, the religious and the democratic aspect of a State are brought to coexist (Bockenforde 2015, p. 24-35). Toleration means that citizens should let the elected representants to govern and not deny to them this possibility on religious bases. On the other hand, the State must allow citizens to be part of the political process and express their views in respect of laws. Within these dynamics, imposing religion would be a violation (Stepan 2000). The spirit of compromise that characterized the Tunisian model brought to a Constitution in which the principle of toleration is respected (Stepan 2000).

Morocco

The reaction of the Monarchy to the February 20 Movement's protests was immediate. It was created the Economic and Social Council with the task of submitting proposals and studies to the Government in order to achieve development at a faster pace. The creation of the Economic Council was soon accompanied by the one of the National Human Rights Council to monitor potential violations and overview the Human Rights situation in the Country. The latter will be not composed by government's members, but these will be appointed by the King together with the Parliament (Tourabi 2011, p. 1-12). These first actions have been then followed by the well-known speech of 9 March 2011 of the King himself. The relevance of the speech is mainly due to the implicit recognition by Mohammed VI of the February 20 Movement. On that occasion, the King illustrated the guided lines that the constitutional reform should have followed. Firstly, the recognition of the pluralist nature of Morocco and thus of the Amazigh minority as a common patrimony. The enlargement of the political, economic, and civil rights and the reinforcement of their protection. The speech also referred to the need of ensuring a higher degree of independence of the judiciary as well as the recognition of new prerogatives of the Parliament and Prime Minister (Biagi 2014, p. 4-18). Once the axes of the new

constitutional reform have been set, the following step was to entrust a Consultative Commission on Constitutional Reform (CCRC) with the task of reviewing the current Constitution. This organ would have been composed of eight members directly appointed by the King. Among them, experts in public law, representatives of associations, activists and distinguished professors. These precise figures would have allowed the CCRC to enjoy a high degree of credibility and thus independence in the definition of the reforms. The lack of religious 'elements' within the Commission aimed at stressing the orientation of the process toward secularization and modernization (Tourabi 2011, p. 1-12). The activity of the CCRC was accompanied by the one of the *Mécanisme politique de suivi de la réforme constitutionelle*. The political parties were called to be part of the latter along with the representants of the trade unions. The just mentioned authority would have acted as a forum in which dialogue among different political actors could be carry on in order to serve the development of the new constitutional text (Lalami 2011). However, the activation of the process has not been immune from critics: the February 20 Movement decided not to be part of the CCRC because of its lack of democratic nature. The CCRC, in fact, was unilaterally appointed by the King and not elected by the Moroccan people. In the opponents' mind, the Constitution conceived by the undemocratic organ would automatically result in a "received Constitution", granted by the King. However, this first clash did not stop the process which kept being focused on some broad themes: The Monarchy, the Government, the Parliament, the identity of the Kingdome (Tourabi 2011, p. 1-12). The necessity of revisited the role of the Monarch stems from the expressed desired of several parties to better defined the prerogatives of the King, reduce some of them, and create a parliamentary monarchy. The main issue born over Article 19. Based on the latter:

"The King as a Commander of the Faithful shall be the Supreme Representative of the Nation, and the Symbol of its unity. He shall be the Guarantor of the perpetuation and continuity of the State. As Defender of the Faith, He shall ensure respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organizations" (Art.19 Moroccan Constitution 1996).

Since its introduction in the Constitution of 1996, the article became the instrument to indirectly abolished the separation of powers since it accords to the King the supremacy not only over the religious community but also over all the other institutions. Hence, in

some way, the provision legitimizes absolutism (Hashas 2013). Dissimilar positions arose among the various factions of the Moroccan political life. The February 20 Movement urged for the suppression of the entire Article 19, while the Socialist Union of Popular Forces (USFP) sustained that the new Constitution should keep the attribution of Commander of the Faithful to the King but limiting the powers of the latter in other fields. Conversely, the Islamist Party, the Justice and Development (PJD) stressed the need for maintaining the powers of the King as expressed by Article 19, which reflects "Morocco's deep identification with the Monarchy" and against any attempt of secularization (Tourabi 2011, p.1-12). The debate within the CCRC proceeded by discussing the need for attributing to the Government more weight and powers. Again, distinct opinions among the Moroccan political actors arose. The Independence Party, the oldest in the Country's history, believes that the Prime Minister should detain the executive power, his appointment entrusted to the Head of Government and approved by the Council of Minister, presided by the King. The Islamist Party, from their side, wanted the King not to be involved in the nomination of the Prime Minister. Other political parties required a Government no longer responsible to the King but only to the Parliament. As far as the Parliament is concerned, the various proposals to reform it, all converged in the need for strengthening its power in drafting laws and monitoring the executive. Then, all the parties agreed on making the Parliament the only detainer of the legislative power (Biagi 2014, p. 4-18). The question of the State's identity was undoubtedly the most complex. The debate was mainly based on two elements: the language and the religion of State. In this regard, two positions arose, the first aimed at officialising Tamazigh, -the Berber language- alongside Arabic. The second was to make Tamazigh a national language, only recognized as an element of national identity. When it came to debating over the role of religion in the new constitutional setup, some parties stressed the importance of dissociating the latter from politics. Most of the parties, however, shared the idea of the Islamic nature of the State, as emblematic of the Moroccan identity, and not questionable (Belkeziz 2011).

By having retraced the main themes of the Constitutional reforms as well as the related positions of the various factions, it will be easier to comprehend the relevance of what followed. Despite the Moroccan process of reforms cannot be defined as in rupture with the 1996 text, or as a historical change, as it was promoted by the same reformers, it

marked a key step toward democratization. In fact, the outcome was the result of a dialogue and compromise among the various political factions (Hashas 2013). One of the reasons why the new Constitution cannot be seen as a break with the previous one lies in the quasi-total maintenance of the King powers. Its prerogatives have been better defined in Article 41 and 42, whereby the King remained the Commander of the Faithful "exclusively within the religious domain" and through the instrument of *dahirs*, the Royal Decrees. Article 19, perceived as the source of the absolute power, was divided in Article 41 and 42 in the attempt of separate spiritual power from the temporal one (Biagi 2014, p. 4-18). The King was decided to be the only one with the power of issuing *fatwas*, religious judgments, but it was eliminated the "sacredness" feature of the Monarch. However, He remains the "Head of the State, its supreme representative and symbol of the unity of the Nation, Guarantor of the sustainability and continuity of the State and Supreme Arbitrator between institutions" (Art.42 Constitution of Morocco). He nominates the Prime Minister and presides the Council of Ministers on the basis of Article 49. However, what might lead to think about some practical changes in terms of "democratization", is the gradual introduction of the principle of check and balances and novelties related to the horizontal separation of powers. The head of Government will be now appointed by the party who wins most of the votes, which indirectly introduces the principle of universal suffrage. Moreover, the new Constitutional provisions attribute to the Head of Government the power of dissolving the House of Representatives, after having consulted the King. The Parliament, on his side, can now play a more relevant political role and has the power of starting investigations if requested by one-fifth of its members against ministers (Dalmasso, Cavatorta 2013, p. 230-240). Step forwards have also been made for what concerns the independence of the Judiciary form the executive thanks to a reinforcement of the Higher Judicial Council, even though the King is still the head of the Constitutional Court. However, the Judicial organ has now the power of checking the constitutionality of internal laws and international conventions. Moreover, the new text introduced the ex-post constitutional review which inevitably reinforced the position of the Court, making it a central body in the democratization of the Country. Thus, what emerged from this very timid step toward political liberalization is a more decentralized system. In addition, changes have been made in relation to a higher level of protection of human rights. In this regard, a chapter named "Freedoms and basic rights"

was introduced in the new text and it deals with gender equality, protection of civil and political liberties and economic rights (Madani, Maghraoui, Zerhouni 2011). To conclude, it emerged that the Moroccan experience differs from the Tunisian one. In the case of Tunisia, in the aftermath of the analysed protests, the priority has been the conception of a new Constitution. An entirely new text that should have replaced the previous one which was mainly identified with authoritarianism. While the Moroccan experience did not show any intent of constructing ex novo the new political system. Moreover, the two cases differ in relation to the nature of the organ entrusted in carrying on the constitution-making process: in Tunisia the latter was entrusted to a commission whose members have been democratically elected, while in Morocco the organ responsible for drafting the reforms has been appointed by the King himself (Dalmasso, Cavatorta 2013, p. 230-240). Dissimilarities are also retraceable in relation to the level of participation of the civil society to the "drafting process". In Tunisia, external actors were invited to play a role and had the chance to make proposals to the Constituent Commission. While in Morocco, the work of the entrusted organs has been kept secret and not open to the public. Finally, it can be argued that the *output* of the two Countries engaged in the constitutional process has been different as well (Dalmasso, Cavatorta 2013, p. 230-240). In fact, in the case of Morocco, if the main aim of the political parties was to set a parliamentary Monarchy, the Constitution of 2011 must be seen as transitory. This transitory Constitution indeed did not make a net break with the previous one. However, it might pave the way for a real democratic transition if one looks at the Moroccan tradition of multiparty system, high concentration of associations and trade unions, peaceful environment, and the high level of consensus enjoyed by the Monarchy (Ottaway 2012). All these elements accompanied by a concrete implementation of the constitutional innovations have great potential in transforming the country toward a more democratized one. To conclude, it can be affirmed that Morocco represents a "third" way if compared to the neighbours Countries, such as Tunisia or Egypt. The reforms' process of Morocco was neither entirely coming from the top -managed by the King-, or it has been the consequence of a violent revolt against the regime. The alternative road taken by the Moroccan political elite has rather been based on a compromise between the King and the parties aimed at reaching effective reforms (Ottaway 2012).

Jordan

The Government's first reaction to the protests was an immediate salary increase and some economic facilitations followed by the removal of Prime Minister Samir Rifai, replaced by Marouf Bakhit [1]. The latter was entrusted by the King to starting a sec to then promote reforms. Subsequently, the new Government established the National Dialogue Committee, composed of 52 members and headed by Tahir al-Masri, chairman of the Senate, with the aim of activating a dialogue with the political parties, associations, and other civil society organizations. The dialogue among these forces would have to produce reform's proposals (Bani 2017, p. 47-48). But the protests kept going, eventually becoming violent clashes. At that point, the King ordered the creation of a Royal Committee to Review the Constitution (RCRC). The intent was the one-off revisiting the entire Constitution of 1952. The political and the Constitutional process of reforms that started in 2011 lasted two years. At the end of the latter, the Committee's work resulted in proposals for constitutional changes of 42 Articles. Proposals that were approved by both the Senate and the Parliament to be then signed by the King himself (Bani, Ananza 2015). The main novelties were the creation of a Constitutional Court, the establishment of an organ entrusted to monitor the parliamentary electoral process and a new Political Parties Law. The latter aimed at fostering the formation of larger political parties to hamper the emersion of tribal affiliations. The supervision of the electoral process was then entrusted to an Independent Electoral Commission. The constitutional amendments were conceived to promote Jordan's democratic process. In light of this aim, the priority was to rebalance the functions and precisely define the sphere of actions of the three powers: of the Legislative, the Executive and the Judiciary (Al-Khasawneh 2015, p. 15-35). On the basis of the new set of reforms, the Government's power to legislate in the absence of the parliament was limited, and it was also foreseen that in case the Parliament is dissolved, the Government is forced to resign. Procedures of Public Persecution against Ministers were also introduced and entrusted to the House of Representatives. Moreover, a provision whereby parliamentary elections must be held within four months after the dissolution of the previous one, confirms the impossibility for the State to remain without

[1] A similar dynamic occurred right after the protests on the 31th of May 2018 in Amman. The protests raised against the increase of fuel, bread, and electricity. In response to such riots, the king halted the raises and after the resignation of the prime minister Han al-Mulki, asked Omar al-Razzaz, a former world bank economist to replace him

a parliamentary council. Even more relevant, it has been the limitation of the King's power to postpone the elections (Bani, Ananza 2015). The new reforms in legislative matters also eliminated the risk of a parliamentary minority dictatorship by reducing the number of the House of Representative's members. To better balance the power of the Government, it was decided that both chambers would have the right to monitor and be involved in the Government's activity. On his side, the Government shall not hamper the participation of the Parliament and must regularly write reports addressed to the two Chambers at the beginning of each session, or when one of the two so requests. As far as the Executive branch is concerned, the amendments of 2011 confirmed the provision of the 1952 Constitution, whereby the executive power is vested in the King (Al-Rashwani 2003) and detained by the Ministers. There have also been determined the fields over which the Government might legislate -with the approval of the King- in case the National Assembly has just been dissolved. The same provisional laws issued by the Executive shall be presented to the new National Assembly on its first meeting. Concerning the King's powers over the Government, it has been restricted the right of the Monarch to dismiss the latter (Bani, Ananza 2015). The reforms package also intervened in the Judiciary sphere. Specifically, with the introduction of a Constitutional Court as an independent judicial body. The same was decided to be composed of nine members nominated by the King. The new organ was entrusted with supervising the legitimacy of the constitutional laws and regulations – if requested by the Council of Ministers or by the majority of one of the two Chambers- The emanated decisions of the Court must be final and binding. This represented a remarkable step toward the democratization of the Kingdome, whose previous Constitution did not conceive any control of legitimacy (Bani, Ananza 2015). Several changes are also retraceable in the field of the Human Rights, with the reinforcement of the protection of motherhood, childhood, and minorities. The reform's process of 2011 should also be seen in the light of the new amendments of the biennium 2014-2016 promulgated by the Jordan Kingdome. These amendments extended even more the powers of the Independent Electoral Commission, ensuring transparency and the correct functioning of the electoral process on democratic bases (Hamouri 2012). Hence, what emerged from the last developments is not only the need for protecting the Monarchy by accommodating people's requests. Rather, the beginning of a slow -but continuous in time- transition to democracy, which in fact, did not end with the end of the

2011 revolts. Undoubtedly, the just cited amendments were not enough to promote a democratic system under a Constitutional Monarchy. Despite the changes brought by the reforms, many provisions related to the power of the King have remained untouched. Some of them were even reinforced by attributing to the Monarch the right to nominate the President and the members of the Constitutional Court. Moreover, the Country is still marked by "public's reluctance to participate in political parties" (Abu Nimah 2017). However, these reforms should be seen as the first scaffolding of a democratic transition process and, if correctly implemented, these would pave the way for further achievements in this direction. By looking at the case of Morocco, insofar as a Monarchy too, it emerged that different strategies have been put in place by the two countries to reach the same objective: the survival of the regime. This is not surprising since Monarchy, as a system, does not represent a single regime type with identical features. However, both considered States seemed to have reached the objective. One of the keys to grasping the reasons why the monarchs succeeded in holding power, must be searched in coalitions they have built to support their regency. (Gause 2013). However, it cannot be said that the adopted reforms changed the nature of the Jordan State in a democratic way. In fact, what the reforms did was to keep stability and a peaceful environment necessary to possibly carry on a genuine democratic transformation (Hamad 2019, p. 122-144). In fact, one has to remind that concrete steps forward in this sense can only be made in the absence of violence and through the elimination of social and economic disparities within the civil society. Since it is the exacerbation of disparities and political exclusion that boosted the protests of almost ten years ago. Political stability represents the necessary environment for the creation of security, development and democratic achievements. To conclude, as it was argued by Barari and Satkowsky, the attempts made so far by the State and societal actors "led to a win-win situation, rather than the zero-sum result that characterized the Arab revolts in other parts of the region" (Barari, Satkwosky 2012, p. 42-56). In fact, the latest events in Jordan as well as in Morocco showed that there is "a growing awareness about the inexistence of other alternatives to increasingly democratic politics as the basis for regime legitimacy and stability" (Barari, Satkwosky 2012, p. 42-56). In light of this, it always appears clearer that democracy is not only "compatible *with*, but also the preferred system *for*, an Islamic State" (Gause 2013). The durability of the Monarchy is

related now to its legitimacy, and the legitimacy in turns, depends on the King's ability to guide the Country toward a real democratic transition.

III Comparative Analysis of the Institutional Arrangements of Tunisia, Morocco, and Jordan: Is there a Democratic Transition Under Way?

The Constitutional path initiated by Tunisia, Morocco, and Jordan alternated pushes towards the democratization of the decisional process and the re-emergence of centralization of power's mechanisms in the hands of the Head of the State or the King. This peculiar path has been developed starting from the acknowledgment of independence until the approval of the last Constitutions. There is no doubt that the latest constitutional developments were influenced and partly shaped by the outbreak of the Arab revolts. It needs to be considered that the 2011 protests did not determine a unique trajectory towards democratic enhancement but rather dissimilar reactions which all resulted in a reconfiguration of the institutional system (Dalmasso, Cavatorta 2013, p.230-240).

Nevertheless, many scholars are still divided over the interpretation of the events that followed the Arab "Spring". Some of them sustain that the latter had determined a democratic change, others believed that there had been an authoritarian continuity. Scholars are then divided between those who claim that there has been a return to the "paradigm of authoritarian resilience" (Rivetti 2015) while some have talked about "cases of failed transition" (Dalmasso, Cavatorta 2013, p. 230-240).

The analysis of the Arab revolts' dynamics of the political actors' answer to the ferments of 2011, accompanied by a clarification over the notion of constitutionalism and democracy, will provide a clearer picture. Firstly, from this research, it emerged that even though the uprisings shaped different trajectories, the priority of making changes to the institutional set up was the common element in the three considered experiences of Tunisia, Morocco, and Jordan. In particular, these changes were intended to be *within* the State apparatus, *in relation* to the opposition's factions, *within* the opposition, and *in* the

society (Valbjørn, Bank 2010, p. 188). This study will proceed by examining these changes from an institutional perspective through a comparative approach. Such an analysis will show then if the path undertaken by Tunisia, Morocco and Jordan is directed towards the configuration of a more democratic system.

3.1 Comparative Analysis of the Institutional Set Up

3.1.1. State order, Head of the State, Executive power.

From the observation of the institutional arrangement, it emerges a multiplicity of differences in the way Tunisia, Morocco, and Jordan have shaped their political system. The first depends on the presence or not of the King. Since, while in Morocco and Jordan the Crown is survived until these days, the last *Bey* of Tunisia dates back to the year 1957, when the Monarchy was abolished (Camau, Geisser 2003). Then, with the turning point of the Arab revolts, the set up conceived in Tunisia was structured so as to ensure a lower centralisation of power. In fact, the choice of the semi presidentialism in Tunisia has been the result of a compromise between several political forces, under the umbrella of the National Constituent Assembly (NCA) and aimed at balancing the power of the several organs of the State. A compromise that arose from the will of the stronger Party *Ennhada*, which pushed for a markedly parliamentary asset, and the secular forces who sustained a presidential form of Government. In their mind, there was the need of a President of the Republic able to counterbalance the Islamic Party (Abbiate 2014, p. 1-22).

The work of the NCA determined the birth of an atypical semi presidential system in which the two highest institutional charges, the Prime Minister and the Head of the State act as a *bicephalous* executive power (Rousselin, Smith 2015, p. 11-36). In light of the above, the first striking difference that arises between the three Countries is related to *how* the institutional setup has been put in place. On the one hand, there is the experience of Tunisia, whose system born through an institutionalized process, on the other, the resilient Monarchies of Morocco and Jordan. In these two cases, the form of Government has never been an object of discussion within the civil society, but rather its existence was a well-established fact. Morocco is defined since the Constitution of 1996 as a "Democratic, social and constitutional monarchy" (Tourabi 2011, p.8), even though it is

preferable to define it as an "executive monarchy" (Tourabi 2011, p.8), in which the power is detained by the authorities near the Monarch, who dictate the main lines of policy. Similarly, the Constitution of Jordan, in the first Article, defines the Country firstly as a Kingdome, and immediately after as independent and sovereign Arab State (Hamouri 2012).

The comparative analysis will now proceed by examining the office of the Head of the State in three different institutional systems. In Tunisia, the President of the Republic is directly elected by the people through the majority system. Here, conversely to what happens in a Monarchy, where the Head of the State remained so until his death, the limit of the presidential mandates is fixed at five years (Article 75, Constitution of Tunisia 2014). At first glance, it seems that the Moroccan Constitution conceives the King's power as a separate sphere. Instead, by reading the articles that deal with the rights recognized to the Monarch, it emerged that the latter is the real head of the Executive power (Biagi 2014, p. 4-18). This feature of the Moroccan system appears much more in line with the Jordan case, whose Constitution conceives the Monarch as an integrant part of the executive branch (Al-Mashkaba, 2012). Moreover, Article 47 of the Moroccan Constitution states that the King detains the power to nominate the Head of the Government (Article 47, Constitution of Morocco 2011). Here, a possible mitigating measure to the King's power is represented by the fact that He must choose the future Head of Government among the exponents of the winning party at the last elections. Then, always under the proposal of the winning party's leader, He nominates the ministries. The King can also dismiss them (Abdelilah Belkeziz 2011). The program of the new Government then has to be presented to the House of Representatives, who express the vote of confidence with an absolute majority (Article 88, Constitution of Morocco 2011).

Similarly, the Jordanian constitutional text, in Article 35, attributes to the Monarch the power to appoint the Head of Government and the members of the cabinet (Article 35, Constitution of Jordan 1952). The new Jordan Government exercises its power until the Parliament recognizes to it the confidence. As it is for Morocco, on the bases of Article 53, the cabinet after its formation has to prepare a ministerial statement requesting confidence. In the same way, it has to resign when it no longer enjoys the confidence. This last provision has to be observed by recalling the King's right to appoint the Prime Minister, which can result in a re-appointment of the same one that has just lost

Parliamentary confidence (Torki, Bani 2015). In Tunisia, conversely, there is no "discretionary" power in the appointment of the Prime Minister. The latter is nominated by the President and has to be the leader of the party who won the majority of the parliamentary seats. Subsequently, the Government appointment is entrusted to both the President of the Republic and the Prime Minister, on the bases of Article 129. As it is for the Government of Morocco and Jordan, the Tunisian one also can exercise its power as long as it enjoys the confidence of the Parliament (Rivetti 2015).

It is worth to mention that in Morocco, the Council of Ministers and the Council of Government are two separate entities. With the former being composed by the Prime Minister and the ministers and being responsible for the strategic directions of the State policy. And the latter, being referred to as the Council of Government when the Prime Minister presides over it. To the latter, it is entrusted the deliberation on issues related to the general policy, the public one and those concerning human rights (Madani, Maghraoui, Zerhouni 2011). However, decisions over strategic issues are addressed to the Council of Ministers. The relationship that tied the two organs is of submission of the Council of Government to the Council of Ministers. In fact, the latter detains veto power over all the decisions taken by the former.

Here, it seems that the power enjoyed by the King in relation to the Government is similar to one of the Jordan King, who has predominance over the Council and ratifies all the decisions made by it (Madani, Maghraoui, Zerhouni 2011). As far as the power of the Head of the State is concerned, it obviously differs from one State to the other, on the bases of its nature: The King is the expression of an inherited power that is not representative of the popular will and legitimized through succession. Moreover, in Jordan and Morocco, where Islam is declared State religion, the King assumes a double value of political and religious authority. The Monarch thus represents both the spiritual and the temporal power. Even though in the Moroccan Constitution the definition of the King as "sacred" has been abolished (Madani, Maghraoui, Zerhouni 2011), his office still implies a broad range of powers because of His identification as "Guarantor of the free exercise of beliefs" (Article 41, Constitution of Morocco 2011). The role of the latter often entails the right to influence the Government activity through royal decrees. In fact, "the royal discretionary power of *dahirs* constitutes one of the most important sources of

legislation" (Biagi 2014, p.4-18). *Dahirs* are above the law and the legislation and not subject to Judicial control. The "religious" nature attributed to *dahirs* make them different from any other discretionary power "that might exist in the extra-presidential system" (Biagi 2014, p. 4-18).

The same legislative power in the hands of the King is recognized in Jordan. Moreover, these discretionary powers, differ from the one detained by the President of Tunisia, who can emanate *Décrets-lois* just in the case of House of Representatives' dissolution (Article 70, Constitution of Tunisia 2014). Plus, the same has to be made with the consensus of the Prime Minister and then submitted to the new Assembly. Overall, as it was pointed out before, the role of the Head of the State of Tunisia, by having a popular source of legitimacy, enjoys a reduced range of powers. In addition, in the Tunisian semi presidential system, those are counterbalanced by the presence of the Prime Minister (The Charter Center 2014). In this respect, it has to be said that with the recent reinforcement of the role of the Prime Minister, and the strong powers attributed to the President, the risk that the two might act in an opposite way is even more concrete. But looking at the political history of Tunisia of the last decade, it seems that the political conflict among the two Heads of the Executive is more than hypothetic (Rivetti 2015). In addition, Article 101 of the Tunisian Constitution states that the conflicts of competence between the two charges are submitted to the Constitutional Court by request of the more diligent party (Article 101, Constitution of Tunisia 2014).

Despite the mentioned dissimilarities, the Tunisian, Moroccan and Jordan Heads of the State exercise several common functions and present some common features. First of all, the three high charges have to be of Muslim religion, as for example is stated in Article 74 of the Tunisian Constitution (Article 74, Constitution of Tunisia 2014). The three Heads of State all define/influence the Foreign and the Defence Policy. They are the commander of the armed forces and they all sign and ratify international treaties. The President of the Republic of Tunisia and the Kings of Morocco and Jordan might also submit a law project to the Chamber for a further reading. In the case of Morocco, the Parliament is obliging to proceed to a new revision if requested by the King, on the bases of Article 95 (Article 95, Constitution of Morocco 2011). Moreover, this request by the Monarch implies a suspension of the bill's promulgation, making in this way the revision of the Chambers the only choice. However, it is also established that the royal veto power

is limited by the possibility of the Parliament to approve the text with a majority of 2/3 choice (Madani, Maghraoui, Zerhouni 2011).

3.1.2. The Legislative power

In the years that followed the Arab revolutions of 2011, it is possible to detect a general intent of reforming the Legislative branch by the considered States (Biagi 2014, p. 4-18). Despite the establishment of a different legislative structure of Tunisia, Morocco, and Jordan, the "direction" of these reforms has been similar in all the three Countries. In fact, it seemed that each one of the leaderships agreed on the necessity of increasing both the role of the Parliament -with regard to the Executive- and its representativeness. It seems that in the three cases, there has been the shared awareness that "an effective and representative legislature is critical to the long-term success of any democratization process" (Ketterer 2001, p. 135). But before clarifying which type of novelties have been brought, one should take a look at the existent structure of each Parliamentary institution.

With the 1996 Constitution the parliamentary structure of Morocco became a bicameral one, and it was maintained as such even after the Arab revolts. The Parliament is composed of the Chamber of Representatives (*majlis al-nuwwab*) and a Chamber of Councillors (*majlis al-mustasharin*). The former, elected by universal suffrage and for a mandate of five years, the latter indirectly elected by regional and national colleges (Abdelilah Belkeziz 2011). The second chamber is often seen as a King's tool to "defend his interests without being directly implicated as a political actor, while he continues to open up the political system within the context of the lower house" (Zerari 2018). Concerning the composition of the Upper House, it has been detected a resemblance with the French project conceived in amendment 76 of 1969 (although later rejected through referendum), whereby a dual representation is recognized to the Senate: a political and socioeconomic one (Zerari 2018).

Conversely to what happened in Morocco, through the decree law of March 23, 2011 Tunisia abolished the Chamber of Deputies and a Chamber of Advisors have been abolished (Article 2, Decree Law No.2011-2014, 23 March 2011) and the new structure of the Legislative organ was set in Chapter III of the new Constitution (Touchent 2013).

It has been established a unicameral system represented by the Assembly of the People's Representatives, elected by a universal, free, direct, secret, sincere and transparent vote (The Carter Center 2014, P. 21-56). The reasons that led to the abolishment of the second Chamber are clearly exposed by Zerari. Specifically, these lie in the "geographic and demographic smallness of Tunisia, in the feeble autonomy of the decentralized territorial communities and the obliterated role of the former second chamber, as well as its financial cost" (Zerari 2018). All these elements made the bicameral structure not needed in the Tunisian system.

The Jordan National Assembly differs from the other two considering the parliamentary nature of both the upper Chamber of Morocco and the Assembly of Tunisia (Bani 2017, p- 47-48). The Jordan Senate, in fact, is appointed by the King. The lower house, the House of Representatives, is an elected organ (Hamouri 2012). As it was specified before, the changes in Constitutions, applied in three Countries in the aftermath of the Arab revolts, were all oriented toward a higher degree of transparency and democracy. In order to reach this aim, some reforms of the Legislative branch were needed.

With the constitutional amendments of 2011, the powers of the Moroccan Parliament were strengthened in order to allow the latter to play an effective role in the law-making function and in the Government supervision (Tourabi 2011, p. 1-12). Firstly, the members' number of the Chamber of Councillors was reduced to 120, instead of the 270 conceived by the previous provision. At the same time, the members of the Chamber of Representatives were increased by 75 elements, from 325 to 395. At the bases of this structural change, there has been the will of including the representations of the women and increasing the one of the youths. Moreover, a relevant decision was also the one-off making the work of the Chambers more harmonious, by listing the cases in which the two must hold jointly meeting and making the internal rules of one House more aligned to the ones of the other (Tourabi 2011, p. 1-12). Article 69 states: "Both Chambers of the Parliament are held to take into consideration, during the drafting of their respective internal rules, the imperatives of their harmonization and the complementariness, in a manner that guarantees the efficiency of their parliamentary work" (Article 69, Constitution of Morocco 2011). The domain of laws of the Parliament has been enlarged too, and now refers to the political, economic and social sphere, on the bases of Article 71. An even more important element was the recognition of the Chamber of

Representatives 'predominance, because of its representativeness of the popular will. This predominance is concretized for instance, in the prerogative of the Lower Chamber of having the ultimate decision on the legislative process (Dalmasso, Cavatorta 2013, p. 230-240). Plus, the Head of the Government submits his governmental program to both Chambers who examine it, but the final vote in demanded to the House of Representatives. In the same way, the decree-law made by the Government have to be presented before to the designated office of the Lower Chamber, and only in a second step, it will be jointly discussed by the two Houses. Concerning the attempt, of balancing the Legislative and the Executive power, some measures have been taken in order to strengthen the monitoring function of the Parliament over the Government's activity. The Chambers meet once a year to evaluate public policies carried on by the executive branch. At the same time, the Head of Government shall present once per month a report on his cabinet's activity. Finally, the establishment of technical committees of external experts was conceived as another tool at the disposal of the Parliament, who through them can better exercise its function of supervision over the Government (Tourabi 2011, p. 1-12).

The new Constitutional provisions of Jordan had the same aim of the Moroccan amendments: countering the imbalance of powers between the Parliament and the Government. In both cases, the previous configuration saw a predominance of the Executive over the Legislative mostly embodied by the possibility of the former to dissolve the Parliament and postponing elections (Al-Khasawneh 2015, p. 15-35). In this respect, Article 74 of the Jordan Constitution has the function of hampering any abuse of executive power. In fact, in case of the dissolution of the Parliament, the Government has to present his resignation within a week and the Head of the concerned Government cannot chair the future one. In such circumstances, a new Parliament must be elected within four months, if not, the dissolved one has to return in function. Within the Jordanian system, a further deterrent to the executive predominance over the Parliament is represented by the possibility of the latter to question the Government on any public issue (Al-Khasawneh 2015, p. 15-35). At the same time, a new constitutional initiative has ensured a higher level of accountability and efficiency of the Parliament by lengthened the duration of its regular sessions, which are now fixed at six months, a reasonable period in the face of the 4 months previously foreseen. As it happened in Morocco, also the structure of the Jordan Parliament has been modified: the members of

the House of Representatives were reduced from 150 to 130 elements. Then, the Constitution states that the member of the upper House has not to exceed more than half of the deputies of the Lower Chamber (Al-Mashkaba 2012). It is worth to mention that Jordan, despite the latest developments, has conserved the longstanding provision on the bases of which nine of the total seats are attributed to the representatives of the Christian minority, nine to the Bedouins 'one, and three for Circassians (a minority whose original land was the Northwest Caucasian region) or Chechens.

The participation of women within this organ was already ensured with a Decree of 2003 by King Abdullah. In 2012 the number of seats reserved to women was raised to fifteen. In this regard, it has to be reported that in the Jordan Parliament it was introduced the so-called "Women and Family Affairs Committee", which is present in both the Chambers. This novelty has represented a step in the direction of gender equality even within the policy cycle, as well as a clear support of women participation in the Legislative activity (Hamad 2019, p. 122-144). Among the analysed Countries, only Jordan foresees the same mandate's duration for the Chambers, which is fixed at four years (Bani, Ananza 2015).

As it has been anticipated before, the main change that followed the 2011 revolts, in the case of Tunisia and related to the legislative field, was the passage from a bicameral system to a unicameral one, and the role attributed to the opposition within the Parliament. It is significant the fact that the rights of the latter were not specified in the first two drafts of the new Constitution. It was the positive work of the NCA between the year 2012-2013, that made possible to refer to the opposition as an essential component of the Parliament. This achievement in the process of Tunisia democratization has been institutionalized by Article 60 of the new Constitution. The Article recognized its rights as a necessary condition to carry on its parliamentary duties. To the latter has also been entrusted with the managing of the financial committee, attributing to the opposition a key role in the state's funds administration (The Carter Center 2014, P. 21-56).

A step toward a higher degree of representation within the Parliament has also been undertaken by Morocco. As in the Tunisian Constitution, the Moroccan text defines the opposition as "an essential component" of the Parliament. The opposition participates in the legislative activity, by also having the possibility of proposing bills to the two Chambers and has the right to initiate censure motions as well as interpellations addressed

to the Government. Proportionally to its representation in the Parliament, the opposition also participates in the election of the Constitutional Court's members (Article 10, Constitution of Morocco 2011). In the three considered Countries, the Parliament detains the power of the legislative initiative. In Morocco, such a function is disciplined by Article 78, whereby the above-mentioned power is recognized simultaneously to the Head of Government and Parliamentary members. It is established the primary deposit of the law projects to the Lower Chamber. While the quorum needed for the adoption has been decreased (Articles 81-84, Constitution of Morocco 2011). The goal was that of ensuring a more fluid functioning of the parliamentary activity. Although the prerogatives of the upper Chamber have been partially limited in favour of a major role played by the lower one, the former maintained the function of representation of the territorial communities and trade unions. In this way the upper Chamber acquired relevance in the field of the social rights protections and territory managing issues (Hashas 2013, p. 13-34). The Moroccan Parliament also has the power of constitutional revision initiative, together with the King. The revision proposal has to be approved by each Chamber with a 2/3 majority of its components. Once it has been approved, the bill is submitted to referendum (Tourabi 2011, p. 1-12).

The Jordan Constitution entrusts the power of law-making to both the Houses. The legislative initiative is conferred to the House of Representatives. Then, the proposals have to be approved by the Senate. The process keeps going by submitting the draft to the King who has the power of either giving his consent, not approving or asking for a review to the Chambers. However, the bill is eventually passed if voted by 2/3 majority of the members of both Chambers, in this way overcoming the veto power of the King. In general, the House of Deputies detains a series of powers that are not recognized to the Upper Chamber as well. The former has the right to question the Government on any issue, proceeding with investigation and accusation against ministries, besides being entitled to express the vote of no-confidence to the Government. The Senate is instead identified as an extension of the King's power. Indeed, its members are directly appointed by the latter. Despite this fact, the Senate enjoys the same status as the other Chamber concerning the law-making function (Bani, Ananza 2015). This equality is also determined by the immunity enjoyed by the members of both the Senate and the House of Deputies (The Jordanian Parliament, Lower House Archives).

On the basis of Tunisian Constitutional Act number 6 of 2011 and the rule of procedures 108, the legislative initiative falls under the prerogatives of the Government and to no less than ten members of the Parliament. The same number of members is requested to constitute a Parliamentary group; hence, this marks the intention of making the law-making power a prerogative of the parliamentary groups. The draft is sent to the President of the Assembly which submitted the latter to the eight committees within the Parliament that evaluate it. It is noteworthy that the rule of procedures number 54 relatively to the law-making process, represents a net rupture with the past by establishing that the committee meetings have to be public and thus ensuring a higher degree of transparency. As far as the adoption of laws is concerned, a distinction is made between the procedures for ordinary or organic law. In the first case, it is required the majority of the present members with at least 1/3 of votes in favour, while organic laws need the absolute majority of the Assembly members in order to be adopted (Ben Moussa 2012).

By taking a look at the electoral system of Tunisia, Morocco, and Jordan, it has to be reported that all the three systems have been reformed after the Arab revolutions. In Tunisia, the Constitutional reform of 2011 in the field of electoral law foresees for the election of the President of the Republic a majority system, on which bases the candidate that win the absolute majority wins. If none of the candidates reaches the required majority, there will be a *ballotage* between the first two. The Assembly is elected in 33 electoral circumscriptions through a proportional system with blocked lists. The seats are firstly assigned on the bases of the electoral quotient and subsequently on the bases of the highest remnants. If only one list is presented in an electoral circumscription, it is automatically elected regardless of the number of votes obtained. The active electorate in fixed at 18 years old, while passive at 23 years old (Brocchini 2017). In Morocco, after the adoption of the decentralization law (which was also introduced by Jordan), as it is for the Tunisian Assembly, the Chamber of Representatives was decided to be elected by circumscriptions (both plurinominal and unique national). 305 members elected in 92 circumscriptions with electoral threshold at 6 percent, 90 in the national one with an electoral threshold at 3 percent. Of these 90 seats, 60 are reserved for women and 30 to the younger under 40 years. The method of assignation utilised is the one of D'Hondt (highest media). Vote of preference is not admitted. The minimum age for the active and passive electoral vote is equivalent to the one of Tunisia, and respectively: 18 and 23

years old. Concerning the upper Chamber, 162 of its members are elected by local councils, 91 form professional orders, 27 by employees (Brocchini 2016). Similarly, the recent law of decentralization in Jordan and the new Election Law of March 2016 has divided each electoral zone in a unique seat for each sub district, and the total number of seats for the electoral zone is equivalent to the number of seats of the old districts. This new division aims at limiting tribalism since it does not specify the geographical borders of the sub districts. On the bases of the Decentralization law, the parliamentary districts have been reduced from 45 to 23. The candidates must choose the sub district in which they want to apply. 103 seats are assigned through an open-list proportional representation system. The 9 seats that belong to the Christian minority and the 3 of the Chechens and Circassian candidates, through a majoritarian system. The fifteen seats reserved for women and 3 reserved to the Bedouin district are assigned to the woman candidate that has the "highest share of the vote of her governorate without winning a seat" (UNDP Report on 2016 Jordan Parliamentary Elections). This system is also called "Best Looser". Ultimately, the entire process of election occurs under the constitutional authority of the Independent Election Commission, in function since 2012, and composed of five members (Bani, Ananza 2015).

3.1.3. The Judiciary

On the basis of Article 115 of the 2014 Tunisian Constitution, the Judicial system "is composed of the Court of Cassation, appellate courts and courts of the first instance" (Article 115, Constitution of Tunisia 2014). After the Arab revolts of 2011, one of the main aims of the Tunisian leadership in the Constitution-making process was the one of ensuring the independence of the judiciary branch as well as the impartiality of justice. This is the reason why today; the new Constitution contains so many guarantees in this regard. The independence of the judicial organ was officialised in Article 102, which states that "The Judiciary is an independent authority that ensures the administration of justice, the supremacy of the constitution, the sovereignty of the law, and the protection of rights and freedoms" (Article 102 Constitution of Tunisia 2014). This feature of impartiality is even strengthened by Article 109 whereby any interference with the organ is prohibited. In fact, the need for ensuring that the judiciary does not "fall hostage to the

government" (Carter Center, Constitution Report 2014) was perceived as a political imperative, differently from how it was in the past. With the aim of better ensuring a check and balance system of the Tunisian institutional setup, Article 60 recognized to the President the power of nominating judges but simultaneously with the Prime Minister and on the bases of the High Judicial Council's proposal. The creation of the latter represented another novelty introduced in the new Tunisian Constitution with a key role in the appointment of the Constitutional Court's members. Other functions of the Council are related to the dismissal and promotion of judges (Mekki 2016).

Concerning the Judicial branch, it is possible to observe much more similarities between the three Countries: as it occurred in Tunisia, in the wake of the reform's initiatives, also Morocco aimed at guarantying a higher degree of independence to the Judiciary power. Today, Article 107 of its Constitution states that the considered institutional branch has to be ensured from the interference of both the Legislative and the Executive. A change in the terminology of the new Article also aimed at highlighting the independence feature not only for Justice but also for the judges. In fact, the text mentions the "Judicial power" instead of "Judicial authority" as it was in the 1996 provision (Lahsini 2017).

In Morocco as well, the concept of independence was concretized by establishing the principle of irremovability of the Magistrates. The judges cannot be removed or fired without their consent or a legal process (Article 108, Constitution of Morocco 2011). In Morocco as well, it was created of the Higher Judicial Council, headed by the King and with administrative and financial autonomy. Later on, the membership of the new organ was increased to 20 Magistrates, and the representation of women (in relation to their number of seats in the Parliament) was introduced. The functions of the Higher Judicial Council of Morocco appear slightly extended from the ones of the Tunisian Council. Where the former also has the power of overseeing the observation of the judges 'guarantees (Tourabi 2011, p. 1-12).

The same path towards judicial independence was undertaken by Jordan since 2011. A series of amendments intervened in the sphere of this branch and these were all oriented to promote the impartiality of the courts and their role in safeguarding rights and freedoms. Similarly, to the case of Tunisia and Morocco, a new body was created. The Judicial Council assumed all affairs related to the judiciary, with a key function in

appointing, promoting and dismissing Magistrates, exactly as the Moroccan and Tunisian High Council. The three specular bodies have indeed replaced the existent organs, accused of being the expression of the authoritarian power given their submission to the respective Governments.

Finally, as far as the Court of Justice is concerned, we can observe some differences in the three cases. These dissimilarities mainly stem from the process of design and of setting up of the Constitutional Courts in the considered institutional system. In Jordan, the creation of such an organ was provided for in the amendment of 2011 and specifically in Article 58. The same amendment states that the Court has to be composed of nine members and a chairman elected by the King. But it was with the Law n.15 of 2012, the Constitutional Court Law, that this organ became the unique body entitled to deal with the constitutionality of the laws (El-Refaie 2018). Article 61 then, listed the necessary conditions to be elected member of the Court, whereby the Jordanian nationality is required, as well as the age of 50 and with previous experience in the Court of Cassation, or as a professor of laws. Obviously, the fact that the King is empowered to appoint judges constitutes the main criticality of the Jordanian system. The main functions of the Constitutional Court are then listed in Article 4 of the Constitutional Court Law (El-Refaie 2018). The organ is responsible for the surveillance of the constitutionality of laws and regulations and for the interpretation of the constitutional texts, tasks that were previously conferred to the courts. All the judgments are made in the name of His Majesty and are binding for all the authorities. The amendments of 2011 individuate three organs that have the *direct* right to request the interpretation of constitutional texts to the Court. On the bases of Article 60, these specifically are: The two chambers of the Parliament and the cabinet. The *indirect* right of challenging the constitutionality of a law is then recognized to the parts of lawsuits which have to submit the request not directly to the Court but by submitting a memorandum addressed to the judge who has in charge the lawsuit, like in most European countries. The latter, if elements of unconstitutionality are found, has to suspend the trial and submit the law to the Constitutional Court. (El-Refaie 2018).

As it has been for Jordan, the reforms of 2011 determined the institutionalization of the Constitutional Court also in Morocco. According to Article 130 of the new Constitution is composed of 12 members, 6 of whom are appointed by the King, six by the Lower

Chamber of the Parliament, six by the Upper one. It immediately emerged that as it is in Jordan also in Morocco the weight of the Monarch's influence is quite consistent and this because of its right to appointing the Chairmen of the Court. The Constitutional Court of Morocco is responsible for ensuring the primacy of the Constitution as well as the constitutionality of the laws and the transparency of the electoral process and referendums. One novelty that differs from the case of Jordan is represented by the power of the Moroccan Constitutional Court to monitoring the conformity of the international treaty with the law of the State. As the Jordan Constitutional Court, also the Moroccan one is responsible for expressing the constitutionality or not of the law on which the outcome of a trial depends (Lahsini 2017). The interlocutory procedure for the review of constitutionality, now provided for in both the Moroccan and Jordanian Constitution, represent a remarkable innovation. At least in the European experience, it is through this procedure that the Courts can concretely control the protection of rights, more than through the direct appeal.

Similarly, the Tunisian Constitutional Court -as the above mentioned one- born in the wake of the 2011 reforms. And as well as the Court of Jordan and Morocco the new body substituted the previous Constitutional Council, which was under the control of the President. The new judicial organ is now composed of 12 members. The President, the Prime Minister and the President of the Parliament and the President of the High Judicial Council appoint four members each. The organ "acts as a check on the executive and the legislative powers through the review of the constitutionality of laws" (Mekki 2016). Only the administrative norms are checked by the specific administrative courts. Moreover, the declaration of unconstitutionality of law, determines its suspension (whether partially, or as a whole). In addition, the conflicts between the President and the Prime Minister are referred to the Constitutional Court to be resolved. While, concerning the control of constitutionality of an amendment, it does exist a distinction between the amendments deriving from a proposal of the House of Deputies, and those coming from a proposal of the President. In the first case, the House of Deputies submits the text to the Court before the adoption. In the second case, the draft might be firstly adopted by the Assembly, and then transmitted to the Court. Among the other functions of the Tunisian Constitutional Court, there is also the one related to the impeachment of the President and

decision over the state of emergency, mainly to avoid that the latter might become a pretext for concentrating power in the hands of the Executive (Mekki 2016).

3.2 Critical Reflections on the Tunisian, Moroccan, and Jordanian Transition to Democracy

3.2.1 General Trends

In order to provide critical reflections on the Tunisian, Moroccan, and Jordanian transition to democracy it is necessary in the first place to define the concept of democratic transition. The latter consists of an ambiguous and intermediate period in which the regime has abandoned some of the features that determined the previous institutional set up, without having acquired elements of the regime that is going to be established (Morlino 2003). This transition can be continuous or discontinuous. The former occurs when there is a generational change of the elite as well as when the costs of repression are perceived as too high and the extremist opposition have been marginalized. On the basis of the latter, if the elites foresee a victory of the extremist faction, they refuse democracy. Conversely, they will accept democracy if a defeat of the opposition is expected. If the elites foresee a victory of the extremist forces and a victory of the moderates, they will accept democracy (Morlino 2003). The following step consists in the instauration, which is articulated in different phases: the constitution building, the individuation of political priorities, a constitutional pact, the legitimization of constituent processes, the instauration of democracy. The end of the instauration phase will coincide then, with the first liberal election and the realization of the constitutional design (Morlino 2003). Having acquired these notions, it is possible now to individuate the phases of the democratic transition the three Countries are currently going through. Freed from his chains, this segment of the Arab civil society seems today having undertaken the democratic transition process. However, despite the changes brought by the 2011 revolutions and the attempt of the Arab leaderships to make first steps in the process of democratization, enormous challenges remained.

In Tunisia, the constitutional recognition and the legislative guarantee of the political pluralism obviously represents a remarkable result. The political and electoral rights, foreseen by the constitutional architecture -based on pluralism and democratic

alternation- did not eliminate the shadows of the system. A series of issues, both political and juridical, poses decisive challenges to the State's solidity (Ben Achour 2016**).** One first issue is paradoxically represented by the presence of too many Political Parties and by the consequent high fragmentation of the political scene. After the death of Ben Ali, more than one hundred parties have been institutionalized (Milani 2018). This, in parallel to the adoption of a proportional electoral system for the appointment of the Assembly of Representatives' members, amplified the effects of the political liberalization, giving birth to a segmented Party system. In its turn, this new conformation of the political system was the most determinant element of the political instability, firstly inside the Parliament (with continuous shifting of the members from one party to another) and right after at the Governmental level (Mrad 2017). This fragmentation highlighted the immaturity of the political parties and their difficulty in channelling the citizens' participation. The proliferation of political actors resulted then in abstentionism and in a growing scepticism toward the role of the political parties as privileged tools of connection between the State and the civil society (Abbiate 2017). To the mentioned circumstances, it has to be added the persistence within the Tunisia political scene of various forces still nostalgic of the authoritarian times. Or the presence of a strong Filo-Islamic political elite (mainly represented by *Ennhada*) whose orientations still divide the Tunisian society between who desire a complete secularization of the politics and who pushes for the configuration of a religious State.

Different conditions provide a similar result in Jordan, where the opposition accused the reforms of 2011 of lacking the fundamental constitutional principle that identifies people as the only source of power. The main critics in fact, argued that the changes of 2011 were introduced only with the aim to avoid the empowerment of the Jordan people in the legislative field. The negation of sovereignty belonging to the people is evident in the persistent imbalance between the power of the King and the ones of the State's authorities. Specifically, this disequilibrium lies in the predominance of the King over the executive. Albeit for different reasons, even the Jordanian Party system, as the one of Tunisia, appears problematic. This mainly, because of the weakness of the parties themselves. A weakness that is determined by the low level of citizens' participation as well as the tribal nature of the political factions which only contributed to segment the popular will (Biagi 2014, p. 4-18). But even more important, the political parties seem to lack internal

democracy, a problem that today is faced by many Western democracies as well. From the Jordan framework, it is possible to learn that Democratization reforms cannot intervene on a single level but must concern each stratus of the system in order to produce the desired results. In light of the above, the reforms should also have intervened at the Party level in order to better activate a correct exercise of democracy.

As far as Morocco is concerned, it can be argued that the Country revers in a similar situation. Political parties seem to lack ideological perspective mainly determined by the lack of modern and fully democratic political practice (Jandari 2012). Another issue is related to the broad executive powers detained by the King. The weight of the Monarch influence indeed, will remain unchanged as long as the political life in the country is not mature. The fragility of the party system, mainly due to its fragmentation, leads to a deep weakness of the representative body, a similar situation only leaves to the Crown more space to interfere. Moreover, absenteeism, which reached a high percentage in the last elections, is due to a large number of parties, which often determines disorientation by the people (Hashas 2012, p. 13-34). The analysis of Benabdellah is useful in showing the contradictions of the reformed Moroccan system. In his opinion the Country is in possession of all the necessary tools and bodies to starting to be engaged in a democratic process, "but every constitutional evolution in Morocco is taking place against the background of a regime in which the legislative and executive branch acts as everywhere else but are practically under the King, who can issue directives" (Monjib 2011).

All the observed problems-that the three Countries have in common- might lead to think that the constitutional reshapes born from the ashes of the Arab revolutions, did not reach the hoped results. These might even lead to the believe that the achievement of a higher degree of democracy has never been the ultimate goal of the leaderships in the first place. The general perception is that the reforms applied aimed at only apparently accommodating the people's requests, with the final purpose of maintaining the status quo.

The question that now naturally arises is the following: It is possible to ascertain the success or the failure of a democratic process after one, five, or eight years? Or is it rather the case of being aware that every analysis in this precise phase can only be partial? What emerged from the analysis carried out until this point is that the three considered

Countries differ in their respective historical and constitutional background, in the determination of the form of government right after the independence, in the process of secularization, and in the configuration of their institutional setup in the aftermath of the 2011 revolts. However, Morocco, Tunisia, and Jordan have in common a much wider element: a first attempt of engagement in a truly democratic transition, even though with still dissimilar outputs. Indeed, what this research is seeking to demonstrate, it is not the existence of established democratic systems, but rather a concrete process, with some first embryonal results, toward the creation of the latter. This view is sustained by some precise elements, both external and internal to the Countries' dynamic.

3.2.2. External Factors affecting the Democratic Transition

In the previous chapters, this research pointed out all the *internal* factors that contributed to or hampered the democratic transition process. Now, by briefly looking at the *external* factors, the progress made by the analysed Countries assume even more relevance, due to the difficult framework in which these steps forward have been made. One can refer to both geopolitical and historical backdrops in which the three Countries are placed. Firstly, concerning the geopolitical one, and by contextualising the three experiences in the region of MENA, it is undeniable that Morocco, Tunisia, and Jordan represent an example of stability and institutional modernization with respect to other Countries of the region. Plus, it is worth noting that the three Arab States lacked a regional driving force. More in detail, there was a lack of "external incentives for democratization, since the Arab League was not able to create any kind of Pan-Arab or Pan-Maghreb transnational unity" (Mansouri, Armillei 2016, p. 156-173) which would have helped to incentivize democratic transition in the neighbourhood. Instead, the Arab League has been and remains too divided and weak to play a constructive role in this sense" (Mansouri, Armillei 2016, p. 156-173). Secondly, looking at the historical framework, the steps made by the three States acquire further relevance if one considers the global "decline" of democracy in the lasts two decades, caused -in its turn- by a decline of the rights and liberties guaranteed (Freedom House 2015).

Third, within this framework, it should be taken into consideration another element which on one hand, makes the path toward Democracy more difficult, but on the other, it made the same even more valuable. This is the emergence of radical Islam. In fact, in the

aftermath of the 2011 revolutions, we assist to a proliferation of anti-revolutionary and anti-democratic radical Islamist factions, which in some way might threat the democratic process (Mansouri 2016). Most of the mentioned radical factions benefited from the chaotic situation of Libya and kept growing, surrounding mainly Tunisia, and Morocco.
It is within these circumstances that the Constitution of Tunisia has even be regarded as a "milestone in North Africa's political history and the region's most progressive and democratic constitution" (Gallien, Werenfels 2019). It is also worth to remind that a similar step was reached in a Country that, only five years ago was identified as the most repressive regime (Freedom House 2015). And that instead -on the basis of the 2014 report of the Freedom Hose organization- was the first Arab Islamic State that gained the qualification of "free Country". (Freedom House 2014).

3.2.3. A "New" Separation of Powers

As it was pointed out before, what differentiated the institutional path of Tunisia, Morocco, and Jordan from other neighbourhood's realities, has been the introduction in the system of mechanisms aimed at rebalancing the powers, since in each case the executive was fully controlled by the President, or the Monarch. The three experiences showed a real attempt to ensure a higher degree of independence of the Judiciary as well as the primacy of the Constitution. The establishment of a Constitutional Court in all the considered States has to be considered as a significant step in this regard. Relevant improvements have also been made concerning the representation and the participation of civil society in the political process. With the recognition of the minorities, and the establishment of women's political rights (Gallien, Werenfels 2019).
A further element suggesting that the acquisition of more democratic values is something truly happening is the *way* in which the reforming process has been conducted. Particularly, in the case of Tunisia and Morocco, the dialogue carried on by the political forces and the willingness to compromise is observed as an incredible achievement. In Tunisia, the so-called National Dialogue Quartet a group of four civil society organizations (composed by the Tunisian General Labour Union, the Industrial and Commercial Confederation, the Tunisian Human Rights League and the Tunisian Order of Lawyers) won the Nobel Peace Prize for its contribution in the democracy construction. One of the main achievements, in this case, has been the awareness of the fact that as

“just Islamists could not establish democracy by excluding others, the others cannot do so by excluding Islamists” (Khan 2014) as Khan put in his words.

However, the relevance of the goals achieved by the three States has to be comprehended not only in relation to other MENA’s Countries but also in the light of the broader debate over the Muslim societies ‘compatibility with the democratic progress (Cevik 2011, p. 121-144).

It seems that traces of democratic commitments are detectable in the Constitutions of Tunis, Morocco, and Jordan, and confirmed in their implementation, despite the differences in their direct application. Tunisia held its first free elections since its independence, in 2011, to these elections even the Tunisians abroad could participate. Moreover, the agencies that monitored the electoral process reported that this has been ordinated and transparent (The Carter Center 2014, p. 21-56).

As far as Jordan is concerned, even though achievements in this direction appear to be less consistent with regard to the ones of Tunisia, the political leadership started to meet people’s demands. By recognizing individual rights and freedoms, the rule of law, and a first attempt of separation of powers, the Jordan reformers have made a major political step in the history of the Country. The amendments did not transform the Jordan institutional arrangement, but they rather represent a first compromise between the leadership and the people that in its turn had created fertile ground for the activation of a democratic process. At least, these reforms represent a new phase of the Jordan political life, by having strengthened the powers of the Parliament and the representativeness of the same. What emerges is that there has been an advancement of democracy and freedoms, that this advancement has been more intense in the last decade, and that this mainly had involved Tunisia (even though signs of the same advancement are retraceable also in Morocco and Jordan).

Likewise the concrete experiences of Tunisia, Morocco and Jordan appear to match, though to a different degree, with the main features of a Constitutional State, them being: ”1) a (democratic) constituent democratic process, 2) the presence of a Constitution intended as at the basis of the system, 3) the constitutional guarantee of rights and freedoms, 4) the constitutional guarantee intended as separation of powers, 5) the performance of free elections, 6) the openness to the international law, 7) the territorial decentralisation of the power” (Groppi 2015, p. 189-220). On the basis of the listed

elements, it is possible to affirm that the Tunisian Constitution represents a precise example of Constitution in a Constitutional State (Groppi 2015, p. 189-220) while Morocco and Jordan lacked some of the mentioned factors or did not fully implement them, although conceived in the respective Constitutions. The three Countries seem also to differ in the modality in which the process of reforms has been activated: in Jordan and Morocco from the above with a consequent *reshaping* of the previous system, in Tunisia through a popular mobilization, which provoked a constitutional rupture with the consequent *transition* toward a different political regime (Groppi 2015, p. 189-220). However, in each of the three cases, something undeniably started to change. Moreover, the Tunisia constitution seems to be fully part of the so-called Global Constitutionalism phenomena (Tushnet 2009) intended as the "convergence among national constitutional systems in their structures and their protections of fundamental human rights" (Tushnet 2009).

As Groppi pointed out, the Tunisian Constitution is the result of a joined constitutional process where different political forces representing different segments of the society (mainly referred to secular and religious cleavage) have reached several compromises. It has been a process in which citizens have been called to participate through a series of tools, including participatory tools; a process that has determined a *guaranteed Constitution,* whereby the latter is considered as the supreme law, as well as a *dignitary Constitution,* by disciplining the political, economic and social rights. The Tunisian constituent process also resulted in an electoral democracy by establishing the popular sovereignty exercised through representatives or referendum, and in an open system because of its openness and value conferred to the international law (Groppi 2015, p. 189-220).

Such a configuration of the Tunisian system cannot be fully ascribed to the Jordan and Moroccan setup too. The mentioned elements that exhaustively defined Tunisia, even though are present and conceived by the two Country, seemed to be not fully implemented. Or, more precisely, in Morocco and Jordan, there still exist constraints (as the influent presence of the King) that hampered the classification of their respective system as democratic. At the same time, it would be not "academically" corrected to define the Constitutions of Morocco and Jordan as "sham Constitutions" (Law, Vertseeg 2013) better known as "*de façade*", or on the bases of Loewenstein classification, as

"semantic Constitution" or "normative Constitution". Whereby the former is referred to a constitutional text that, although foresees limits to the political power, is neither implemented nor applied, and the latter to a Constitution that is fully effective and applied but merely aimed at crystalizing the status quo, without establishing any limits to the holders of power (Loewenstein 1957).

Conclusions

This research aims at verifying the compatibility between Islam and Constitutionalism through the comparison of the Tunisian, Moroccan, and Jordanian systems. At first glance, the realities of the Muslim world seem to exclude the existence of an Islamic Constitutionalism. The Muslim political experience is still today characterized by Kings, Chiefs, and military or ex-military regimes that enjoy week legitimacy and which are sustained by military and security forces. In fact, usually one refers to the States of the Arab world as "Security States" (*Mukhabarat*) (Esposito 2007). In some cases, Islamic militant movements have even projected religious absolutism analogous to the secular absolutism (Esposito 2007). All these elements have, throughout the time, reinforced the image of an incompatibility between Islam and Constitutionalism, and Islam and Democracy. But, as it has been shown, the reality is far more complex.

The process of nation-building of the MENA's Countries revealed itself to be fragile and carries with it the seeds of the subsequent crises of identity, legitimacy, power, and authority which eventually erupted in the 2011 uprisings. However, the comprehension of the area of MENA with its problems of authoritarianism, instability, and security, requires to do not forget that most of the States of the region were born just a few decades ago, by being recognized as independent starting from the end of the Second World War. Hence, when we debate over the lack of Democracy or Constitutionalism's inexistence in this area, we should recall the heritance of centuries of European imperialism. The latter indeed was mainly focused on maintaining its domain rather than constructing solid bases for a future democratic society (De Vergottini 2004).

During the XX century, the Islamic political thought continuously shifted between the rejection and the acceptation of democratic principles as the expression of the Western

model and as a threat to the preservation of the Islamic identity. Overall, the Islamic interpretation of Constitutionalism make leverage on the concept of *Shura* -consultation- but diverge from the western ideals in the measure in which People exercises this right. Moreover, many scholars, among which Esposito, Bahul, Al Turabi, individuate the existence of an Islamic Constitutionalism and sustain that Islam is intrinsically democratic, and not only because of the principle of consultation but also because of the principle of consent-Ijmà- and the role played by the Community- Ummah- as well as for the degree of flexibility in the interpretation of the Islamic law (Esposito, Voll 1996).

In the XXI century, the appeals for a major liberalization and democratization in the region have increased. In some cases, an enlargement of political participation and representation have been even obtained. In this framework, the path toward democratization is the result of fights between secular-nationalist forces and Islamic ones. The requests of more transparency, freedoms and human rights' recognition, brought Islamic activists to emerged as political alternative and opposition forces in a moderate way and no longer through violence (Esposito 2007). These changes have demonstrated a reality far more complex with respect to the tendency of depicting the image of a monolithic Islamic fundamentalism (Corrao 2014, p. 210). Islamists forces have emerged as opposition-guide in Tunisia, Morocco, and Jordan. The events of the last twenty years demonstrated that candidates and Islamic Parties have been elected, have guided the government, have played a relevant role in politics. As all the politicians and parties, some of them have failed, others succeeded in adapting the faith to effective political programs (Esposito 2007). As the Economist reported, the Islamic world does not provide examples of good government or democracy. But rarely this depends on religion. More often this is because of feudal and corrupted systems, despotic military forces, Kings and Presidents that deliberately make all the decisions, and manipulated referendum. Religion is in large measure foreign to this spread abuse (The Economist 2000). Thus, through this research, it seems to be confirmed the existence of the Islamic Constitutionalism, and it is as well demonstrated that rarely the religion is responsible for impeding a democratic turning-point.

Then the Arab revolutions, started in 2010 were taken as a critical juncture in the Constitutional and institutional configuration of the Arab States: in the aftermath of the uprisings some States of the MENA area witnessed a reinforcement of authoritarianism,

as in Egypt, others were doomed to fail, as Libya, others opened the door to a reforming process, as the three analysed Countries. The Arab protests fermented in very dissimilar frameworks, as a result, these did not follow a unique trajectory in all the States involved, and consequently, even the changes introduced in the various systems did not bring the same results (Dalmasso, Cavatorta 2013, p. 230-240).

However, what emerges from the comparison of the constitutional reforms and institutional apparatus of Tunisia, Morocco, and Jordan, right after the "Arab Spring", is the existence of similar impediments to the instauration of democracy. These impediments mainly lie in the structure of the Party system and in the incapability of the Political Parties to becoming a force of proposition which would restrict the sphere of action of the Monarch or the President in question. Instead, their fragmentation and low level of representation fostered mistrust by the people towards them. In the case of Morocco and Jordan, it also contributed to depicting an image of the Monarchy as the real promoter of modernity and democracy, without challenging its persistent strong powers (Biagi 2014, p. 4-18). Finally, it is possible to assume that the three Countries are crossing three different stages of the Constitutionalism and democracy building path. The phase that Tunisia is going through represents the final step, that is the establishment of a Constitutional State in which the democratic discourse is developing (Groppi 2015, p. 189-220). In Morocco, the process of political liberalization, already initiated in the 90s, has been further carried on and despite the structural obstacles, it is inevitably preparing the regime for a democratic transition. It can be argued that Morocco is in fact, in the middle of a democratic-learning process: Moroccans do not appear ready to completely embrace democratic principles and seem to need time to familiarise with its procedures and develop an autochthonous model able to adapt itself to the national tissue. First results in this direction, have been also the acceptance by the Moroccan Islamic party of embracing political participation based on secular rules of the game (El Hachimi 2015, p. 754-769). Similarly, it is possible to record an initial engagement in the democratic transition by the State of Jordan. Here as well, bases for further achievements in this direction have been created. Finally, the carried-out insights show that the success of the illustrated constitutional changes depends now on the effectiveness of the political parties' activity in making pressure for the obtainment of greater freedom and democracy, and in the emersion of a new political class, able to eradicate the old models of power

(Abu Nimah 2017). However, the new awareness of the Arab populations, their cultural growth, their capacity of transversally aggregating to assert their rights (Corrao 2014, p. 234) show that there are good reasons to believe that, although complex and discontinuous, the path toward democracy is already ongoing. In this sprit, the latest constitutional achievements have contributed to the State/Kingdome continuity and "one day they may turn into an effective constraint of authoritarian power" (Biagi 2014, p. 1259), determining a genuinely democratic form of government.

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Summary

Introduction

The area of Middle East and North Africa (MENA) is today the theatre of some of the major challenges to global security and stability (Talbot 2017, p. 7). A multiplicity of issues of various nature are today concentrated in this precise region: The presence of radical Islam, the contrast between Sunnis and Shiites, the Libyan crisis, the migration plague, to name but a few (Talbot 2017, p. 7). These are the reasons why the dynamics of the MENA area have recently been at the core of the most compelling debates and insidious analysis. Some of the current problematics of this area had ancient roots. Then, the impact of the 2011 uprisings fostered the emersion of new themes to be faced.

This research seeks to answer an old question, considering a more recent series of events. The first aim is to verify the existence of an "Islamic Constitutionalism" through the analysis of the 2011 events in Tunisia, Morocco, and Jordan. The second aim is to determine the existence or not of a democratization process in the three mentioned Countries, by investigating their institutional set up from a comparative perspective.

I Setting the Scene: Definition and Historical Development of Constitutionalism, and Islamic Constitutionalism

In the first chapter, it is provided a general overview of the concept of Constitutionalism to then try to individuate the same within the Islamic paradigm. Precisely, Constitutionalism is defined as the juridical and political doctrine that pursues the objective or the idea of limitation of power and the guarantee of the individual's autonomy based on liberal democratic principles (Viola 2009, p. 247-255). Differently, Islamic Constitutionalism is identified as "all the provisions derived from the resources of Islamic law related to the organization of the Islamic polity" (Longo 2013, p. 3).

At first glance, the realities of the Muslim world seem to exclude the existence of an Islamic Constitutionalism. The Muslim political experience is still today characterized by Kings, Chiefs, and military or ex-military regimes that enjoy week legitimacy and which are sustained by military and security forces. In fact, usually one refers to the States of the Arab world as "Security States" (*Mukhabarat*) (Esposito 2007). In some cases, Islamic militant movements have even projected religious absolutism analogous to the

secular absolutism (Esposito 2007). All these elements have, throughout the time, reinforced the image of incompatibility between Islam and Constitutionalism, and Islam and Democracy. This study will show that the reality is far more complex.

What will emerge from this research is that it is possible to talk about an Islamic Constitutionalism starting from the XIX century. Specifically, at the down of the independencies 'recognition from the colonial powers. In this first phase, the newly born Arab-Muslim States activated a Constitutional process mainly based on the attempt to find a collocation for Sharia within the institutional system's architecture (Oliviero 2003, p. 554-574). It is at this very point that one of the most complex questions arose: What is the relationship between Sharia and Constitutionalism? The research shows that, although the scholars' opinion is not univocal in answering this question, several academics, as Esposito, Voll, Bahlul, al-Hibri (1996, 2007, 1992) do not exclude *a priori* the compatibility between the Islamic law and the western conception of Constitutionalism. Indeed, a set of elements seem to show similarities between the Islamic and the Western conception of Constitutionalism (Baldwin, 2007). Among the cornerstone teachings of Islam, that may recall a Constitutionalism print on the Islamic system there are, for instance, the principle of Consensus and Consultation. Besides, these principles jointly determine a limitation of the arbitrary exercise of power (Mawdudi 1975). The first, *Ijma*, being the expression of the Community -the *Ummah*-, the second, *Shura*, guarantying that the decisions affecting the Community are to be made in consultation with the members or representatives of the same (al-Hibri 1992).

Starting from the period of independence, in the mid-twentieth century, it is possible to individuate a classification of the constitutional phenomena in the Islamic context. However, from a deeper analysis, it results that some constitutional experiments have been already made under the Ottoman domain. The *Tanzimat*, the process of reforms initiated in 1839, constitutes a clear example of a constitutional process culminated with the adoption of the first Constitutional Charter of the Ottoman Empire in 1876. This process set in motion, for the first time, the subordination of the Shariatic Law to the State's one, in a system in which the principles of the parliamentary government and the equality among citizens have been combined with Islamic practices (Castro 2007). Some scholars even retraced elements of Constitutionalism at the time of the first Muslim Community. Specifically, referring to the Medina Charter of 622 C.E. (Faruki 1971). The

latter, inspired by the principles of the Quran and Sunnah, aimed at ensuring justice and equality within a multi-religious society, by safeguarding the maintenance of peace, the freedom of religion, the respect of the property (Khatab, Bouma 2007). All the presented considerations seem to create space for a unique type of Constitutionalism: The Islamic one, which is for some aspect similar, for others dissimilar to that of the West (Abdalhadi, Gahad 2015). Moreover, on the bases of these analyses, one cannot exclude the possibility of making Sharia coping with contemporary Western Constitutionalism (Gouda, 2013).

II Constitutional Process After the Arab Revolution in Tunisia, Morocco, and Jordan

The second chapter illustrates the peculiar dynamics that unleashed the protests of 2011 in the MENA area, and in particular in Tunisia, Morocco, and Jordan. In the aftermath of the revolts, the three States started to be engaged in a process of reforms of the institutional setup. By examining these reforms through a comparative approach, it will be possible to determine if the considered States have undertaken a democratic transition process. In fact, the so-called Arab Spring led the leadership of Tunisia, Morocco, and Jordan to the awareness that democratic reforms were the only alternative for the stability and legitimacy of their respective regimes (Barari, Satkwosky, 2012, p. 42-56). In all the three Countries, one of the first actions taken by the Governments entailed the setup of organs entrusted with the task of carrying on the reform process. Since this first phase, the three experiences present some dissimilarities. A first difference can be individuated in the nature of the mentioned organs, in Tunisia the National Constituent Assembly was composed of members democratically elected, while the Consultative Commission on Constitutional Reforms of Morocco and the Jordanian National Dialogue Committee have been appointed by the King himself. Moreover, in Tunisia, the priority was the elaboration of a new Constitution. An entirely new text that should have replaced the previous one which was mainly identified with authoritarianism. The intent of the Moroccan leadership, instead, did not show any intent of constructing *ex novo* the political system (Dalmasso, Cavatorta 2013, p. 230-240). More similarly to the Moroccan case, the one's of Jordan saw the creation of the National Dialogue Committee entrusted with the task of elaborating amendments to the 1952 Constitution (Bani 2017, p. 47-48). Despite the dissimilar goals, it emerges that the three processes of constitutional reform have been characterized by the common will of the leaderships of enlarging political

participation, by allowing the political parties to participate as well as to the woman, the youth and the representatives of minorities (Biagi 2014, p.4-18). It also emerged that in the three States, the whole process of reforms 'draft has been conducted in a spirit of compromise and dialogue among the various political actors. However, in Tunisia the work of the Constituent Assembly was characterized by a higher level of transparency, since external actors had even the chance of making proposals to the latter, while in Morocco and Jordan the work of their respective Commissions has been kept secret and not open to the public (Dalmasso, Cavatorta 2013, p. 230-240).

III Comparative Analysis of the Institutional Set Up

3.1 State order, Head of the State, Executive, Legislative, and Judicial power

The third chapter deals with the institutional set up of the three considered States in light of the introduced reforms. The Legislative, Executive and Judicial branch and the constitutional process of the three Countries will be analysed through a comparative perspective. Firstly, the comparison shows that the institutional changes brought in Tunisia, Morocco, and Jordan systems after the year 2011, were focused on the same aspects: An increase of representativeness and civil society's participation, a strengthening of human rights 'recognition, the guarantee of judicial power's independence, a higher level of transparency in the electoral process. However, the process of reforms had a very different output in relation to the system of government. In Tunisia, the work of the National Constituent Assembly resulted in the adoption of a semi-presidential system, in order to ensure a lower centralization of power and thus in rupture with the previous regime (The Carter Center 2014, p. 21-56). Conversely, in Morocco and Jordan, the Monarchical system of government has never been an object of discussion during the reforming process. This was mainly due to the high level of legitimization the two Kings have always enjoyed in their respective Countries (Tourabi 2011, p. 1-12).

Concerning the Head of the State, the President of Tunisia (jointly with the Prime Minister), the King of Morocco and the one of Jordan oversee the executive power. The three heads of States are responsible for the appointment of the Prime Minister and (under the proposal of the latter) also for the appointment of the cabinet. In all the three States the Government must enjoy the confidence of the Parliament. One of the main relevant

differences between the Tunisian President and the King of Morocco and Jordan lies in the discretionary power enjoyed by the Monarchs and mainly constituted by the possibility of issuing *Dahirs*, which are considered a source of legislation (Biagi 2014, p. 4-18). Overall, the powers of the Head of the State differ from one Country to the other by virtue of its nature, being the King expression of an inherited power that is not representative of the popular will and the President of Tunisia being directly elected by the people. Moreover, in Jordan and Morocco, where Islam is declared State religion, the King assumes the double value of political and religious authority: The Monarch represents both the spiritual and the temporal power (Madani, Maghraoui, Zerhouni 2011).

The analysis will proceed by examining the Legislative branch. Within the mentioned reforming process, it is detectable a shared willingness to strengthening the role and increasing the representativeness of the Parliament (Biagi 2014, p. 4-18). In Morocco and Jordan, the bicameral structure of the Parliament has been confirmed after the year 2011. In Tunisia, the two Chambers have been abolished and replaced by the Assembly of the People's Representatives, in this way establishing a unicameral system. Zerari has clearly explained the reasons that led to this change in the composition of the Parliament. In his opinion "the geographical smallness of Tunisia, the feeble autonomy of the territorial communities and the obliterated role of the former second chamber" (Zerari 2018) led to retained that a bicameral structure was simply not needed in the Tunisian system. The main novelties introduced by the three States referred to an increase of woman and youth representation within the legislative organ, and the recognition of the opposition as an essential component of the Parliament. In Morocco and Jordan, it can be also detected the intent of ensuring the predominance of the directly elected Chamber -because of its representativeness of the popular will- over the Senate (Dalmasso, Cavatorta 2013, p. 230-240). To this purpose, Moroccan Constitution states for instance, that the House of Representatives has the final vote on the government program that the newly formed cabinet must present to both Chambers. Jordan, in its turn, recognized to the lower Chamber the possibility of questioning the Government on any public issue (Al-Khasawneh 2015, p. 15-35). A further relevant change introduced by the three States is represented by the adoption of a new electoral and territorial decentralization law, both oriented towards the guarantee of a higher degree of representation in the electoral process

as well as within the Parliament (Brocchini 2016). However, in the three considered Countries, the Parliament detains the power of legislative initiative.

Following the 2011 ferments, the Tunisian, Moroccan and Jordanian leadership shared the intent of ensuring the independence of the Judiciary branch, the impartiality of Justice, the prohibition of any interference of the Legislative and Executive in the Judiciary sphere. In addition, the Jordanian Law n.15 of 2012, the new Article 130 of the Moroccan Constitution and the 2014 Constitution of Tunisia institutionalized the creation of the Constitutional Court. In all the three systems, the latter is retained the unique body entitled to deal with the constitutionality of the laws and ensuring the primacy of the respective Constitutions (El-Refaie, 2018). However, the Constitutional Courts of Tunisia, Morocco and Jordan present dissimilarities in the judges' appointment mechanism as well as in their composition. Apart from Tunisia, whose judges are jointly elected by the Prime Minister, The President, the President of the Parliament and the High Judicial Council, in Morocco and Jordan, it is detected a strong interference of the King in the appointment procedure. In both Countries, the latter has the power of nominating the chairmen of the Court or some members of it, which clearly constitutes one of the main criticalities of the two Monarchical systems.

3.2 Critical Reflections on the Tunisian, Moroccan and Jordanian Transition to Democracy

Thereafter, the comparative analysis highlights how the mentioned reforms took root in the political and social tissue. The research shows that both *internal* and *external* factors, common to the three States, affected the realization of a more democratic context. The first internal factor is represented by the conformation of the Tunisian, Moroccan and Jordanian Party system and the features of the Political Parties themselves. Being the former highly fragmented and the latter often reflecting the tribal aspects of the society. In Tunisia, for instance, after the death of Ben Ali, more than one hundred parties have been institutionalized (Milani, 2018). This, in parallel to the adoption of a proportional electoral system for the appointment of the Assembly of Representatives' members, amplified the effects of the political liberalization, giving birth to a segmented Party system. In its turn, this new conformation of the political asset was the most determinant element of the political instability, firstly inside the Parliament (with a continuous shifting

of the members from one party to another). This fragmentation highlighted the immaturity of the political parties and their difficulty in channelling the citizens' participation. The proliferation of political actors resulted then in abstentionism and a growing scepticism toward the role of the political parties as privileged tools of connection between the State and the civil society (Abbiate, 2017). To the mentioned circumstances, it has to be added the persistence within the Tunisia political scene of various forces still nostalgic of the authoritarian times. Or the presence of a strong Filo-Islamic political elite (mainly represented by *Ennhada*) whose orientations still divide the Tunisian society between who desires a complete secularization of the politics and who pushes for the configuration of a religious State. Different conditions provide a similar result in Jordan, where the opposition accused the reforms of 2011 of lacking the fundamental constitutional principle that identifies people as the only source of power. The main critics, in fact, argued that the changes of 2011 were introduced only with the aim to avoid the empowerment of the Jordan people in the legislative field. The negation of sovereignty belonging to the people is evident in the persistent imbalance between the power of the King and the ones of the State's authorities. As far as Morocco is concerned, it can be argued that the Country revers in a similar situation. Political parties seem to lack ideological perspective mainly determined by the absence of a modern and fully democratic political practice (Jandari, 2012). The fragility of the party system leads then to a deep weakness of the representative body. These circumstances only leave the Crown more space to interfere. Moreover, as it is in Tunisia, in Morocco as well absenteeism, reached a high percentage in the last elections, due to a large number of parties that often determines disorientation by the people (Hashas, 2012, p. 13-34).

The second internal factor is related to the preservation of the King's power mainly over the executive branch. As far as the external elements are concerned, the first one refers to the geopolitical framework in which the three Countries are set: Tunisia and Morocco within a region characterized by instability, Jordan in between an unsteady area on one side and the bastion of "rigidity" and "immutability" as it is Saudi Arabia, on the other side. Within this context, a further external factor emerges: The lack of a regional driving force that would have incentivized the democratic transition or offered a model to be followed in this direction. Instead, the Arab League, because of several reasons, does not appear able to play such a role (Mansouri, Armillei 2016, p. 156-173).

Through the observation of the constitutional changes introduced in the three systems and the related obstacles to their effective implementation, this thesis provides a set of critical reflections on the Tunisian, Moroccan and Jordanian transition to democracy. To this purpose, a clarification on the concept of democratic transition is needed. The latter consists of an intermediate period in which the regime has abandoned some of the features that determined the previous institutional setup, without having acquired elements of the regime that is going to be established (Morlino 2003). The democratic transition comprehends some key steps, among which the constitution building, the individuation of political priorities, a constitutional pact, the legitimization of constituent processes, and finally the instauration of democracy. The end of the instauration phase will coincide then, with the first liberal election and the realization of the constitutional design (Morlino 2003).

By looking at the latest institutional developments in Tunisia, Morocco, and Jordan, the question that naturally arises is the following: It is possible to ascertain the success or the failure of a democratic process after one, five or eight years? Or is it, rather, the case of being aware that every analysis in this precise phase can only be partial? What emerged from this examination is that the three Countries differ in their respective historical and constitutional backgrounds, as well as in the determination of the form of government, process of secularization, and configuration of the institutional arrangements after the Arab revolts. Nevertheless, Tunisia, Morocco, and Jordan seem to have in common a much wider element: A first attempt of engagement in a genuinely democratic transition, even though dissimilar outputs. The conducted researches, in fact, do not intend to demonstrate the establishment of democratic systems, but rather, the development of a concrete process- with some embryonal results- toward the creation of the latter.

The relevance of the three States' constitutional processes has to be seen not only in relation to the other MENA's Countries (since these processes can serve as a model for the region) but also as a first answer to the broader debate over the Muslim societies' compatibility with the democratic progress (Esposito 2007). This assumption is based on some precise elements. Firstly, the establishment of the Constitution's primacy in all three systems. Secondly, the increase of representation and participation of the civil society in the political process, jointly with the recognition of minorities and women's political rights. Thirdly, the *way* in which the reforming process has been conducted. Particularly,

in the Tunisian and Moroccan case, the dialogue among various political forces was carried on in the spirit of compromise and transparency. Ultimately, the introduction of the idea of separation of powers, by ensuring the independence of the Legislative from the executive through a set of mechanisms. Traces of democratic commitments are detectable in the three reviewed Constitutional texts, although some differences are present in the implementation of the new institutional reforms. Tunisia held its first free election -since its independence- in 2011. The agencies responsible for the supervision of the electoral process reported that the latter has been ordinated and transparent (The Carter Center 2014, p. 21-56). As far as Jordan is concerned, achievements in terms of democracy have been less consistent than the ones registered in Tunisia, and this is mainly due to the strong powers still enjoyed by the King. However, it results that the Jordanian political leadership started to meet people's demands, by the recognition of individual rights and freedoms, a first attempt of separation of powers and establishment of the rule of law. The amendments to the 1952 Constitution, did not transform the Jordanian institutional set up but these represent a first compromise between the political elite and the citizens, a compromise that, in its turn, might create fertile ground for the activation of a democratic process. These reforms at least have determined a new phase, characterized by a strengthening of the role of the Parliament and its representativeness (Al-Khasawneh 2015, p. 15-35).

Moreover, the last constitutional developments in Tunisia, Morocco, and Jordan make possible to define them as *Constitutional States*, since the three system appear now to match, though a different degree, the main features of a Constitutional State, them being: A constituent democratic process, the presence of a Constitution intended as at the basis of the system, the constitutional guarantee of rights and freedoms, the separation of powers, the performance of free elections, the territorial decentralization of power (Groppi 2015, p. 189-220). In light of the above, it can be argued that Tunisian Constitutional text represents a precise example of Constitution in a Constitutional State (Groppi 2015, p. 189-220) while Morocco and Jordan, seem to lack some of the mentioned factors or did not fully implement them, although conceived in their respective constitutions. At the same time, it would be not correct to define the Constitutions of the two Monarchies as "sham Constitution" (Law, Vertseeg 2013) better known as "de façade" or based on Loewenstein classification, as "semantic" or "normative"

Constitutions (Loewenstein 1957). Whereby, the former is referred to a constitutional text that although foresees limits to the political power, it is neither implemented nor applied and the latter to a Constitution that is fully applied but merely aimed at crystalizing the *status quo,* without establishing any limits to the holders of power (Loewenstein 1957). Instead, it can be argued that the three Countries are going through three different stages of the Constitutionalism's process and democracy building path. The phase that Tunisia is crossing represents the final step, that is the establishment of a Constitutional State in which the democratic discourse is developing. In Morocco, the process of political liberalization, already initiated in the 90s, has been further carried on and despite the structural obstacles, it is inevitably preparing the regime for a democratic transition. It can be argued that Morocco is in fact, in the middle of a democratic-learning process: Moroccans do not appear ready to completely embrace democratic principles and seems to need time to familiarize with its procedures and develop an autochthonous model able to adapt itself to the national tissue. First results in this direction, have been also the acceptance by the Moroccan Islamic party of embracing political participation based on secular rules of the game (El Hachimi 2015, p. 754-769). Similarly, it is possible to record an initial engagement in the democratic transition by the State of Jordan. Here as well, bases for further achievements in this direction have been created.

Conclusions

To conclude, in the first part of this thesis it has been proved the possible compatibility between Islam and Democracy, and the existence of an Islamic Constitutionalism. As the Economist reported, the Islamic world does not provide examples of good government or democracy. Rarely this depends on religion. More often this is because of feudal and corrupted systems, despotic military forces, Kings and Presidents that deliberately make all the decisions, and manipulated referendum. Religion is in large measure foreign to this spread abuse (The Economist 2000). Instead, it is demonstrated that rarely the religion is responsible for impeding a democratic turning-point. Then, the second part of this research individuates the existence of an ongoing democratic transition process in Tunisia, Morocco, and Jordan, although at very different stages. Subsequently, this study verifies the possibility of developing a democratic State in the three considered Countries based on their latest constitutional achievements. Finally, the carried-out insights show that the success of the illustrated constitutional changes depends now on the effectiveness

of the political parties' activity in making pressure for the obtainment of greater freedom and democracy, and in the emersion of a new political class, able to eradicate the old models of power (Abu Nimah 2017). However, the new awareness of the Arab populations, their cultural growth, their capacity of transversally aggregating to assert their rights (Corrao 2014, p. 234) show that there are good reasons to believe that, although complex and discontinuous, the path toward democracy is already ongoing. In this sprit, the latest constitutional achievements have contributed to the State/Kingdome continuity and "one day they may turn into an effective constraint of authoritarian power" (Biagi 2014, p. 1259), determining a genuinely democratic form of government.