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The First Political Systems in the Independent Maghrib

(A Comparative Study)

Prof. Hassan Sayed Suliman

Abstract

The aim of this paper is to compare the first constitutional systems that came out after the independence of the three countries of the former French Maghrib, i.e Tunisia, Morocco, and Algeria. The paper is built on the thesis that though the three systems seem to differ from each other while they are influenced by the western constitutional theory, they have in reality some common specific principles while they are also different from western political systems because of the political realities of their environments related to the nationalist background and the arabo-islamic civilization.

The methodology of this study depends on the textual analysis of the first three constitutions of the independent Maghrib, i.e Tunisia (1959), Morocco (1962), and Algeria (1963). The comparative method is used to compare the texts with the political realities. The conclusions will be of great importance for the understanding of the contemporary political systems in the Maghrib.

مستخلص

النظم السياسية الأولى بدول المغرب بعد الاستقلال (دراسة مقارنة)

تهدف الورقة إلى مقارنة النظم الدستورية الأولى التي برزت بعد استقلال بلدان المغرب الثلاثة التي كانت تابعة لفرنسا : تونس ، والمغرب والجزائر . وتقوم الورقة على الأطروحة التي تنص على أنه بالرغم من أن النظم الثلاثة تبدو مختلفة عن بعضها البعض وقد تأثرت بالنظرية الدستورية الغربية، إلا أنها في الواقع تشترك في مبادئ خاصة بينما تختلف عن النظم السياسية الغربية بسبب واقع بيئاتها المرتبطة بالخلفية الوطنية والانتماء للحضارة العربية الإسلامية .
منهجية الورقة تعتمد على تحليل النصوص للدساتير الثلاثة الأولى لدول المغرب بعد الاستقلال: تونس (1959م) ، المغرب (1962م) والجزائر (1963م). وتستخدم الورقة المنهج المقارن بهدف مقارنة النصوص مع الوقائع السياسية . وستكون النتائج ذات أهمية كبيرة لفهم النظم السياسية المعاصرة في المغرب .

Introduction :

The aim of this paper is to attempt a comparative study on this first constitutional systems that emerged in the Maghrib- Tunisia, Morocco and Algeria – after independence. The fact that the three political systems of what was formerly called " French North Africa" are apparently different in their forms (a " presidential" system in Tunisia, a " constitutional monarchy" in Morocco and a " one – Party" government in Algeria) can be explained in the modern historical context by the differences in the leadership of the nationalist movements in the three countries of the Maghrib: Habib Bourguiba in Tunisia, Sultan Nohammed Ben Yussef (who became King Mohammed V) in Morocco and the FLN (Front de Liberation National) in Algeria.

The paper attempts to validate the thesis that though the first constitutional systems in the Maghrib seem to differ from each other while at the same time they seem to have been influenced by the western constitutional theory) as represented by Britain, France, U.S.A. and former U.S.S.R.), they have in fact some common specific ideological principles while they are also different from western political systems.

The methodology of this study depends on the textual analysis of the first three constitutions of the independent Maghrib, namely the constitutions of 1959 in Tunisia, 1962 in Morocco and 1963 in Algeria. However the constitutional texts will not be taken at their face-value as it is evident that the constitutional ideals do not always correspond to the political realities of their environments. The comparative approach will be used to compare the texts and the political realities in the three cases, on one hand, and to compare them as well with western political systems, on the other hand. It is hoped that the outcome of the general conclusions will be of great importance to the understanding of the contemporary political systems in the Maghrib.

The plan of the present study consists first of a brief historical background on the initial political realities related to the promulgation of the first three constitutions of the Maghrib. This will be followed by a discussion of the ideals embodied in the

constitutional texts in order to detect their general theoretical "models" rather than to describe in detail their political institutions. More stress will be laid on the ideological principles of these constitutions so as to see to what extent they have some common characteristics. This leads us consequently to the evaluation of the roles of these constitutions with regard to their relation with the political realities. Then the last part of the paper will concentrate on the specific features of the three constitutions in relation to western political systems. The study will finally end by a general conclusion.

Promulgation of the first constitutions :

It should be remarked that the promulgation of the Tunisian constitution took place more than three years after independence (1956 – 1959), that of Morocco six year (1956 – 1962) while that of Algeria only one year (1962-1963). Moreover the leadership of each of the three nationalist movements gained a degree of nationalist legitimacy that enabled it to have a dominant role in the elaboration and promulgation of the constitution.

In Tunisia:

In Tunisia, a demand for a constitution (*destour*) had always been the major element in the Tunisian nationalist movement since the 1920's⁽¹⁾. On 8 April 1956, Bourguiba declared before the new constituent Assembly (elected on 25th March 1956) that sovereignty belonged henceforth to the people and not to the Bey. This declaration led consequently to the proclamation of the republic and the abolition of the monarchy⁽²⁾ by the constituent Assembly which nominated on the same day (25th July 1957) Bourguiba (already the prime minister) as the new head of the State and as "president of the Tunisian Republic" until the promulgation of the permanent constitution.

It was in fact clear that there were two different political trends in Tunisia after independence: one was in favour of a parliamentary system and the other was for a presidential system. Bourguiba initiated this latter trend and made use of the transitional period to consolidate in practice his option for a presidential constitution. He even made a public declaration in favour of the American system of government which he described as being more stable than the French political system, but he said that the Tunisian constitution would not be a copy

of the American constitution as it would first be subject to the practical experience⁽³⁾. In following this pragmatic attitude, Bourguibda finally declared the Tunisian constitution which was promulgated on the 1st of June 1959 (after more than three years from independence in March 1956).

Bourguiba needed the transitional period to affirm his leadership in the State and in the Party (the Neo-Destour) through his own method known as " Bourguibism" or the policy of successive stages (step by step) to realize his specific ends⁽⁴⁾.

In Morocco:

In Morocco, two rival political forces emerged after independence: the Monarchy led by the popular nationalist leader King Mohammed V and the political parties of which the Party of independence (Istiqlal) Party, led by the nationalist leader Allal Al-Fassi, was the most important. During the transitional period(from the independence to 1962), the monarchy succeeded to consolidate its position in power through a system of " consultative monarchy" ⁽⁵⁾ while the Istiqlal Party was divided with the emergence of the UNFP(Union Nationale des Forces Populaires) led by Ben Barka. With the old Party of independence and the emergence of the popular Movement, pluralism came to be established in Morocco.

King Mohammed V promised be establishment of a "constitutional monarchy" in Morocco before the end of 1962, but as he died before that, his son King Hassan II decided to realize the promise of his father. King Hassan II began by declaring in June 1961 the " Fundamental law of the Kingdom of Morocco" which was mainly a political programme of the new king with some ideological principles related to Islam and Arabism⁽⁶⁾. Instead of the constitutional council formed by his father, King Hassan II prepared personally the constitutional text which was promulgated by a referendum on 7 December 1962. This referendum was considered as a renewal of the " sacred pact" that had always united the people with the King⁽⁷⁾ and so it appears as a modern form of the traditional act of allegiance (bay'a) of the Islamic political system.

In Algeria:

In Algeria, the FLN (like Bourguiba and Mohammed V) found itself in a strong position to dominate political power as it was the only organized body in Algeria after independence, but it splitted into two rival factions one led by Ben Khedda (president of the provisional Government of the Algerian Revolution) and the other by Ben Bella (one of the prominent figures among the nine " historical leaders" who had declared the Algerian Revolution of 1954). This latter faction of Ben Bella succeeded to take power as a result of the support of the National Council of the Algerian Revolution held in Tripoli and, more important, that of colonel Boumedien (the commender- in – chief of the National Liberation Army ⁽⁸⁾ who consequently formed an alliance with Ben Bella in the new Algerian government.

In fact the Algerian constituent Assembly was elected on 20 September 1962 and nominated the new government with Ben Bella as Council President and Boumedien as Vice president and minister of defense. In April 1963, Ben Bella took from Khider the general secretariat of the FLN which had officially become the ruling Party. By dominating the leadership of the government and the Party, Ben Bella weakened the role of the constituent Assembly ⁽⁹⁾, and the constitution itself was prepared outside it. Though the constitution was officially issued by the Party, it was in fact prepared by persons from outside the Assembly and under the close participation of Ben Bella ⁽¹⁰⁾ who enjoyed popular support as well as the support of the army ⁽¹¹⁾. The Assembly had a short period of time to approve the constitution before its expiry date, and the constitution which had already been passed by the Party conference, was finally promulgated on 10 September 1963 as a result of popular referendum. In fact this constitution institutionalized the political system which was gradually established by Ben Bella from September 1962 to September 1963.

It is thus clear that the independent Maghrib reflected three cases of a struggle for power between two competing or rival forces in each to the three countries .It also demonstrated how the stronger side in each case had strived to consolidate itself in political power and consequently to influence the adoption of a certain constitution after a transitional period which lasted as long as six years in the Moroccan

case and as short as one year in the Algerian case while it extended to more than three years in the Tunisian case. In each one of the three cases, the choice of the constitution was determined by the nationalist leader who took political power after independence: Bourguiba in Tunisia, Mohammed V followed by his son Hassan II in Morocco, and Ben Bella in Algeria. Each leadership depended in fact on a dominant political force: the Neo-Destour Party in Tunisia, the Sharifian Monarchy (tracing its origins back to the House of Prophet Mohammed) in Morocco, and the political Bureau of the FLN (supported by the army) in Algeria. However the real political power was in fact personalized in the hands of the three leaders at the top of State organs and this applied even in the Algerian case where the principle of "collective leadership" was adopted by the Algerian Revolution since 1958. It should also be noted that the transitional period which was dominated by the three leaders, had conditioned the constitutional "model" adopted in each of the three cases.

II Ideological principles of the constitutions:

The constitutions of the independent Maghrib appeared as different from each other because the political options of the nationalist leaders took different courses in the three cases. The Tunisian option of Bourguiba who graduated from French schools, was for the "modernist" trend (comparable to some extent with that of Ataturk in Turkey). The Moroccan option of King Mohammed V in agreement with the major *Istiqlal* Party of Allal Al-Fassi, was for a relatively "conservative" constitutional monarchy which was closely connected with the Arab – Islamic traditions. The Algerian option of the FLN was for a "revolutionary" trend which was closely related to the Algerian Revolution of 1954.

In Tunisia, Bourguiba easily abolished the weak traditional monarchy (which was of Tunisian origin) in order to declare the modern Republic. He also opted for the American presidential system which had to be adapted to the internal conditions in which Bourguiba was keen to realize national unity together with his personal consolidation of power. Hence Bourguiba adopted in his modernist approach a system of "liberal democracy" adapted to the Tunisian situation. The Tunisian constitution followed the western theory in

which general principles together with the organization of public powers and public rights and liberties were declared without any mention of the Party system. However the nationalist legitimacy gave Bourguiba very wide powers and prerogatives in the constitution while the search for national unity led to the insistence on the one-Party rule.

The Moroccan Monarch had a different basis and option connected with the traditional "sharifian" origin which gave it a historical and then a nationalist popular legitimacy over the constitution. Hence the constitution was considered as the product of the "sacred pact" which had always united the King with his people. The Monarchy became constitutional, but in fact it was the monarchy which gave value to the constitution and not vice versa ⁽¹²⁾. The result of the constitutional referendum gave a great victory to the monarchy enabling it with both temporal and spiritual powers to control the State organs against the domination of political parties. Consequently the constitutional monarchy established in Morocco strengthened the position of the royal dynasty while it weakened at the same time the position of political parties.

The Algeria of the FLN based its future orientation on the revolutionary heritage of the struggle against French colonial domination. As the constitution was elaborated by the Party and outside the constituent Assembly, it did not become sovereign as it had to execute the will of the Party in its aim of constructing a "socialist" democracy in Algeria as an extension to the Algerian Revolution. In fact the constitution responded to the necessity of granting the newly born Algerian Republic some stable political institutions with the leading FLN as the guarantor of this stability. This new original system was described as a "constitutional regime of government by the Party" ⁽¹³⁾. However though the constitution placed the FLN at the center of political power and as the supreme organ, it also gave very wide powers and prerogatives to the president of the Republic who practically controlled both the State organs and the Party ⁽¹⁴⁾.

This general view of the first constitutions in the independent Maghrib shows clearly that we are in front of three constitutional systems which are apparently different from each other in their

external forms: a "presidential" system in Tunisia, a "constitutional monarchy" in Morocco and a "government by the Party" in Algeria. However, one should not be deceived by this general view as the three political systems despite the different political options of their leaders, have some internal common ideological principles.

The ideological principles of the constitutional texts are related to Islam and democracy. In the three cases, Islam is declared as the "religion of the State" while "democracy" is strongly defended. It is important to remark that while democracy is presented as "socialist" in the Algerian case, it remains "liberal" in the other two cases. Moreover, while the Algerian constitution can be described at the same time as a "programme" and as "fundamental law", it can be argued that the other two constitutions of the Maghrib concentrate on the legal side which follows the Western constitutional theory relating to the organization of public powers. However it should be admitted that all constitutions usually lay down some general political or ideological principles. In the context of the Maghrib, these principles are connected with Islam and democracy.

I- Islam as "religion of the State":

It is evident that Muslim societies cannot do without Islam in all aspects of their human life. Hence Islam as a religion and as a way of life cannot be separated from the State. As the Maghrib had been subjected to the Arabo-Islamic civilization since the 7th century, its national identity has been marked by this civilization which was used in the struggle against French colonial domination. Consequently after independence, Islam has been declared in all the constitutional texts the "religion of the State" while the Arabic language has become the official national language. This recognition of the importance of the Islamic religion has been expressed in a certain manner in the three constitutional texts.

In the Tunisian constitution, the preamble States that the representatives of the Tunisian people in the national constituent Assembly declare their will to remain faithful to the teachings of Islam. Then the first article of the constitution affirms that Tunisia is a free independent sovereign State whose religion is Islam. Moreover article 37 declares that the president of the Republic must be a Muslim

while article 41 makes the oath of the president in the name of the All-powerful Allah ⁽¹⁵⁾. It should be noted, however, that article 5 declares the guarantee of the liberty of conscious and of religious cults provided that this does not trouble public order. This position goes in conformity with the general Islamic principle which maintains that the rights of non-Muslims are guaranteed and protected by the State.

In the Moroccan constitution, the preamble describes the Kingdom of Morocco as a "Sovereigns Muslim State" while article 6 declares that "Islam is the religion of the State which guarantees to all the free exercise of religious cults". Moreover the King is given in article 19 the traditional Islamic title of "Amir Al- Mouminin" (Commander of the Faithful). In this regard, the King being the symbol of national unity and the guarantor of the continuity of the State has to assure the respect of Islam and the constitution. In other words, the head of the State and the spiritual leader of the Muslim community are both represented by one person, i.e. the King. It should be noted here that the traditional institution of the caliphate has been maintained by the Moroccan monarchy first through the title of "Sultan" used formerly by Mohammed V and then through the title of " Amir Al-Mouminin" used by King Hassan II ⁽¹⁶⁾. Lastly article 108 of the Moroccan constitution declares that "the dispositions relating to the Islamic religion cannot make an object of a constitutional revision".

As for the Algerian constitution, its preamble and text give two conceptions on the role and the place of Islam in the Algerian political system. On one hand, Islam is associated in the preamble with the Arabic language as two positive cultural facts which had been effective resistance forces against the colonial attempt of westernizing the Algerians. Consequently Arabic is affirmed as the national and official language that takes its essential spiritual force from Islam ⁽¹⁷⁾. On the other hand, article 4 declares Islam as the "religion of the State", but it guarantees to all the respect of their opinions and beliefs as well as the free exercise of religious cults. Moreover article 39 makes an obligation on the president of the Republic to be a Muslim.

It should be remarked that the three Maghribian constitutional texts treat Islam as the "religion of the State" and not as "State

religion", the former term implies the Islamic concept of the "Umma" (Community) in which non-Muslims are admitted to live as citizens with Muslims: these are the Jews in the Maghrib case⁽¹⁰⁾. Moreover the term also implies the right given to the State to intervene in order to protect Islam. In fact the Moroccan case shows a particular situation in this respect as the constitution makes an implicit reference to the Caliphate while it declares the protection of Islam as one of the fundamental tasks of the King. Religion and patriotism are associated with the national personality which is in turn closely identified with the Monarchy⁽¹⁹⁾.

It should also be mentioned that even in the Tunisian case where the secular option was undertaken by Bourguiba, the head of the State felt the need to legitimize his regime in the eyes of Muslim public law as the "Mufti" of Tunis was called to make a "fatwa" (a juridical decision) in order to declare that the newly established republican regime was in conformity with Islamic principles; this Islamic legitimacy is confirmed by article 37 of the constitution⁽²⁰⁾.

It is thus evident that Islam has an important place in all the three constitutional texts of the independent Maghrib. As for the democratic principles declared in these texts, three themes appear as the most important in the comparison of the three political systems: sovereignty, separation of powers, and public rights and liberties.

II- Sovereignty :

The concept of sovereignty seems to be used in three different contexts in the first Maghribian constitutions. Though the three constitutions use the notion of "popular sovereignty", this notion is employed in different contexts: it is related to "liberal democracy" in the Tunisian case, to a combination of "liberal democracy" and traditional Islamic institutions in Morocco, and to a "socialist democracy" in the Algerian "model".

In the Tunisian constitution, the preamble affirms the will of the Tunisians to establish "a democracy based on the sovereignty of the people" while article 3 States that "sovereignty belongs to Tunisian people who exercises it in conformity with the constitution. This democracy is not direct; it is of the representative type. In fact the principle of "popular democracy" is connected in the Tunisian case

with the mechanism of representation which already began with the constituent Assembly. This Assembly became a national Assembly after the promulgation of the constitution.

It should also be noted that the elected constituent Assembly already pressed since its first session to declare the principle of popular sovereignty⁽²¹⁾ in order to have full powers from the sovereign people enabling it to abolish the Tunisian monarchy in which the Bey was the real holder of sovereignty. Hence the concept of popular sovereignty is also connected with the republican form of government. Moreover one should not forget that in the new Republic of Tunisia, the Neo-Destour led by Bourguiba was practically dominating all political power while it was establishing a de facto one - Party system in Tunisia.

In the Moroccan constitution, Morocco is described in the first article as "a constitutional, democratic and social monarchy." The constitution uses in article 2 the concept of "national sovereignty, in a specific sense: sovereignty belongs to the "Umma" which exercises it directly by means of referendum and indirectly through the intermediary of constitutional institutions⁽²²⁾. The term "Umma" includes here both the Western concepts of "people: and "nation" : it is a body of citizens as well as a religious community. As a body of citizens, the "Umma" expresses its will directly, but as a religious community, it can only do so within the respect of the divine will of God⁽²³⁾. Being placed above the State by the pact concluded with community through the constitutional referendum and by the title of Amir Al- AMouminin, the King continues to consult the "Umma" either directly by referendum or indirectly through the elected representatives. There is no contradiction between "national sovereignty" and "royal sovereignty" in the Moroccan context. However the constitution proclaims in article 4 the principle of legality: the law is the supreme expression of the will of the nation and all must submit themselves to it. Thus the Moroccan constitution seems to reconcile the norms of modern liberal democracy with those of the traditional Caliphate.

In the Algerian constitution, Algeria is described in the first article as a "democratic and popular republic" which implies the

formula of popular democracy as distinct from liberal democracy: Algeria fixes the objective of the construction of "socialism" through its own "democratic and popular Revolution". In the preamble, the specific character of the Algerian option concentrates on the deep belief in the "philosophical, moral and political traditions of the algerian nation". The first article of the constitution describes "socialist democracy" as the exercise of power by the people whose vanguards are composed of the farmers (fellaheen), workers and revolutionary intellectuals, as well as the struggle against the exploitation of man in all its forms ⁽²⁴⁾. This is considered to be the responsibility of the FLN which is the vanguard of the nation whose organization is based on the principle of "democratic centralism". The new "economic power", says the preamble is to be democratically exercised by the farmers and the working masses.

It appears thus that the democratic basis of the Algerian constitutional system is closely connected with the conceptions given to the notions of "socialism" and the "Party of vanguard". In fact the constitution makes popular sovereignty the basis for the exercise of power, but it gives a particular dimension to the concept of nation: national sovereignty belongs to the people who exercise it through their representatives in a national Assembly whose members are proposed by the FLN and elected by universal suffrage for five years (article 27). The constitution admits the exercise of direct sovereignty by the people only in the constituent field ⁽²⁵⁾. Hence the National Assembly is expected to give its juridical expression to the popular will as concentered by the FLN (article 48) which reflects the profound aspirations of the masses (article 25).

III- Separation of Powers

The principle of the separation of powers which is considered as fundamental in liberal democratic systems, has a particular context in the Tunisian and Moroccan constitutions while it is completely absent in the Algerian text.

In the Tunisian constitution, the preamble States that the democracy established in Tunisia is characterised by a "stable political regime based on the separation of powers". In fact this principle was first used by the Constituent Assembly against the Monarchy with the

aim of establishing a parliamentary system in Tunisia, but this was ruled out by the presidential option of Bourguiba. In this option, it is difficult to talk about two different organs exercising legislative and executive powers. Though the former belongs initially to the elected national Assembly in A monocameral system , the president of the Republic is given very wide prerogatives in the field of legislation ⁽²⁶⁾. Moreover the executive power depends almost exclusively on the president who is also elected for five years by universal suffrage. In fact the Tunisian constitution does not organize two separate " powers" as it simply established two organs for the exercise of legislative and executive functions. The president cannot dissolve the Assembly which in turn cannot overthrow the " Government": the President and the Assembly should have thus one and the same will.

In the Moroccan constitution there is no explicit mention of the principle of the separation of powers except in article 82 which deals with justice: " the judiciary authority is independent from legislative and executive powers" . However, the general director of the royal cabinet explained on 19 November 1962 that there were three distinct powers- legislative, executive and judiciary- and that this distinction was a necessary condition to any real democracy ⁽²⁷⁾. In fact though the Moroccan regime appears formally as a bicameral parliamentary system, there is a very clear preeminence of the Executive represented by the person of the King- Commander of the Faithful⁽²⁸⁾. There is almost a complete subordination of the legislative to the executive ⁽²⁹⁾ while the King is supreme over the Government within the Executive ⁽³⁰⁾. Also in the judiciary power, the judges who are nominated by the King, make their judgments in his name: justice originates from Amir Al- Mouminin who delegates the exercise of this function to judges subordinated to him ⁽³¹⁾. On can refer her to the classical theory of the confusion of powers, but the particular realities of the Moroccan case should also be taken into consideration: the Monarch whose parson is " sacred and inviolable" (article 23) dominates political power not only as ruling King but also as Amir Al-Mouminin.

In the Algerian case, the role given to the leading unique Party (the FLN) in the constitution goes deliberately against the principle of the separation of powers. In fact this principle has been rejected in the

preamble through a clear-cut condemnation of the "classical parliamentary and presidential regimes". Instead of the principles of the separation of powers, the Algerian constitution concentrates on the unity of power in the State together with a separation of functions. As the Party reflects the aspirations of the masses and concretises the popular will, power is concentrated in its hands: the Party defines the policy of the nation and this policy has to be executed by the National Assembly and the Government within their areas of competence and under the Party's control (article 24). In other words the Party is not a substitute for State organs but it controls both the legislative and executive functions in the State through the power of designation and dismissal: the FLN nominates the candidates for the national Assembly as well as the president of the Republic before the elections through universal suffrage. The judiciary is also considered as a function in which judges are independent but should obey the law as well as the "interests of the socialist Revolution" (article 62).

It is clear therefore that the Party constitutes legally the master-piece in the Algerian constitution: it is considered as the revolutionary force that has to direct all the State action. However the domination of the Executive over other governmental organs has been assured in the constitution ⁽³²⁾. In fact article 39 gives all the executive power to the elected president of the Republic who is also the head of the Government. The president makes and directs the policy of the Government while he also leads and coordinates the internal and external policies of the State in conformity with the popular will as concretised by the Party and expressed by the Assembly (article 48). Thus the president alone is responsible before the Assembly , but in the case of a vote of non- confidence against him, the Assembly automatically loses its existence as a result of the resignation of the president (articles 55 and 56). Briefly the President seems to have a supreme position in the Algerian system of government as the role and the prerogatives of the Assembly appear to be largely reduced in his favour.

IV Public rights and liberties:

While the Tunisian and Moroccan constitutions deal with public rights and duties and well as public liberties in a way comparable

with liberal democracy, the Algerian text talks about " fundamental rights" and refers to the universal Declaration of Human Rights but limits these rights to the particular needs of socialism and the one – Party system in Algeria.

In the Tunisian constitution, the duties of citizens are specified in the defense of the homeland and the territorial integrity while those of persons consist in the payment of taxes and the contribution to public charges. On the other hand, the rights are essentially related to citizens, but some rights for all persons are also indicated: inviolability of the human person, freedom of conscience and exercise of religious cult, freedom of opinion, expression, press, publication, union, association and of the syndicalism, inviolability of residence and privacy of correspondence, presumption of innocence and guarantee of defense, personal character of the penalty and non-retroactivity of laws, right of property and impossibility of extradition of political refugees. All other rights and liberties concern only the Tunisian citizens who are considered as equal in rights and duties before the law. Also some rights constituting declarations of intention are mentioned in the preamble: right to work, to medical care and to education.

Nevertheless the legislator is authorized in the Tunisian case to make restrictions or limitations on the exercise or rights and liberties. This authority is stated in a general way in article 7 of the constitution on the basis of the protection of the rights of others, the respect of public order, national defense, economic and social progress. The possibility of the intervention of the legislator to limit rights by a law is mentioned with regard to certain rights: freedoms of opinion, expression, press, publication, union and associations, inviolability of residence and privacy of correspondence, free circulation, choice of domicile, and lastly the right of property⁽³³⁾. The limitation on the free exercise of religious cults which is conditioned by the maintenance of public order does not seem to need the intervention of the legislator. Briefly the Tunisian constitution seems to concentrate on the limitations on the rights and liberties rather than the guarantees to insure their application and there is no any foreseen procedure or

organ to control the constitutionality of the laws to be enacted by the legislator.

The Moroccan constitution devotes also many articles to the individual rights and duties nearly in the same manner as the Tunisian constitution. In fact the duties are the same while also the majority of rights concern only the citizens: the only exceptions to the rights are the free exercise of religious cults, the principle of legality in offenses and penalties, the inviolability of residence, privacy of correspondence, the right of strike and the right of property which concern all the inhabitants. Moreover the citizens are equal before the law and in the access to public offices while the equality of the two sexes is mentioned in connection with " political rights" (article 8).

As for the problem of the guarantee of rights, the Moroccan constitution, like in the Tunisian case, gives the legislator the authority to limit the exercise of most of the rights and liberties in addition to the right of strike which is particular to the Moroccan case. In fact despite the establishment of the constitutional chamber in the supreme court (article 100), public liberties are not constitutionally protected because the chamber can only examine the constitutionality of organic laws. Nevertheless article 19 states that the King is the protector of the rights and liberties of citizens, social groups and collectivities while as Amir al- Mouminin guards the respect of Islam which recognizes the Jewish and Christian religious but rejects heresies, as declared King Hassan II in a press conference in 1962⁽³⁴⁾.

In the Algerian constitution, the preamble uses the term " fundamental rights" which refers to a certain number of individual rights and public liberties. These rights and liberties aim at allowing every citizen to participate fully and effectively in the task of building the country and also to develop themselves within the collectivity in conformity with the interests of the country and the options of the nation. They refer precisely to political rights (namely equality of the two sexes, the right to vote and the right of asylum), economic and social rights (namely right to a descent life and to a fair share in the national income, protection of the family by the State, right of education and culture, and the participation of workers in the administration of enterprises), and public liberties (namely

inviolability of residence and privacy of correspondence, legality of offences and penalties, freedom of religious cults, freedom of information, expression union and association as well as syndical liberty including the right of strike as specified by the legislator).

It should be added that these "fundamental rights" are followed by a "solennel adhesion" of the Algerian Republic to the Universal Declaration of Human Rights) articles 11). Nevertheless it should be remarked that these "fundamental rights" of the Algerian constitution do not include the right of property and they are subject to a general limitation imposed by the necessities of the options of socialism and the single-party system in addition to national independence, territorial integrity, national unity and the institutions of the Republic (article 22). It is clear that this restriction applies basically on the freedom of expression, union, association as well as on syndical liberty which can only be exercised within the Party. This implies the existence of internal democracy within the FLN which is considered as the instrument of popular sovereignty and the artisan of the construction of socialism.

III The political realities of the constitutions:

It is now evident that the first constitutions of independent Maghrib have laid down certain ideals in the newly established political systems. These ideals have been dictated by two factors: the implicit ideology of the Muslim community as related to the adhesion to the Arabo-Islamic civilization and strengthened by the nationalist legitimacy claiming for national identity, on one hand, and the influence of the modern western civilization as conveyed to the Maghrib through French colonization, on the other hand. The former finds its expression in the Arabic language and more important in Islam which is in the three constitutions the "religion of the State" while the latter is expressed by the concept of "democracy". It should be noted here that Islam as a political ideology does not contradict the concept of democracy: the Quranic concepts of "al-Shoura" (consultation) stands against any form of dictatorship while Islam also insists on other important concepts such as justice, equality and liberty. Briefly, the first Maghribian constitutions raised the ideals of Islam

and democracy, but the political realities behind these constitutions should also be taken into consideration.

i. The Tunisia of Bourguiba

In the Tunisian case where the nationalist movement was insistently demanding a constitution and the leading Party was hence called the constitutional (destourian) Party, Bourguiba did not seem to be in a hurry after independence to promulgate the constitution as he took nearly four years to build in practice the political system of his own choice, i.e the " presidential" system. His main goal after the abolition of the monarchy was to consolidate his own power so as to continue as the leading personality of the Tunisian people in the new Republic. In fact Bourguiba succeeded after the defeat of his rival Salah Ben Yussif⁽³⁵⁾ to obtain popular legitimacy for his leadership and that was the important basis of his political domination. Hence the constitution became of secondary importance in the legitimization of Bourguiba's political power. The only role of the constitution in this case, was to give legal legitimacy to the already existing political system which was established by the personal initiative and the pragmatism of Bourguiba in order to suit his own ends. In fact Bourguiba called himself the father of the nation and the " Supreme Combatant" (al Mujahid al-Akber). The use of his strong authority against his political rivals and his style in the personalization of power led some writers to talk about a " presidential monarchy" and the " cult of personality" with reference to the political system in Tunisia⁽³⁶⁾.

In the field of the Islamic ideology, it was evident after independence that Bourguiba was for modernism in Tunisia. Though influenced by the French political culture, Bourguiba did not openly advocate secular reforms. He tried to remold religion to suit his modernist ends end to project himself as a great Muslim reformer in the example of Mohamed Abdoh who advocated the restoration of liberty to human intelligence⁽³⁷⁾- i.e the reopening of the door of "ijtihad" on the basis of the Quran and the Traditions of the Prophet. Hence Bourguiba used his own interpretation of Islam " as Head of a Muslim State" in order to declare his new reforms. He began in August 1956 by the code of personal status which abolished polygamy, made marriage a voluntary contract (rather than an agreement between

families) and protected women by making divorce subject to judicial decision. Then he expropriated private land held by religious trusts (habous) and incorporated the Islamic University of AL-Zaitouna into the University of Tunis. Lastly came in 1960 his daring "fetwa" about the fasting of Ramadan (one of the five pillars of Islam) which he discouraged on the basis that there is no fasting in times of war and that Tunisia was waging a true "jihad" (which he called a supreme jihad) against under-development. It is therefore clear that Bourguibia took a modernist attitude towards Islam depending on his own interpretation of the Islamic texts.

With regard to the concept of democracy, the Tunisian constitution outlines a type of "liberal democracy" which does not exist in practice. The concept of "popular sovereignty" does not correspond to direct popular participation in the free choice of representatives through elections. It simply refers to the republican form of government as opposed to the former monarchy whose power was considered as arbitrary and was to be replaced by "popular representation". Nevertheless this popular representation was subjected to the single mass Party rule, a fact which the Tunisian constitution completely ignores. In reality all the candidates who are to become the representatives of the people in the national Assembly are nominated by the Neo-Destour Party which is the only officially recognized Party since independence.

It should also be remarked that though the Destourian nationalist movement always hoped for a regime of a separation of powers in order to control the monarchy⁽³⁸⁾, it is difficult to talk about a real separation of powers in the Tunisian constitution of 1959. In fact the constitution gives the head of the State all the powers which are attributed to the president of the republic in a presidential regime as well as those given to the prime minister in a parliamentary regime⁽³⁹⁾. The legislative and executive powers are not given to two different and separate organs as the president of the Republic enjoys important prerogatives in the legislative field while he dominates almost completely the executive power. It is thus difficult to admit the existence of a real separation of powers or even a collaboration of powers as such principle would involve the presence of two separate

or distinct legislative and executive powers. Hence the Tunisian "presidential" system makes essential the existence in practice of one will for both the president and the Assembly and, given the wide prerogatives of the president, the Assembly is bound to follow the will of president who reflects the popular will as he is generally elected by universal suffrage. In practical terms the "supreme combatant" who is the "Leader- hero" of the nation, dominates the Assembly, the Government and the Party.

ii The Moroccan Monarchy:

In the Moroccan case where the Monarchy had been involved in the nationalist movement with the *istiqlal* Party, the exiled Sultan who became King Mohammed, took his time (like Bourguiba) to construct a new system of "constitutional monarchy". His intention was to create the suitable environment for a new democratic experience which (unlike the Tunisian case) was closely connected with Islamic traditions. Hence King Mohammed V followed the Islamic principle of "Al- Shoura" in the establishment of the first political institution which was called the (consultative Council). As he had to face political parties in their claim for political power, Mohammed V being the symbol of national unity and the beloved leader of his people, chose to play the role of the arbiter by placing himself above political parties especially after the emergence of pluralism in Morocco as a result of the creation of the popular movement and the U.N.F.P. Consequently the transitional period in Morocco extended for six years from independence until the promulgation of the constitution in 1962 by King Hassan II. This period enabled the Moroccan Monarchy to consolidate itself in power and to weaken at the same time the position of the political parties.

It can be argued that the Moroccan Monarch has a long historical legitimacy in Morocco through the Alaouite dynasty which traces its origins back to the Prophet ⁽⁴⁰⁾. Moreover Mohammed V and his Crown Prince Hassan II have obtained, like Bourguiba, what can be called a nationalist legitimacy because of the leading role of the Palace in the nationalist movement. Hence with these two sources of legitimacy, the Moroccan Monarchy has become in strong position to

dominate political power. The first historical source is considered as the basis of the legal Islamic legitimacy which gave the Sultan in the past his royal sovereignty (based on the bay'a) that enabled him to issue "dahirs" (laws). Consequently the constitution is considered as a "pact" between the King and his people and the referendum had become a means for the renewal of this "sacred" pact or relation that had always united the two sides. After the referendum, the monarchy has been legitimized in a modern context by the people and is hence given wide powers and prerogatives to control the State organs as well as the political parties⁽⁴¹⁾. The constitutional monarchy had thus been established, but far away from reducing the position of the throne, it has given it more powers while it has undermined the position of the parties. In other words the new "parliamentary" system established by the constitution of 1962 has practically confirmed the political domination of the throne in Morocco.

With regard to the position of Islam in the Moroccan political system, it is evident that Mohammed V, unlike Bourguiba, followed, with the support of Allal Al-Fassi, the Arabo-Islamic tendency. Hence his son King Hassan II considered the referendum on the constitution as a renewal of the "sacred pact" which reminds of the traditional bay'a to Amir Al-Mouminin. Moreover while Islam was declared as "religion of the State, the King also used the traditional title of the Caliphate, i.e Amir Al-Mouminin which was first used by the second caliph Omer Ibn Al-Khatib. Thus the choice of the modern system of "constitutional monarchy" is partly coloured in Morocco by the traditional system of the Caliphate which largely explains the political realities of the Moroccan case.

It can also be noted that while Bourguiba used the title of "Al Mujahid Al-Akbar" in the temporal sense of the nationalist struggle for independence and development, King Hassan II employed the title of "Amir Al-Mouminin" in a purely spiritual or religious context. Hence King Hassan II followed as Amir Al-Mouminin the practice of the traditional ride to Friday prayers in his full national costume. Moreover he kept traditional Islam in Morocco as it is or without making any such initiatives or innovations made by Bourguiba in Tunisia. The King-Amir al-Mouminin is constitutionally responsible

for the protection of Islam as he is the spiritual head of the Muslim community as well as the temporal head of the State in which there is no separation between the spiritual and the temporal domains.

As for the concept of democracy, it is evident that the Moroccan case is also of a particular character. King Mohammed V Stated in his message on 23 May 1960 concerning the nomination of a Constitutional Council ⁽⁴²⁾ to draft a project of a constitution, that the future constitution would establish democratic institutions within the system of constitutional monarchy in which the fundamental principles of Islam and the specific character of Morocco would be respected. Then after the death of Mohammed V, King Hassan II declared on 2nd June 1961 a temporary "Fundamental law of the Kingdom of "Morocco" and referred at that occasion to the message of his father by saying that he was inspired by the spirit of the " authentic democracy" which found its basis in the teachings of Islam as well as by the principles which always guided the actions of his father in favour of the establishment of a "constitutional monarchy" ⁽⁴³⁾. It was thus evident that this "constitutional monarchy" would be of a specific nature because of the importance of the charismatic relationship between the King and his people, which is undoubtedly the most striking characteristic of Moroccan politics⁽⁴⁴⁾.

In practical terms this can be made clear through the exercise of "national sovereignty" which is dominated in the Moroccan context by the Islamic concept of the "Umma" (referring both to a people and to a religious community). The constitutional institutions and referendum which are borrowed from the modern techniques of representation and direct democracy express the will of the "Umma" within the limits fixed by Islamic traditions. As the King Amir al-Mouminin continues to consult the Umma either directly (by referendum) or indirectly (through the elected representatives), the new sovereignty of the nation cannot practically contradict the traditional " royal sovereignty" which was existing before the promulgation of the constitution. The fact that the Moroccan Monarchy is closely connected with national identity explains the political realities behind the important powers and prerogatives given to the King whose person is " sacred and inviolable" (article 23) in a system

of "constitutional monarchy". The principle of legality or the rule of law stated in article 4 of the constitution does not change in practice the political realities of the Moroccan political system.

In fact the dualist or bicameral Moroccan parliamentary system gives a clear-cut eminence to the Executive which is represented by the person of the King⁽⁴⁵⁾. Though the legislative function is entrusted to the elected parliament, the Government also controls the initiative and the voting of laws while the House of Representatives is restricted by certain conditions from the exercise of its power of putting in cause the responsibility of the Government by a vote of non-confidence. The King controls the Government which is also responsible before him while he has his own prerogatives that enable him to issue royal decrees. The Ministers are in fact the direct collaborators of the King who unlike them, has no political responsibility. Also the monarchical form of Government (like Islam) cannot be the object of any constitutional revision. Lastly, the judicial power is delegated by the King to the judges. Hence it is practically difficult to talk about a real separation of powers as the personality of the King- Amir AL-Mouminin dominates the political system of the 1962 constitution.

iii The Algeria of Ben Bella:

The Algerian case offers a different political reality as the famous Algerian Revolution of 1954 which was initiated by the "nine historical leaders", gave rise to the principle of "collective leadership" instead of the traditional concept of one national leader as in the cases of Tunisia and Morocco. In fact the FLN was created as a front that gathered all the different political tendencies (the moderates, the Ulama or learned Muslim scholars, the communists and the revolutionary youth) with the aim of conducting a violent struggle for the liberation of Algeria from French colonial domination.

As the FLN was thus concentrating on the task of liberation until independence in 1962, it was not yet a political Party ready to rule the new independent Algerian State. However the FLN was at that time the only organized body in Algeria having both political and military organs. Hence and despite its weaknesses, the FLN was declared as the ruling Party in independent Algeria. In fact it was hoped that the FLN

would become a strong Party later on as a result of the important constitutional role given to it as the leading and ruling Party . Until that stage is reached, a charismatic leadership, like that of Bourguiba and Mohamed V, was needed in Algeria. Hence Ben Bella, who was imprisoned in France for six years (1956-1962) ⁽⁴⁶⁾ and was made popular in the Egyptian press, took the position of the Algerian popular leader after he came to power with the support of colonel Boumedien.

The period between July 1962 and September 1963, considered as a transitional period, paved the way for the legal institutionalization of the one- Party system in Algeria as well as the consolidation of the power of the political Bureau of Ben Bella. The constituent Assembly elected in September 1962 for a period of one year, had a triple task: nomination of a provisional government, legislation in the name of the people and elaboration of a constitution ⁽⁴⁷⁾.

In fact the candidates for this Assembly were nominated by the political Bureau after consultations with the representatives of the "wilayas" or regions. This practice prepared the emergence of the one-Party system in Algeria in favour of the coalition formed around the political Bureau and the former National Liberation Army which subsequently became the National popular Army. In this leading coalition Ahmed Ben Bella, head of the Government, supported by his deputy and Defense minister Boumedien, used all the possible means at the top of State organs in order to insure a wide popular support, e.g through the "historical decrees" of March 1963 on the "autogestion"⁽⁴⁸⁾. It should be remarked that the transitional period witnessed supremacy of the Government over the Assembly and also a concentration of the executive power in the hands of Ben Bella who became also the general secretary of the Party. Consequently Ben Bella became in a strong position to influence the elaboration of a constitutional project that suited the political realities of the transitional period.

In the Islamic ideological context, it should be noted that the mention of Islam and the Arabic language as two major elements of the Algerian personality (as the preamble says) has resulted from the influence of the Association of the Algerian Ulama led by Ben Badis

who insisted on the Arabo- Islamic character of Algeria against the French policy of assimilation. Also Islam is declared, like in the other cases of Tunisia and Morocco, as "religion of the State" which respects other beliefs as well as the free exercise of religious cults. While in Morocco there was no need to mention that the head of the State should be a Muslim as the King was given the title of "Amir Al-Mouminin", the Algerian as well as the Tunisian constitutions State that the president of the Republic should be a Muslim.

The major problem which Ben Bella had to face was the relation between the Algerian socialist option and Islam. The political realities indicated that Ben Bella's Government was composed of both of two conflicting forces: the "Ulama" on one hand and the "Marxists" on the other hand. It seems that Ben Bella attempted to strike a balance between these two different ideological trends without giving either side the possibility of domination in the Government, but it has been remarked that the charter of Algiers declared by the Party's conference in 1964, was largely coloured by the influence of the "Marxist" collaborators of Ben Bella. In fact Ben Bella was in favour of a "socialism" which was in conformity with the principles of Islam while taking at the same time only the economic analysis of Marxism⁽⁴⁹⁾.

With regard to the concept of democracy, the Algerian case seems to be totally different from the other two cases in Tunisia and Morocco: it is related to the option of "popular democracy" rather than "liberal democracy". The Algerian option is characterized by the adoption of "socialism" as the fundamental goal of the Algerian "democratic and popular Revolution. Though the first Algerian constitution of 1963 did give a definition of either "socialism" or the "democratic and popular Revolution", it stressed the specific character of this option by reference to the traditions of the Algerian nation. The people's power to be exercised in the struggle against all forms of exploitation while there was also reference to "agrarian reform", the creation of a "national economy" administered by the working masses, the elevation of the standard of living for these masses, the emancipation of some and other social reforms. This task of the construction of "Algerian socialism" and "popular Revolution" had

officially been given to the Party. Though the Party is distinct from the masses, it has to be in permanent contact with these masses and so it concretizes the popular will which will be legally expressed by the Assembly. In other words all power came from the people through the Party ⁽⁵⁰⁾. However as the Party was practically weak, its leadership composed of the "most conscious and active revolutionary elements" took the process of decision – making through the principle of "democratic centralism" which was borrowed from the one- Party communist systems. The National Popular Army (like other mass organizations) was closely connected with the Party and in this context "Participates in the political, economic and social activities of the country" as said the preamble as well as article 8 of the 1963 constitution.

It is thus clear that popular sovereignty is exercised indirectly by the Algerians through their representatives in the Assembly but in the manner organized and concerted by the Party. Hence the practice of the Algerian "popular democracy" rejects completely the principle of the separation of powers which is essential in the parliamentary and presidential systems of liberal democracy. Instead of the separation of powers, the Algerian "model" insists on the "unity of power" in the State as well as a certain form of a separation of "functions" which replaces the concept of "public powers". The unity of power is supposed to be practically in the hands of the Party which directs all the policies of the State and controls their execution for the sake of the "socialist revolution". However one should not forget that the FLN was not yet in 1963 the "revolutionary force" capable of leading and directing the new Algerian State. Hence the mandate of the Assembly was extended to one more year by article 77 of the constitution while the supremacy of the Executive under the control of Ben Bella became evident in practice.

It is thus clear that the Party's monopoly of power was declared constitutional so as to serve as a cover to an organization of public powers in which the Party had in reality little impact ⁽⁵¹⁾. The president of the Republic appears practically as the real holder of power on behalf of the Party. It seems that the constituents intended by this situation to allow the already existing but politically newly born Party

to find support in the State machinery. This is perhaps confirmed by the fact that Ben Bella accumulated in his hands both the functions of the president of the republic and the general secretary of the Party. It should be remarked here that this "personal union" of the Party and the State contributed in practice to the fragility of the "constitutional regime of government by the Party": the officialisation of what was called the "personal power" led in 1965 to the overthrow of Ben Bella by colonel Boumediene.

IV The Maghrib and the Western Political Systems:

It is now evident that the first constitutions of the independent Maghrib have apparently adopted the three western constitutional models (i.e. the presidential system, the parliamentary constitutional monarchy and the government by and Party), but a closer study of these constitutions shows that they have in fact their own particular characteristics resulting from both their arabo-Islamic ideology and the nationalist background. It should be noted that while the Tunisian and Moroccan cases seem to have borrowed from the models of liberal democracy, the Algerian case had been distinguished by its preference for the model of popular democracy, but in all the three cases the new models have their own specific features and they were very closely related to their political realities. The striking common feature which distinguishes the three cases from Western political models was the declaration of Islam as "religion of the State". This can be explained by the Islamic concept of the "Umma" and the fact that, unlike Western national secular States, religion cannot be separated from the State in Muslim societies. Again in the field of democracy, the Maghribian States have their own particular characteristics with regard to the Western political systems. Their common references in the first constitutions to public rights and liberties concentrate generally on the legal limitations rather than the guarantees of these rights and liberties. Specific differences appear also in the concepts of sovereignty and the separation of powers.

i- Tunisia and the presidential model:

In Tunisia, Bourguiba opted publicly for the American presidential model for the sake of political stability which he was not available in the French model of government. Thus the constitution of 1959 manifested a presidential system of government with the president of the Republic representing the central part of the system in which he was assisted by State secretaries while there was a National Assembly for legislation. However there were three important elements which distinguished the Tunisian political system of Bourguiba from the American model.

The first important element was that while the American model gave the legislative and executive powers to distinct organs of equal importance (i.e. the Congress and the president respectively), these two powers were not really given to two different organs (the National Assembly and the president of the Republic) as the Tunisian President had wide prerogatives in the field of legislation while he dominated almost completely the executive power. It is difficult in this case to talk either about a separation of powers or about the principle of checks and balances which are essential features of the American model: the Tunisian constitution did not organize two different or distinct powers as it only foresaw two organs for the exercise of legislative functions with a clear domination from one of these two organisms i.e. the president of the Republic. The Economic and Social Council established by article 58 of the constitution as a consultative body to assist both the president and the Assembly did not change the essence of this system or the principle of monogameralism in Tunisia.

The second important element in the distinction between the Tunisian and the American political systems is the wide area of powers and prerogatives given to the Tunisian president in the executive and legislative functions. Also as neither the President nor the Assembly can overthrow the other, the Tunisian system presupposed the existence of a complete harmony between the president and the Assembly as both sides had one and the same will. In comparison, the American President does not have the same wide powers and prerogatives as the Tunisian president while a complete harmony between him and the Congress cannot be assured because of the existence of an opposition Party in the Congress which can also

exercise the power of "impeachment" on the president. These differences in the two systems can be explained by the fact that the Tunisian presidency was controlled by the nationalist leadership the "supreme combatant" who could be qualified in the Arabic terminology as the "Zaim" or the political leader of his people as long as he lived.

The third and last element in the comparison is that though the Tunisian constitution followed the Western liberal constitutional theory in which there was no explicit reference to political parties, the Tunisian political system could not be understood without reference to the real existence of the one mass Party system. Hence though the Tunisian constitution apparently followed the example of liberal democracy, it was in fact in contradiction with it because the Western theory rejected the domination of one Party which refused to recognize the existence of other parties or opposition parties. It is also clear that the absence of any procedure of arbitration between the president and the Assembly and also the non-existence of any organ to control the constitutionality of laws could only be explained by the presence of an external arbiter above the State organs, i.e. the Party of the Neo-Destour which had led the struggle for the independence of Tunisia. Consequently it is evident that the democratic principles declared by the Tunisian constitution of 1959 have a different political significance from those of liberal democracy: the unanimous people in Tunisia express their sovereignty through the Party and its leader who as president of the Republic and the supreme combatant, concentrated power in his hands preventing thus the rise and expression of opposite political tendencies.

ii- Morocco and the parliamentary model:

the Moroccan political system offers also another different example with regard to liberal democracy. King Mohammed V and his successor Hassan II opted for the system of constitutional monarchy but declared at the same time their adherence to the principles of Islam. The choice of the dualist or bicameral parliamentary system was made in the constitution of 1962 in order to give the people the possibility of participation in power with the Monarchy on the basis of the concept of "national sovereignty" and the principle of the"

separation of powers" Nevertheless the Moroccan political system manifested a number of particularities which distinguished it from the liberal parliamentary systems of constitutional monarchy.

The first particularity of the Moroccan constitution of 1962 was that the King did not reign but also ruled effectively his people. The Moroccan case seems to be characterized by a confusion of powers in favour of the King who in addition to his domination of the executive power participated actively with parliament in the legislative function while he also delegated the judiciary power to the judges. The double responsibility of the Government before the king and the parliament did not change this situation as the ministers were in fact the direct collaborators of the King who presided on the council of Ministers and had no political responsibility while he had the right to dissolve the House of Representatives. It is thus clear that the Moroccan parliamentary system was different from that of European constitutional systems in which the Monarch had a limited or no real political power at all. It should also be noted that the Moroccan political system of 1962 was considered as comparable with that which was established by the French constitution of 1958 In the sense of creating a : hereditary Gaullism," but it should be admitted that the prerogatives of King Hassan II were much more than these legally enjoyed by president de Gaulle in France ⁽⁵²⁾.

The second particularity of the Moroccan political system as distinguished from liberal democracies was the spiritual power given to the King in his quality of the "Commander of the Faithful", a title which refers to the traditional system of the caliphate in which there was no separation between temporal and spiritual powers or between the State and religion. In this case the King has the task of protecting Islam and he is related to his people by a "sacred pact" comparable with the traditional "bay's" which the King applied by using the modern technique of the referendum. This pact allegiance from the part of the Muslim community gave the King a very high status in which the person of the King was constitutionally considered as "sacred and inviolable". Hence the reference in the constitution to the modern concepts of national sovereignty, legality and the separation of the judiciary was accompanied by a traditional conception in which the

Moroccan monarchy was directly inspired by the Caliphate system. The unity of the royal power in the temporal and religious fields is an important characteristic of the Moroccan system as distinguished from the modern constitutional monarchies in Europe⁽⁵³⁾.

The third and last particularity of the Moroccan constitution of 1962 was that unlike Western liberal constitutions, it made refers to the role of political parties as serving the organization and the representation of the people. It is also important to note that the Moroccan constitution prohibited the one-Party system in Morocco and consequently advocated the case for pluralism. This position was taken by the Monarchy possibly to avoid the formation of a single mass Party which like that of Tunisia might have threatened the existence of the Monarchy itself or also possibly to protect the small new parties which emerged after independence giving the king the occasion to become the arbiter between these parties or even to manipulate them in his favour. Moreover the prohibition of the one-Party system in Morocco can also reflect a rejection of the one- Party rule as known in the popular democracies of the communist world. Another important remark in this field is that the Moroccan Monarchy was not in favour of the monopoly of political parties in practical politics. Hence the bicameral parliament was partially composed in the Senate by two thirds from municipal and regional councils and one third from agricultural and commercial chambers while trade unions participated with political parties in the general elections for the House of Representatives. This situation is clearly different from the pluralist political systems in Western liberal democracies where political parties usually monopolize in practice the representation of the people as well as the centre of political power in the government though there is no explicit mention of them in the constitutions.

iii Algeria and the Government by the Party:

The Algerian political system of 1963 reveals these cases, which had its own specific characteristics as distinguished from both liberal and popular democracies. Rejecting the theory of the separation of powers which is essential in presidential and parliamentary liberal systems, the first Algerian constitution of 1963 opts for a specific "model" of popular democracy which is closely related to the political realities of

the Algerian Revolution. This revolutionary situation accounts for the vigorous originality of the Algerian constitution in comparison with Western political systems. The Algerian “constitutional regime of the Government by the Party” has consequently its own characteristics in relation to these political systems.

The first characteristic of the Algerian constitution of 1963 was that it was marked by the nationalist armed struggle that lasted for about seven and half years (November 1954 –June 1962); that was a war of liberation which ended by the independence of Algeria. In fact the constitution evoked the concept of the “social contract” as it reflected a global conception of the Algerian society (defined as a social group) in the past, present and future. The preamble also included a real construction of the Algerian political community in a way that went far beyond any other constructional text of this type. The objectives in this construction consisted in establishing a “socialist democracy” and a “socialist economy” in a manner that made a wide distance between the Algerian regime and the occidental as well as the Marxist- Leninist models. The contents of this “Algerian socialism” were also different from those of other developing countries such as Egypt of Nasser and Guinea of Seko Tore`.

The second characteristic of the Algerian constitution concerns the role given to the ruling Party (FLN). This is all powerful Party which had for essential tasks mobilization and the education of the masses as well as the reflection of their aspirations and the control over the State origins. In this case the difference with liberal democracy is clear as pluralism was rejected and so electoral liberty was absent as the Party nominates the candidates representing the people in the national Assembly.

Also the Algerian case is different in its conception of the State and the political community from that of the Marxist model. In fact while the Government by the Party in the Communist States cannot be separated from ideological indoctrination, the FLN was the vanguard Party because it was identified with the struggle of the Algerian people for liberation and national existence. The choice of a single—Party system in Algeria had two reasons in the logic of the constitutional text. On one hand there was a historical reason: it was the FLN which

gave life to the Algerian nation as a political community with which it identified itself. On the other hand there was a practical reason: political efficiency necessitated the unification and concentration of power in the hands of a vanguard Party which was the FLN. Another important difference from the communist States was that while the membership of the Communist Party in these States was very limited, the FLN was an open Party: it was a mass or a “nation- Party” as its membership, like the case of the Neo- Destour in Tunisia, was open almost to all the nationals.

The third and last characteristic of the Algerian constitution of 1963 was that it theoretically appeared to establish an amalgam of both presidential and parliamentary systems in a particular manner which was different from the French constitution of the Fifth Republic of 1958. The organization of the public powers was not of a pure presidential type because the national Assembly “controlled the actions of the Government” (as the case in the parliamentary system). On the other hand it was not of a pure parliamentary type because the Head of the State- President of the Republic- who was elected by universal suffrage, directed personally the “Government” for which he was alone responsible before the Assembly (as the case in the presidential system). Also in the Algerian case, the dissolution of the Assembly could only be the automatic result of a vote of non-confidence by the Assembly against the President of the Republic. However it should be noted that the important powers given to the Algerian President in the direction of the State made the political system in Algeria closer to a type of presidentialism of a specific nature ad it corresponded to the political realities of the transitional period⁽⁵⁴⁾ while it was also instituted within the context of a one- Party system that did not recognize the principle of the separation of powers. In this new Algerian system, Ben Bella, the former Head of the Government who became “ President of the Republic “ and “ President of the Council”, had a supreme power over the Executive while dealing with a weak Assembly. The Algerian President appeared at the end as the real holder of political power and he was also a national hero in the eyes of his people.

Conclusion:

It is now evident in conclusion that the first constitutional systems in the independent Maghrib seem to have established three different political regimes in Tunisia, Morocco and Algeria as a result of the different options made by the top leaders of the nationalist movements(i.e Bourguiba, Mohammed V followed by Hassan , II and Ben Bela) during the transitional periods which preceded the promulgation of these constitutions(i.e 1956 – 1959 in Tunisia, 1956 – 1962 in Morocco and 1962 – 1963 in Algeria). Though all the three countries of the Maghrib were under French colonial domination, the course and the leadership of each nationalist movement gave rise after independence to a different political system from the one existing in France under the Fifth Republic of General de Gaulle. Hence the new political systems of the independent Maghrib have been dominated by the nationalist background and by the transitional periods that followed after independence..

One should conclude at this stage that the new constitutional texts of the independent Maghrib (1959 in Tunisia, 1962 in Morocco and 1963 in Algeria) were based on the political realities of the three countries after independence. These political realities were marked by a struggle for the consolidation of political power by the top nationalist leaders against their real or possible rivals.

Hence the constitutions had been used as a legal “ façade” or cover for the political realities which dominated the transitional periods. In fact the constitutional texts largely reflected the outcome of these political realities, i.e. the consolidation of political power in the hands of the top leaders and artisans of these constitutions, namely Bourguiba, Hassan II and Ben Bella. However, as the case with all constitutions, these texts do not reflect all the political realities as they rather concentrate on ideal principles. The Tunisian constitution for example does not mention the one- Party system though it is a fact which dominates the whole political situation in Tunisia while the Algerian constitution declares a system of government by the Party though the FLN has no significant or effective existence in the Algerian political realities after independence.

It should be concluded, moreover, that the three independent States of the Maghrib are very closely attached to the arabo – Islamic

civilization which represents the implicit ideology to which they belong and which distinguishes them from the occidental world. In this ideology the head of the "Umma" is a personality of top and real importance: he is the leader (Zaim or Qaid) of his people in a Muslim community in which there is no separation between temporal and spiritual affairs. This accounts for the fact that despite the apparent constitutional differences, very wide powers and prerogatives have been given in the three cases of the Maghrib to the Head of the State whether he is the President of the Republic (as in Tunisia and Algeria), or the King (as in Morocco). Moreover Islam has been declared in the three constitutions as the "religion of the State", and in the Moroccan case, the King also holds the traditional title of the Caliphate, i.e Amir al-Mouminin while this situation is different from the Western concept of the national State in which religion has been separated from the State, it reflects in fact three different attitudes in the minds of the leaders : "modernist" in the case of Bourguiba, relatively "conservative" in the case of the Moroccan monarchy and "revolutionary" in the case of Ben Bella and the FLN.

It should be concluded, finally, that though the three constitutional systems of the independent Maghrib seem to have adopted certain Western political models, they have in fact their own specific characteristics. Hence the Tunisian option of the "presidential" system is different from the American model mainly because of the existence of a single mass Party regime in Tunisia led by a powerful president who is also the "supreme combatant" among his people. The Moroccan option of the "parliamentary" system of constitutional monarchy is again different form such liberal democracies in European modern monarchies mainly because of the dominant role of the King- Commander of the Faithful who accumulates both temporal and spiritual powers. Lastly the Algerian option of socialist "government by the Party" is also different from the popular democracy of the former Soviet Union and the communist countries mainly because the FLN is an open nationalist Party led by a charismatic national hero.

Hence despite their apparent different options, the first Maghribian constitutional systems also have some major differences with regard to Western democracies. As these systems have evolved since independence, it is important now to know whether they are still maintaining their specificity.

Endnotes:

- (1) It should be noted that Tunisia experienced the “ Fundamental pact “ f 1857 and more important the constitutional of 1861 which limited the absolute powers of the Bey during the era of the Regency of Tunis. Hence the Tunisian nationalist movement formed in the 1920's the Liberal Constitutional Party which became later on the Neo-Destour and continued as the ruling Party in Tunisia after independence.
- (2) The Hussainid dynasty took power in Tunisia sine 1705 under its founder Hussain Ibn Ali, and though it was originally a Turkish family, it gradually became a Tunisian family with more independence form the Ottoman Empire.
- (3) This was a declaration to the Swiss Radio on 6 September 1957. See Charles Debbasch, “ Assemblée national constituant tunisienne”, in Revue Juridique et politique d'outre-mer, No.1, January- March 1959,pp. 52 – 54.
- (4) See Charless Debbasch, la Republique tunisienne, Paris, 1962 p. 62
See also Wilfrid Knapp, Tunisia, London, Thames and Hudson, 1970, 1962
- (5) Jacques Robert, La Monarchie Marocaine, Paris, 1963 p. 99 see also S.M. MohammedV, La Maroca l'heure de L'indépendence, Rabat, 1957, pp. 23 – 24 and Salah al- Aqad, AL-Maghirb Al-Arabi, Cairo, 3rd edition, 1969, p. 514
- (6) See S.M. Hassan II, Le Maroc en marche, Rabat, 1965 ,p. 158
- (7) Public speech of King Hassan II from Radio Rabat on 18 November 1962. See *ibid*.
- (8) Salah Al'Aqad, *op.cit.*, p.48. see Ch.R. Algeron, L'histoire de L'Algerie Contemporaine, Paris, Que sais – je? (400),3rd ed, 1969,p.118.
- (9) Ch. – R. Ageron, *op.cit.*, pp.118-119.
- (10) Louis Fougere, " La constitution algerienne", in Annuaire de l'Afrique du Nord, 1963 , p.9.
- (11) Jean Leca, " Parti et Etat en Algerie", in Annuaire de L'Afrique du Nord, 1968,pp.20-21
- (12) Michel Camau, La notion de democracie dans la pensee des dirigeants maghrebins, Paris, CNRS, 1971, p.310. The author has also published in French three papers on the evolution of constitutional law in Tunisia, Morocco and Algeria since independence, in Jahrbuch des offentlichen Rechts der Gegenuart, J.C.B. Mohr (Paul Siebeck) Tubingen, 1971, 1972 and 1974, pp.309 – 369, 383-529 and 239-334 respectively for Tunisia, Morocco and Algeria.

- (13) M. Benabdallah who presented on 24 August 1963 the constitutional project to the constitution Assembly, used these same words to describe the Algerian political system and added that the constitution was neither presidential nor parliamentary. The expression has then been used by Francois Borella in his article " La constitution algerienne, un regime constitutional du government par le parti". In Revue algerienn des Sciences juridiques, politiques et economiques, vol.1(1) March 1964.
- (14) Louis Fougere, op. cit. p.20.
- (15) See Etinne Bruno, Les dispositions islamiques au droit public maghrebin, in Revue de L'occident Musulman et de la Mediterranee(1), 1st September 1966.
- (16) This title was first used by Omer Ibn Al-Khatib, the second caliph who came after Abu Bakr in the succession of the Prophetic Caliphate. The term combines both temporal and spiritual powers as the holder of the title was at the same time the political, the military and the spiritual leader.
- (17) Though article 5 declares Arabic as the national and official language in Algeria, article 76 insists on rapid Arabicisation while admitting " temporarily" the use of the French language together with Arabic.
- (18) One can compare this situation with that of the State of Madina- the first State in Islam established by Prophet Mohammed after the Hijra (immigration) from Mecca- as the Jews of Madina were admitted by a pact to live as citizens with Muslims within the new Islamic "Umma" in which they were free to exercise their religious cult as a separate religious community.
- (19) Article 7 of the constitution associates in one formula religion with patriotism and monarchy: the motto of the Kingdom is " Allah, Al-Watan and Al-Malik " (the King).
- (20) See Charles Debbasch, " La constitution de la Republique tunisienne du 1er juin 1959", in Revue Juridique et politique d'Outre-Mer(4), October- - December 1959,p.579.
- (21) This was done in accordance with article 2 of the short " constitution" of 13 April 1956.
- (22) This article can be compared with article 3 of the French constitution of October 1958
- (23) Michel Camau, La notion de la democracies..., op.cit., p.277.

- (24) The preamble makes references to the " programme of Tripoli" adopted by the National Council of the Algerian Revolution just before independence. This programme opted for the construction of a popular democratic republic in Algeria on the basis of socialism.
- (25) Article 73 States that any project of revision of the constitution must be approved by referendum.
- (26) The President shares with the Assembly the initiative of making ordinary and constitutional laws and can also make decrees as well as exceptional measures in cases of imminent danger. He also informs the Assembly of the evolution in the governmental policies either directly or through messages.
- (27) This was a declaration made by Ahmed Guedira in a press conference.
- (28) See Maurice Flory and Robert Mantran, *Les regimes politiques des pays arabes*, Paris, P.U.F., 1968.p.216.
- (29) The Government controls the initiative of law- making through fixing the agenda while the prerogatives of the Parliament to vote laws are largely restricted by different dispositions in articles 47 , 53 ,56 , 58 , 62, 70 – 76 and 104 – 108. Moreover the Throne cannot be put in cause and the monarchical form of the State cannot be amended while the right of the House of Representatives to make a vote of non-confidence against the Government is also limited by article 81.
- (30) The supremacy of the King can be seen in the fact that the Council of Ministers cannot act independently from the King who enjoys certain prerogatives: the King forms the Government and directs its action, issues" dahirs (royal decrees) and decides the measures to be taken in cases of emergency. See Michel Rousset, " "Reflections sur la competence administrative du roi dans la constitution marocaine de 1962" " in Revue juridique et politique, Independence et Cooperation, October December 1967, p.536.
- (31) See Jacques Aveille, " Le Maroc se donne une constitution", in Confluent(27) , January 1963, p.32. It can also be noted that this situation is confirmed by a decision declared by the supreme court on 20 March 1970. see the text in Michel Rousset article " Du l'indépendance du pouvoir judiciaire au controle de l'administration, propos d'une recente decision de la cour supreme du Maroc", in Revue juridique at politique. Independence at Cooperation(3), 1970 , pp. 541-542.

- (32) See Hubert Michel, " Les institutions politiques de la Republique algerienne", In Revue de L'ocdent Musulman et de la Mediterranee(1), 1st September 1966, p.150.
- (33) These rights are mentioned in articles 8,9,10 and 14 respectively.
- (34) See this press conference of 13 December 1962 in S.M. Hassan II op.cit., p.209
- (35) Salah Ben Yussif was the second man after Bouguiba in the leadership of the Neo-Destour Party. He stayed in the Arab Orient some time and differed with Bourguiba because he insisted on the total independence of the Maghrib rejecting thus the 1954 agreement between Bourguiba and France for the internal autonomy of Tunisia. Also he adopted a strong Arabo-Islamic tendency while Bourguiba was largely influenced by the French culture.
- (36) Clement H. Moore, Tunisia since independence- The Dynamics of one- Party Government, California,, 1965, pp.6 and 71. see also Wilfred Knapp, op. cit. pp. 143-147.
- (37) Ibid. p. 49 .It can be noted that Mohammed Abdoh together with Gamal AL-Din Al-Afghani and Rashid Rida were the three pioneers of the modern Muslim revivalist movement .
- (38) The Congress of the Neo-Destour Party held in Sfax in November 1955 voted a general motion in favour of the principle of the separation of powers in view of reducing the monarchical powers of the Bey.
- (39) Charles Debbasch, La Republique tunisienne, op. cit., p. 56.
- (40) The Alaouite dynasty came to power in Morocco since 1631 following the division of the Saadians who had established the Sharifian State in 1553. see Salah Al-Aqad, op.cit. pp. 53-76.
- (41) See Michal Camau, La nation de democratic, .. op.cit. p.310.
- (42)It should be noted that only two months after its creation, the Constitutional Council(a consultative organ) failed to carry on its mission as the National Union of Popular Forces (which was the " left" wing that separated from the Istiqlal Pary) refused to participate in the council because its members were nominated while at te same time the election of ' Allal Al-Fassi as president of the Council provoked the withdrawal of the members representing the Popular Movement and the Democratic Party of Independence. The Concil came to a final end with the death of Mohammed V on 26 February 1961.
- (43) See S.M. Hassan II, op.cit. p. 158.
- (44) Douglas E. Ashford, Political change in Morocco, Princeton, 1961 p.412

- (45) See Maurice Flory and Robert Mantran, op.cit., p.216.
- (46) France captured the plane carrying Ben Bella and his companions from Morocco to Tunis in 1956. The leaders of the FLN were making contacts with the leaders of the two newly independent sister States in Morocco and Tunisia in order to prepare with them a project of a North – African confederation after the independence of Algeria.
- (47) Jean Leca, " L'organization provisoire des pouvoirs publics de la Republique algerienne (Septembre 1962 – September 1963), in Revue Algerienne des Sciences juridiques, politiques et economiques, vol.(1), January 1964 , pp. 7 – 17.
- (48) The French term " autogestion" which means " self – management" refers to the management of the different enterprises (mainly farms and factories) given to the Algerian nationals as a result of the massive return of the French of Algeria back to France at the time of the independence of Algeria.
- (49) See the speeches of Ben Bella, Ministry of Information , Alger, 1962 – 1964.
- (50) Francois Borella, " :La constitution algerieme..", op.cit. p.69
- (51) See Ibid., p.80
- (52) Maurice Duverger, " La constitution marocaine de 1962" Europe-France- Outre – Mer (401), 2nd trim. 1963, pp.17 – 18.It can be noted that the Moroccan constitution is also described as a mixture of presidential and assembly regimes. See Mohammed Berrada, " Analyse du projet de la constitution du Royaume du Maroc", in la Pensee(2) , December 1962 , p.33.
- (53) See Michel Rousset, " Reflexions sur la competence administrative du Roi dans la constitution marocaine de 1962", op.cit. pp. 530 -531.
- (54) In his intervention before the Constituent Assembly on 25th August 1963, the deputy M. Bouzida stated that the constitution had only extended the transitional period as apart from the choice of the president of the Republic, there was nothing new: the Assembly remained but with reduced powers in the face of an Executive that did not exist in any Arab or African constitution. See the Journal Officiel de la Republique Algerienne- Debats Parlementaires (J.O.R.A.D.P) No.7,11 March 1964, p.934.