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NEW CONSTITUTIONS FOR NEW DEMOCRACIES. POLISH AND WORLDWIDE EXPERIENCES FOR EGYPT, TUNISIA AND OTHER MUSLIM COUNTRIES.

Since 1974 – when general Geisel has given up the Brazilian junta – about 90 countries have been travelling from dictatorship to democracy. Those travels appeared to be so dangerous Sindbad the Sailor journeys. Unfortunately, only 27 percent of them successfully consolidated their democracies. But in Central and Eastern Europe almost 60 per cent (11 among 19) accomplished it enough well. What is most interesting Central and Eastern countries did it two times quicker than South American and South European ones.²

DEMOCRATIC TRANSITIONS EXPERIENCES

Global experience has confirmed that the most effective transitions take place where there was a definite advantage pro democratic elites, but only if they were consensually

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² Based on author’s recent book: *How to Build, and How to Destroy Democracies. The Study on the Consolidation of New Democracies in XX and XXI Century*, Warsaw 2012 (Polish Edition). See also: C. O. Schneider, P. C. Schmitter, *Liberalization, Transition and Consolidation: Measuring the Components of Democratization*, “Democratization” 2004, vol. 11, no. 5, pp. 77-79.

polarized and divided. Because it is impossible to dictate a well-balanced democracy by one dominant political camp, even if it is expressly pro democratic camp like Polish "Solidarność" movement, for example. In Poland, the first good semipresidential constitution was established in 1992, just under the conditions of appearance of the opposition inside the former "Solidarność" and sharp competition between supporters of President Lech Walesa and of former Prime Minister Tadeusz Mazowiecki. Additionally accompanied, during the process of constitutional designing, by the rivalry among the state institutions as such: the office of the president and the two chambers of parliament. Previously, as a result of a complete political marginalization of former communists, Poland became threatened to be under the domination of the "Solidarność", where, of course, a few only understood the essence of democracy based on competitiveness, and thus the capability of a peaceful transfer of power in the hands of the opposition. Although at that time we felt disappointed with political divisions and the prospect of losing government, from today's point of view it is clear that dating back to the *ancien regime* constitution (similar to that of Mubarak and Ben Ali, with a very strong president and the parliamentary majority electoral law) would make of Walesa and "Solidarność" political hegemony for many years. Yet the level of consolidation of democracy are also estimated after the first, and especially the second successful rotation of power. I personally see here an opportunity for Egypt, where the debate on a new constitution is joined by people elected in universal suffrage, and also representing separated institutions like: People 'Assembly, the Shura Council and the newly elected, in the near future, the president. From this point of view, I am afraid a little bit about the process of democratization in Tunisia, where a new constitution and the most important constitutional acts are able to be dictated by winning Al. Nahda and its coalition partners.

Unfortunately, it is well known world problem - "rotten door" transitions (as opposed to "hard door" ones)³, where the ruling elites have achieved during the dictatorship such a level of "rot" that upon the return power were no longer able to provide valuable opposition, but decided to spread in the other groupings or away from politics. The thing is that the new post-revolutionary camps if they are united almost always try to write a constitution and other fundamental rights "for themselves", for easy re-election or maintain government for

³ Concepts are taken from: L. A. Way, S. Levitsky, Why „Democratic Breakthroughs” often fail to create democracies: Modes of Transition and the Prospect for Democratic Change, [w:] S. Levitsky, L. A. Way, *Competitive Authoritarianism: International Linkage, Organizational Power and the Fate of Hybrid Rule*, Manuscript.

longer. To these ends, they also issue a law explicitly authorizing the discretion available or difficult to understand because of its vagueness. Forgetting that in democracy it happens to handover the government into the hands of the opposition. What, in the 90s years the last century, resulted in the so-called "no cooperative" transitions in Argentina, the Republic of South Africa and other sub-Saharan Africa and also in Europe: in Romania, Serbia and Croatia. Of course, building democracy is also prevented by too large, and too dominant influence on the process of transition of elites ruling under the dictatorship. It was just Brazil which was experienced directly coming out of the military junta, and particularly Chile, where General Pinochet has secured in the constitution - through the configuration of the second chamber of parliament - 'enclaves' which gave him an autocratic influence the decisions of the state (including the budget of the army) and his own impunity for years.

In the process of designing a new constitution two things seem to be most important. First, the importance of the so-called "constitutional moment", so if there is public support for the transition process and for the Constituent Assembly, which it prepares. Second, obtaining approval for a draft constitution among a meaningful political elites. Because these are the elites who in practice will determine its effectiveness or sabotage. And we must remember that the democratic consolidation, we can speak only when between basic social actors and elites there is a consensus that we all play the same game - democracy. That no one will try to pursue their interests in any other way. Polish experiences in this regard may be instructive. For Poland we made so many mistakes as much as possible, or even more. In 1990 we lost the "constitutional moment" (the same happened later in Belarus, Ukraine and Russia), with the result that between the years 1989 to 1997, we had three constitutions, and the impression that each team may try ruling adapt it to their own political ambitions. Exactly the global experiences confirm transactional process of constitution-making, and so every time attempts to use the starting position of politicians (for example the former Communist Party first secretaries and chairmen of the socialist parliaments) to fight for the best position and the biggest influence in the future. Unfortunately, too many people from "Solidarność" thought then that they alone are enough to ensure a democratic Poland. Nothing could be further from the truth. But true democracy is just the constitutional democracy. I kept hearing there's still a time! As it turned out soon - we did not have. Polish constitutional moment however, lasted until about one year and a half. On the other hand it must be said that, the whole time we were learning from our mistakes and reacted to the changing political situation in the country. And what about referendum? Of course, because the constitution must have a strong democratic

legitimacy of its existence, because someone still tries to change it. This gives the stability of a democratic regime. And besides, the very fact of the constitutional referendum announcement mobilizes (through political parties) public debate.

DEMOCRATIC CONSOLIDATION. WHAT KIND OF CONSTITUTION?

Pro democratic elites themselves are not enough. Painfully revealed to build democracy in Iraq, Afghanistan and Bosnia.⁴ Modernization changes are needed (in the economy, education, civil society), and at the beginning mainly the institutional ones. First of all, to combat erosion of democracy, with which the young democracy struggling from the start. When it comes to change and modernization in the context of the democratization process one can be an optimist. As shown by various indicators, at the end of the Mubarak and Ben Ali governments, Egypt and Tunisia respectively reached a level equivalent to liberalization in Central Europe (excluding Belarus, Russia and Ukraine) in 1986-88⁵, so for three years before the democratic opening. In addition, this part of Europe to achieve the current level of consolidation of its democracy needed an average of 11 years, while Southern Europe (Greece, Spain, Portugal) - 14, and Latin America as much as 26 years. Especially in Poland, largely due to the fact that work on revisions of the Constitution was focused on preventing the most dangerous agents of erosion of democracy, which turned out to be previously:

1) disregard or break of the principle of "separation of powers" (goes by the legislative proactivity of executive power: the right to self-decrees or to unilateral holding the referendum by the presidents of Latin America, Central Asia and Belarus, Russia and Ukraine);

2) too excessive dominance of the executive power (the presidents in the presidential and governments in parliamentary systems), resulting often in practice in attempts to paralyze basic for democracy mechanism of "checks and balances", resulting the depreciation of the position of parliaments and the judiciary, mainly constitutional one;

⁴ See for example: C. Manning, *Political Elites and Democratic State-building. Efforts in Bosnia and Iraq*, "Democratization" 2006, vol. 13, no. 5, pp. 724-738.

⁵ See: C. O. Schneider, P. C. Schmitter, *Liberalization, ...,* pp.77-79.

3) admission to the syndrome "dominant party" (such as once Mubarak's or Ben Ali's party), destroying the party pluralism and social options.

The answer to these common threats to the young democracies in Central and Eastern Europe which managed to build a good democracy has become essentially semipresidential system, but founding in the logic of parliamentarism. That is the president elected by popular vote, however, clearly lacking the competence to interfere with the current governance, where this government should have been accountable only to the parliament, not to the President simultaneously(by vote of no-confidence). This system took eight of eleven countries (the others are purely parliamentary regimes). Professional indexes of consolidation and quality of democracy (Bertelsmann Transformation Index, Nation in Transit, Freedom House) give the highest ratings here semipresidential models, alternately: Slovenian, Polish and Slovak Republic (after 1998) and also parliamentary republics: the Czech Republic and Estonia. And in the world rankings, the top ten new democracies, half of the regimes are semipresidential, and on top (except Uruguay and Spain): Slovenia, Portugal and Poland.⁶

Why is that? In my opinion, first, because the semipresidential system in this version is the most reasonable mechanism expanded "balance of powers" (checks and balances), which protects the back of dictatorships, despite the appearance, here and there, attempts to autocratic practices. Second, in addition, with applications in most of them the proportional electoral system which protects fair and honest elections(which is extremely important for the starters of democracy) and the distribution of political power among different social options. Thirdly, with the exception of the Czech Republic, it was decided as soon as possible the decentralization of power through general elections to local authorities (municipalities), securing them with independent budgets, and thus independence from their capitals. Unfortunately, while all too often we forgot that there is also erosion of democracy in a similar or even identical manner as that of the state.

In summary, it appears that young democracies, including North Africa, or ever, it is hoped, the Middle East in particular should avoid models of presidential model (outside the U.S. none have succeeded, because of the lack of respect for "separation of powers"), but also

⁶ See for example: W. Merkel, Against All Theories: The Rapid Democratic Consolidation in Central and Eastern Europe, http://www.fphil.uniba.sk./file/admin/user_upload/edit.

British parliamentary version (complete failure of the application of this model in sub-Saharan Africa), and the irresponsible mix of both (for example president of both the prime minister), with the exception to the rules set by the variants semipresidential founded on parliamentary logic. We must constantly keep in mind, again I emphasize that once the basic flaw as the Arab countries and the communist was the impossibility of ruling rotation room. And democracy is just that. In addition, the consent among elites covering the basic rules of governing media freedom, the existence and activities of social organizations and local authorities to fulfill the conditions for the consolidation of democracy with success.