WORKING PAPER

INSTITUTIONAL ARRANGEMENTS WITHIN THE FRAMEWORK OF POLITICAL LIBERALISATION IN MOROCCO

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Abstract

The objective of this working paper is to study the institutional arrangements that Morocco has enjoyed. This is based on subtle political balances that everyone, from the top to the bottom of the social hierarchy—from the king at the top to the electors at the base—is trying to preserve. Such stability is also founded on judicial norms mixing specific practices with a monarchy that is hundreds of years' old and foreign influences emanating from countries throughout the Mediterranean, every time this was felt necessary. Far from seeking a paradox at all costs, it is perhaps the ancient character itself of the Sherifian kingdom and the strong traditions it is founded upon, that have made it easier to abandon a number of elements that do not seem adapted to modern times. It is only within the framework of a pact between the monarch, the whole of the political class, and the entire nation that this policy of reform can be shown to have achieved complete success..

Keywords: Reforms; Political Liberalization; Moroccan neo-constitutionalism; Institutional Arrangements; The political pact; The multi-party system; Fundamental rights: freedom; equality; the judiciary power; A new form of citizenship; Governance and institutions.

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Introduction

The Moroccan constitutional text is set out in a spirit of continuity that very few countries can match, including the regular development of recognised and protected human rights and civil liberties, in a transitional period of a little less than 50 years. This has been coupled with an extension of the role of the head of the government and its assemblies, giving the appearance and acceptance of real constitutional control and a recognition of the values of decentralisation and the flourishing of independent institutions. Such continuity contrasts with the approach adopted in other countries, such as France, where the succession of fundamental laws represents an opportunity for universal questioning of those laws, with each Constitution adopting an almost completely opposite position from the previous one.

Thus, the present work rejects any analysis that is placed either solely within the scope of pure political science, or one conducted with judicial big guns. Such endeavour is both interesting and difficult in that it requires both methods, without prejudicing either of them and without resort to mere juxtaposition.

From this start point, a parallel study of partisan polemics, that may have developed in the Sherifian kingdom and the fundamental laws which, from 1962 until 2011, have continuously refused to accept the logic of the one-party system, will include lessons not only for understanding the political struggles of which Rabat has been a theatre since the struggle for independence, but also for enlightening neighbouring countries currently proceeding with newly discovered fervour en route towards political pluralism. They, most certainly, stand to gain inspiration from the experiences that the Alawite monarchy can provide in this area taking, as an example, the multiparty system and lessons drawn from the problems encountered, and how they have been surmounted. In the same way, the remarkable stability that the country has enjoyed, in a region that is particularly unsettled, is based on subtle political balances that everyone, from the top to the bottom of the social hierarchy—from the king at the top to the electors at the base—is trying to preserve. Such stability is also founded on judicial norms combining specific practices with a monarchy that is hundreds of years old and foreign influences emanating from countries throughout the Mediterranean, whenever this was felt necessary.

The sources of democratic consolidation in Morocco

The political pact

Neither « *extreme democrats* »[2], nor « *adventurers, nor idealists resistant to any compromise* »[3] can lead to a democracy. Only the « *impure benefits of connivance* », such as those which took place in Spain and Portugal, are likely to produce *« amicable democratisation* ». Philppe Schmitter and Terry Lynn Karl rightly noted that, out of the four types of transition they studied (through revolution, through imposition, through a pact and through reform), only the transition through a pact is likely to lead to strong democracy.[4] Naturally, such pacts are completed by other factors, including free and competitive elections and constitutionalism. These political procedures, to paraphrase Adam Przeworski, institutionalise uncertainty and allow political actors to act in a stable framework where they are able to defend their own interests.

The political pact may be defined, as an « *agreement that is explicit, but not always interpreted or publicly justified, between a specific group of actors, and which tends to define the rules governing the exercise of power on the basis of a mutual guarantee of the « vital interests » of each party […]. At the heart of the pact is a negotiated compromise through which each actor agrees not to use, or at least underuse, its capacity to undermine the organisational autonomy or the vital interests of the others.* »[5] A pact establishes institutional prerequisites so that "*substantial political offers are sufficiently restricted and mutually compatible not to be considered by the other parties as an unacceptable threat that may justify a breaking up of the rules of democratic competition.*"

This pact is, by definition, an agreement signed by the different protagonists with the aim of providing an opportunity for the establishment and

[2] Guy Hermet, « *Présentation: le temps de la démocratie ?* », *Revue Internationale des Sciences Sociales*, n° 128, 1991, p. 272.

[3] Guy Hermet, *Le Passage à la démocratie*, Paris, Fondation Nationale des Sciences Politiques, 1996, p. 83.

[4] Terry Lynn Karl and Philippe Schmiter, « *Les modes de transition en Amérique Latine, en Europe du Sud et de l'Est* », *Revue Internationale des Sciences Sociales*, N° 128, 1991, p. 289-291.

[5] Guilermo O'Donnel, Philippe Schmitter & Laurence Whitehead « *Tentative conclusions about uncertain democracies* », Guillermo O'Donnel, Philippe Schmitter & Laurence Whitehead (eds) *Transition from Authoritarian Rule, Prospects for Democracy*, Baltimore, John Hopkins Univ. Press, 1986.

strengthening of democratic principles. This « *authoritarian* » technique, in Przeworski's words, first requires for its success trust amongst all the stakeholders, who are called upon to reflect on a common strategy to get out of a crisis without negatively affecting the interests of any of the parties. Thats said, in order for the political pact to succeed, the expected trust is intended to lead players to opt for "*the duality*: *incomplete victory (benefit) / relative defeat (risk*) » rather than « *total victory (benefit) / defeat (risk).*"

Later, this pact, leads either to a triumph for the rules of democratic competition (as was the case in Spain and Portugal), or to at least a partial defeat,, as was the case of Morocco between 1996 and July 2011. Algeria, at the beginning of the 1990s, would be an example of the worst case outcome.

- The political pact in Algeria was not realised because there was not enough trust between the main actors, namely the army and the FIS. This resulted in the duality:"*total victory*" of the FIS and "*complete defeat*" of the system. The outcome of this situation was a violent breaking off of the pact and the rules of democratic competition.
- The political pact in Morocco saw the light of day because some degree of trust, however cautious and limited, was achieved between the monarchy and the *Koutla* parties,. This led to the duality "*incomplete victory*" of the opposition and "*relative defeat*" of the regime, resulting in the pact's success.
- Tunisia has never had a political pact between an elite in power and an elite in opposition. The national political scene was completely deserted and the regime had nothing to share with the poor or the middle classes. There was neither freedom nor food.

Two remarks are called for here. The first is that, in all these countries, as in Syria, Libya or Yemen, no state was committed to a real political pact between the different protagonists on the national political scene. Secondly, what characterises revolutionary conscience is the conviction that grievances can be settled only through a change of regime and the setting up of a new social order.

However, if in Algeria, following the total failure of the pact, the regime designed a scenario meant to rebuild the political institutions by preserving the dominant logic of the system and avoiding the reoccurrence of the 1991 events, in Morocco, the pact contributed to the advent of the first changeover of political power in the history of the Maghreb

Compared to its neighbours, Morocco is very much an exception, as it started the move towards democracy in the 1990s, which made it possible for

the country to protect itself from the destabilising protests that characterised regimes such as those in Tunisia and Egypt.

Young people's resentment, or what has come to be known in Morocco as the "*20 February Movement*", did not really target the monarchy. Rather, it, restricted its demands to moderate changes, in other words, an evolution rather than a revolution. The monarch reacted in a revolutionary manner and, in his speech of 9 March 2011, he mapped out a political route which would allow the political pact to achieve its aim, thus going beyond the grievances of the 20 February Movement. The very slow "*democratisation*" process in Algeria is still hampered by the military factor, which "*stifles*" the potential effect of any overtures that have been initiated in the country since the 1996 Constitution. Ben Alis's Tunisia was the most "*authoritarian*" regime in the Maghreb and the hegemony of the RCD served as both a basis for the neutralisation of the political system by challenging the legitimacy of any other political party that aspired to autonomy, and as the real catalyst of the 14 January revolution. Algerian society was so stifled that when the *cover was blown, the pot exploded*.

Grass Roots of the Reforms initiated in Morocco

Morocco's democratic transition was enhanced by the Kingdom's wise and pioneering political and strategic choices which were made from the dawn of its independence. Need we recall that Morocco was amongst the first Arab and African countries that opted for pluralist democracy the moment it became independent. It was one of the few countries in the South that forbade the single-party system. At a time when socialist or highly centralised systems were popular, it was also one of very few developing countries that went for a bold policy of decentralisation and a liberal economic system, open to free initiative, thus taking the first steps towards the creation of a democratic and modern state[6].

These initiatives were accompanied by several reform projects involving, in particular, the strengthening of the legal and institutional human rights framework, in order to provide citizens with the constitutional, legal and institutional conditions needed to guarantee the full enjoyment of human rights and their involvement in the national, regional and local decision-making processes, with dignity and equality. It is in this spirit that the

[6] See the remarkable contribution of Ambassador Omar Hilal in AMSRI (under our direction) « Le Maroc et les Droits de l'homme : choix national irréversible et engagement international résolu », Tome1, Paris, l'Harmattan, pp. 73-100.

National Human Rights Council was created, as well as the Inter-Ministerial Delegation for Human Rights, the Mediator Institution and the Economic and Social Council. Human rights were thus placed at the heart of government policies and the national development strategy, in all areas, both public and private.

The new Constitution, adopted last July by referendum, was the climax of these reforms and encouraged their pursuit, their furtherance and, first and foremost, their regionalisation. It was conceived as a supreme national human rights charter. The constitutionalisation of human rights, including the consecration of Amazigh as an official language and of Hassania as part and parcel of the Moroccan cultural identity, brought a constitutional guarantee of their irreversibility and elevated them as a strategic asset of the Nation. This has been a major advance and a qualitative leap forward in Morocco's political and constitutional evolution, which has exceeded all expectations.

Moreover, in its new Constitution, Morocco emphasised the principles of protection and promotion of human rights through the constitutionalisation of many entities responsible for the protection of fundamental rights and freedoms, good governance, human and sustainable development, as well as participatory democracy, in particular:

- the National Council for Human Rights;
- the office of the "Al-Wassit", the Ombudsman;
- the Inter-Ministerial Delegation for Human Rights;
- the Competition Council;
- the Anti-Corruption Authority;
- the Council of the Moroccan Community Abroad;
- the High Authority for Audiovisual Communication;
- the Youth and Associative Action Council;
- the Authority to promote equality and combat all forms of discrimination;
- the National Institution for probity and against corruption;
- the National Council for Moroccan languages and culture;
- the Supreme Council for Education, Training and Scientific Research;
- the Advisory Council on Family Matters and Childhood;
- the Economic, Social and Environmental Council;
- the Independent Arbitration Commission;
- the Equity and Reconciliation Commission (IER).

The constitutionalisation of these mechanisms is a major political act aimed at strengthening the existing bodies that are responsible for the promotion of fundamental rights and freedoms, amongst which are the National Observatory on the Rights of the Child, the Moroccan Centre for Information, Documentation and Studies on Women, the National Observatory to combat violence against women, as well as the Centre for Human Rights Documentation, Training and Information.

The Kingdom of Morocco did not limit itself to adopting legislative and institutional measures to safeguard respect for human rights and the Rule of Law. This irreversible choice translated into several structural, harmonious and integrated actions on the ground.

The new concept of authority, developed by His Majesty King Mohammed VI early on in his reign and presented in his speech dated October 12, 1999, is thus "premised on the protection of public services, local affairs, individual and collective freedoms, on the preservation of security and stability, on the management of local affairs and the maintenance of social peace".

Convinced that economic development and the reduction of disparities are a sine qua non for genuine democracy, His Majesty King Mohammed VI launched the National Initiative for Human Development (INDH) in his speech dated May 18th, 2005. This Initiative is part of a global and integrated vision of social and human development aimed at combating social deficits, precariousness and exclusion and at laying the foundation for harmonious development of urban and rural areas. Moreover, it revisits State and local community actions without being a substitute for sectoral programmes or local authority economic and social development programmes.

To that effect, the INDH offers additional funding to support actions, leading to a rapid and sustainable improvement of human development indices to appreciable levels.

In the area of women's rights, a gender-based strategy was required in order to enshrine equality in law, in practice and behaviours. To that end, the Ministry for Social Development adopted various measures and initiatives, such as the drafting of the 2010-2015 Governmental Agenda for Equality to operationalise the 2006 National Strategy for Gender Equity and Equality. This strategy, aimed at combatting gender-based violence through the empowerment of women, the drafting of the charter for the improvement of the image of women in the media, awareness raising campaigns on women's access to decision making processes, participation of women in political life and the integration of gender issues in public policies.

Besides this, His Majesty's speech of January 3rd, 2010, has been the founding act of 21st century Morocco. Indeed, it signalled advanced

democratic regionalisation, strategically focussed on integrated and sustainable economic, social, cultural and environmental development.

Moreover, the fight against corruption has seen remarkable developments, for instance with the establishment on March 13, 2007, of the Central Authority for the Prevention of Corruption, whose mission is to coordinate, supervise and ensure continuity in the implementation of corruption prevention policies, as well as to collect and disseminate information in this area.

Finally, civil society has become a key stakeholder in the Kingdom's development and socioeconomic evolution. It is now involved in various areas: human rights, health, children's rights, women's rights, including violence against women, the morality of public life, the fight against poverty and environmental protection, amongst others.

The reform programme, launched in Morocco over two decades ago, culminated in the adoption by referendum of a Constitution on July 1st 2011. This new Constitution unquestionably enshrines Morocco's commitment to the principles contained in Charters and Conventions, thus reaffirming the Kingdom's dedication to universally recognised human rights. It also confirms the country's irreversible decision to consolidate the democratic rule of law, based on the principles of participation, pluralism and good governance.

The new Constitution enshrines a series of safeguards for human rights protection, in particular by the constitutionalisation of new social, economic and cultural rights, by strengthening the rights already enshrined in the previous Constitution and by enlarging the scope of individual and collective freedoms.

Moroccan neo-constitutionalism: Meeting the new political challenges[7] :

The multi-party system

This system has been one of the Moroccan most exceptional specificities for a long time, and all the more so, as the country has not shared it with any other state on the continent. The rejection of the single-party system is expressed with a moderate determination in all the country's Constitutions and preserved in the current text, as follows: "*There may not be a single party"* (Current Article 7). This was not, in any way, an insignificant choice, in as much as most of the advocates of democracy presently concur on the fact that this is an absolute condition for a genuine functioning of such a regime. One exception is that some of them tend to think of communist and related regimes as a form of specific democracy, which has not really been confirmed by developing events. During the 1960s, 70s and 80s, when some foreign observers used to portray the Sherifian monarchy as archaic, a number of Moroccan officials felt irritated at being preached to by rulers who would not accept any form of political pluralism within their own country. However, with the phenomenon of democratic transition, what used to be considered as the Moroccan exception has now become the norm. Its even an obligation sanctioned by eminent international organisations and, particularly, by funding sources attached to the United Nations. Respect for the multi-party system is amongst the basic conditions for being eligible to receive international aid.

In countries that had lost their democratic tradition, or that had never experienced democracy, the absence of pluralism stands out as a problem: a recent authorisation for the freedom to create a political party often materialises in the confused emergence of micro-structures without any real programme, or with any local implantation, except in the capital and the main leader's town of origin. These structures, eventually, turn into platforms, each of which is intended to promote the image of a politician who identifies with it, rather than organisations capable of structuring public opinion. The fact that Morocco has never lost the habit of having a political life characterised by a pluralist system, which puts the country at an advantage compared to other states on the continent that need to develop their own experience of such a

[7] See our book (with Pr. André Cabanis), *Moroccan neo-constitutionalism meeting the challenge of the Arab Spring*, L'Harmattan, Paris, 2017.

system. Moreover, for the major parties, it is a question of old structures, some of which date back to the colonial period and draw their legitimacy from the struggle for independence. Most of these structures already have a rich history, marked by doctrinal developments, internal rivalries, and, sometimes, by scissions or rallying together or the switching round of acronyms. All these elements are likely to baffle the foreign observer, who is not always able to grasp what's really at stake and that these are not recent and artificial creations, but are characterised by live debate.

From a given perspective, the 2011 Constitution goes back to the fundamental principles of the 1962 text, which presented the parties as contributing to the organisation and representation of citizens (Article 3). Later, and in order to better establish the legitimacy of the parliamentarians elected by the trade unions, local collectivities, and professional chambers, the texts of 1970 and 1972 inserted these latter elements, assigning to them the same role as the political parties. This, in a way, could be interpreted as a weakening through diluting them within a set of bodies, which are supposed to enjoy a similar democratic legitimacy when, in fact, their main mission was not a political one. This, without doubt, was the aim at the time, but things have changed. Henceforth, distinct articles serve to define the functions of political parties on the one hand, and trade unions and professional organisations on the other (Article 8), by granting the former an implicit supremacy within the framework of political debate. Here, we may perceive the Constitution's will to take into consideration the demands expressed by Moroccan political parties during the last ten years in the referendums they presented.

The lengthy article (Article 7) enumerates the missions assigned to the political parties and the constraints imposed. As far as the missions are concerned, they are pedagogical ("*supervision and […]political training of citizens [feminine] and citizens [masculine]",* civic ("*promotion of their participation* [*that of citizens, feminine and masculine*] *to the national life and to the management of the public affairs")*, and strictly speaking, political ("*They contribute to the expression of the electors' will and participate in the exercise of power"*). Concerning the imposed constraints, and given that the creation of parties and the exercise of their activities are free, they tend to avoid the existence of movements founded on distinctive traits (religious, as we saw earlier, but also linguistic, ethnic or regional) and, therefore, likely to cause conflicts between communities. Such a disposition exists in most Constitutions of Francophile Africa. It is further justified by the fact that the countries concerned have been recently created, born out of decolonisation and with borders that many consider to be artificial and which do not take ethnic differences into consideration. The centrifugal forces likely to lead to secessionist claims are many. The very ancient history of Morocco and the

prevalence of a strong national identity should shelter it from such risks, unless a future problem arises concerning the Moroccan Sahara. Allusion is explicitly made in the following paragraph that prohibits a party from undermining "*the national unity or the territorial integrity of the kingdom*".

Amongst the prohibited objectives, is anything that involves calling into question the Islamic religion, the monarchic regime, or the constitutional principles and democratic foundations of Morocco. Additionally, and for the sake of good order, prohibition has been introduced on any basis that is discriminatory or contrary to human rights, as well as the obligation to be organised and to function in conformity with democratic principles. We must admit that this is an ambitious programme that has been imposed on Moroccan political movements. But it is difficult to say how many parties, even in the old Western democracies, wholly conform to such a programme, particularly in relation to the modes of democratic functioning. Too many of these structures are dominated by either a charismatic leader who lays down the rules with the help of his very selective entourage, or by small groups that confront one another in fratricidal struggles, founded more on the competition for power than on doctrinal oppositions. In any case, as mentioned earlier with reference to religious parties, it is very difficult to eliminate a political party once it has established a real existence, a specific programme, local presence, an electorate, and participation in the exercise of power at national or local level. Such measures can only give rise to strong protests, unless the excluded party is seen as a real threat to public order.

Most of the prohibitions formulated in Article 7 are related to questions that, if set out in a provocative way, could imply a threat to public order. It is worth noting, the specific character of Article 9, which subordinates the dissolution or suspension of parties to a court ruling; this guarantee is also granted to trade unions. To conclude this section, let us emphasise the fact that the Constitution refers to an organic law for the implementation of the said guarantee. This does not seem to warrant any further comment, except for those already formulated in the introduction relating to the technique of frequent appeal to an organic law, if, as it happens, allusion was not made to the fact that it will have to determine the "*criteria for granting the state's financial support*", as well as "*the modalities of control of their financing*" (Article 7). Concerning so sensitive an issue, we may anticipate closely-conducted negotiations amongst the parties, each working out ways to get the most favourable distribution with regard to the various criteria most likely to be taken into account. For want of this, vigorous debates will ensue in Parliament. At the extreme, efforts will be made to calm things down through putting forward the fact that, given fluctuations that may affect the electorate, the parties should understand that none of them are safe from seeing the criteria for whose adoption they have struggled, suddenly

overturned.. This awareness could facilitate the conclusion of an agreement to share the public manna.

No less than twelve rights, rather widely defined, have been granted to the opposition. Some points refer back to dispositions that are to be found elsewhere.. This is the case with freedom of opinion, of expression and of assembly, of participation in the contribution to supervision and in the participation of citizens. It confoms to the article that applies to all political parties, or else to the principle of democratic changeover of power that is applicable at national, regional and local levels. A second set of rights concerns the means that are made available to the opposition, which provides an opportunity to talk about "*public funding*" and "*appropriate means*", as well as access to the official media, on the basis of representation for each party. This latter point is to be brought closer to the rule of "*political pluralism*" imposed on the public means of communication (Article 28), and to "*respect for a pluralist expression of the currents of opinion and of thought*" to which the High Authority for Audiovisual Communication must attend (Article 165).

Finally, other rights fall under the rules of parliamentary work, covering issues ranging from participation in the legislative procedure and oral questions addressed to the government, to commissions of enquiry. In this context, two dispositions (Article 10) will potentially contribute to satisfying the traditional demands of the elected members of the opposition. The first makes it possible for them to be appropriately represented in the internal activities of both chambers, which should guarantee that they are not systematically prevented from performing the most interesting functions. The second disposition offers them the possibility to "*actively participate in parliamentary diplomacy*", which would entitle them to claim participation in missions outside the country. However, the text carefully specifies that they will have to "*dedicate themselves to the just causes of the Nation and its vital interests*". The implication, then, is that they will not indulge in disparaging activities against their country and its government. Another prerogative, that may have serious consequences in practice, is that the presidency of the important commission in charge of legislation in the Chamber of Representatives is reserved to the opposition. All this needs to be specified through organic law and the internal regulations of each chamber. Finally, it is worth noting that a reference to this prerogative may prove threatening, in case the majority in power decides to use it in a strict manner, as the opposition groups are required to "*contribute in a useful and constructive way to the parliamentary debate*". We can only but commend this invitation, under the condition that this requirement is not used to deprive the opposition of its rights, on the pretext that it is not "*useful*" and "*constructive*" enough.

Fundamental rights: freedom

Concerning most of the points mentioned since 1962, subsequent texts did not bring anything new, until the 2011 Constitution yielded a much more substantial development.. Amongst these rights, here is what speaks in favour of an enhancement, of permanent elements. It is worth noting certain innovations that the 2011 Constitution meant to specifically emphasize, such as the protection of people facing a trial, or the requirements of good governance, which were not mentioned at all in the previous texts. Interestingly, these were not chosen to introduce the beginning of the text, along with other rights and liberties that occurred in most of the Constitutions, particularly those of Francophile Africa. But, rather, the Constitution decided to devote specific titles to these innovations at the end of the Constitution, thus emphasising the impression of a break from the norm and definitely of novelty. It is under these conditions, for example, that protection from arrest and arbitrary detention, already included in the 1962 text, was again proclaimed at the beginning of the fundamental law (Article 23), whereas defence rights were guaranteed much later in the text (Article 120). This is a way of settling closely related issues by dealing with them repeatedly in completely different places. Thus, the presumption of innocence and the right to a fair trial are worded in more or less the same way in both Articles 23 and 119-120. To those who may consider this as a sign of clumsiness in writing, we say that there are rights that exist that are never proclaimed as they should be.

The four Moroccan Constitutions state, in a fine display of unity, a number of fundamental guarantees pertaining to what human rights specialists traditionally present as first and second generation rights. The first set of rights seems to derive from the ideals of the French Revolution, with values of freedom and equality on the basis of negative rights, i.e. those that are opposable to the public powers. Additionally, a number of duties are included, which are also within the French revolutionary tradition of the Directory regime. Thus, and concerning *freedom*, the three Hassanian (promulgated under Hassan II) Constitutions of the kingdom list these rights in a single, rather condensed article (Article 9 in all texts), which is a good way of demonstrating how close these texts are aligned with each other: "*the freedom of movement and settling in all parts of the kingdom, the freedom of opinion, the freedom of expression in all its forms and the freedom of assembly, the freedom of association and the freedom to join any labour or political association of their choice*". It seems fairly difficult to promise more in so few words. Additionally, this promising enumeration is followed by a precaution that is tersely worded, implying both threat and guarantee: "*limitation to these liberties can be enacted only through the law*". As mentioned in the introduction to this statement, it is possible to bring closer

to these conventional liberties some liberties that are linked to the *guarantee* that Montesquieu talked about and considered as fundamental. This is a guarantee that gives each individual the feeling that he is not in danger of being imprisoned without motive, upon the impulsive reaction of a public agent, or judge. It is, then, a good thing that since 1962, the Moroccan Constitution has prohibited arrests, detentions and arbitrary punishments, and guaranteed the inviolability of the home by prohibiting house searches and illegal checks (Article 10 in the three Constitutions). Similarly, the secrecy of personal correspondence is proclaimed (Article 11).

Overall, the 2011 Constitution does not contradict any of these prescriptions. Most often, in fact, it repeats them almost word for word, before explaining, specifying and developing them in the following paragraphs. An example, here, is the freedom of movement: the Constitution guaranteed to the *citizen* the possibility to move and settle *in* all regions of the kingdom, which was already considerable progress in comparison to a number of totalitarian regimes of the time. Henceforth, the Constitution guarantees to *all* the freedom to move and to settle in the national territory, to *leave* it and *return*. Progress, here, is noticeable, although it is specified that this is possible only in conformity with the law. The *freedom of opinion and expression in all forms* that follows is the subject of the most important developments, in the same words as those used in the preceding texts. Three articles each add an important element, given that it is not enough to guarantee a freedom, but it is advisable that the public authorities provide citizens with the necessary means that will enable them to effectively enjoy these freedoms. The first article is meant to protect a specific form of expression of opinions that seems particularly worthy of attention, namely: literary, artistic, scientific or technical creation. Such expression must not only be free, but it is the State's duty to support it through promoting "*the development and organisation of these sectors in an independent way and on specific democratic and professional bases*" (Article 26).

The following article promotes the right of access to information emanating from the public administration, the elected institution and the organs in charge of missions of public service. Here again, the right of access comes with useful details, since it is stated that the only possible cases of denial can be justified solely by arguments related to national defence, internal/external security of the state, people's private lives or fundamental rights (Article 27). Finally, the denial of any form of censorship concerns both information and ideas and opinions. This implies that the "*public authorities promote the organisation of the press sector in an independent way and on democratic bases*", and that the law defines the rules of organisation and control of the public means of communication, respecting linguistic, cultural and political pluralism, a principle which is a responsibility of the High

Authority for Communication (Article 28). Finally, only the freedoms of assembly, association, and adherence to any labour or political organisation of the citizen's choice were not subject to important additions. The noteworthy exception in the 2011 Constitution is that the freedom of "*assembly*" is replaced by the freedom of "*association"* (Article 29).

To the fundamental rights enumerated in Article 9 of the 1962 Constitution, we may add the prohibition to carry out arrests, detentions, arbitrary searches, as well as home inviolability prescribed by Article 10. The 2011 document has repeated the 1962 formulae. Fundamental rights have been distributed throughout articles 23 and 24 of the new text, followed by ample details and additions resulting, in particular, from the fact that recommendations by the "*Equity and Reconciliation Commission*" were taken into consideration. Considering, first, *security* "*No person may be arrested, detained, and punished outside of the cases and forms provided for by the law"*, the word "*punished*" is omitted and *replaced* by "*prosecuted or condemned*", which fits better within judicial terminology. This is followed by a set of highly specific dispositions (a) against those who violate these rules ("*crimes of the greatest gravity [...] the harshest punishments", (b)* on information of the detainee (informed "*immediately, in a way that is comprehensible to him, of the reasons of his detention and of his rights, including that of remaining silent")*, (c) on the possibility [for a detainee] to benefit ("*as early as possible")* from juridical assistance and of the possibility of communication with his/her relations, and (d) on the situation of detained persons ("*humane conditions of detention* [...] *training and rehabilitation programmes*").

Concerning the inviolability of the home in the formula *"The home is inviolable. Searches or checks are possible only in the conditions and forms provided for by the law*". The note "*or checks*" has been omitted because the word does not correspond to a judicial term. On the other hand, the sentence is, henceforth, preceded by a general principle to the effect that "*every person has the right to protection of her private life*". Finally, the statement on the secrecy of private correspondence, a rather simplistic term at a time when computers and information transfer techniques are proliferating, is replaced by the assertion of secrecy of "*private communications, under whatever form"*. Only the judge may authorise "*in accordance with the forms provided for by the law, access to their content, their total or partial divulgation or their use at the request of whomsoever*" (Article 24).

Concerning issues related to arbitrary arrests, the rights of the defence and conditions of detention (including the prohibition of "*torture under any forms*", Article 22), the Moroccan Constitution has proved very meticulous. An hypothesis has been put forward that some of the new rulers have themselves been victims of arbitrary measures, which would explain their

being so meticulous about these points. This explanation does not seem to hold water in the case of Morocco. Anyway, on these sensitive issues, and in order to effectively perform its role, the law is never detailed enough.

Fundamental rights: equality

Articles of the 1962 Constitution concerning equality were not subjected to the same regrouping effort as those relating to freedom. One revealing fact in this respect is that the first area where equality is proclaimed is that concerning relationships between men and women (Article 8), in the political domain. This demonstrates the fact that Moroccans from both sexes can participate in elections. Added to this is equality of access to public employment (Article 12), and equality in taxation, based on everyone's *contributory capacity*. All of this already figured in the 1789 French Declaration of Human Rights, and no national or international text exists in this area that does not allude to it. Here, however, the three twentieth century Moroccan Constitutions introduced three small specificities that still figure in the 2011 text.

The first ensues from Article 18, which provides details about whose necessity is likely to be underestimated by the external observer, unless we decide that: "*All in solidarity bear the cost of national disasters*". At the extreme, we may ask whether this rule does not imply in cases of problems of this kind, and in relation to the usual criteria for tax distribution, where taxpayers who have not been affected by the disaster shall pay what the victims of such events cannot pay. The second specificity is less surprising, since it concerns the obligation to contribute "*to the defence of the homeland*". It also underlines the fact that this obligation is presented as a contribution to the equality among citizens, which has been an argument for military service as a context in which equality is realised.. Finally, the third specificity, which is not always present in constitutional texts, is that "All *citizens are entitled by right and on an equal basis, to education and work*" (Article 13). We must acknowledge that this is an ambitious and costly programme of implementation in the 2011 text..

Still concerning *equality*, the formula on equal *political rights* for men and women was replaced in the 2011 text by reference to *civil and political rights* (Article 30), which is in line with the effort deployed since the beginning of the reign of Mohamed VI to promote the civil condtion of women, particularly through the *Mudawwana*. Women's political rights are specified through a reference requiring the law to provide measures likely to promote their equal access to elective functions. Despite the growing conviction among responsible Moroccan people of the necessity to extend the

participation of women in political decision-making, women's representation is still below the country's high expectations.

Currently, the number of women having access to positions of responsibility in the different Moroccan administrations does not exceed 10%. At the level of local collectivities, only a very few political parties have tried to democratise their internal organisation through imposing a quota of 20% for women amongst their executive officers, including the political bureau. The lack of parity is one of the reasons why Moroccan women shun political parties, even though the presence of women in the first chamber was quite substantial after the legislative elections of 2007. Yet only a minority had access to the Chamber of Councillors. In accordance with the Constitution, and whilst waiting for the establishment of the authority in charge of parity and struggle against all forms of discrimination, the state is, today, being called upon to take legal measures aimed at ensuring women's representation that achieves parity, as Morocco aspires to at least reach the world average of female representation (19.5%).

These dispositions only serve to specify and implement the prescriptions opening Title II on "*liberties and fundamental rights*": "*The man and the woman enjoy, in equality, the rights and freedoms of a civil, political, economic, social, cultural and environmental character"* (Article 19). A terminological evolution that may be noticed in the entire constitutional text attests to the new preoccupation with women's issues. In nineteen places, the word "*citoyens*" (masculine) is preceded by the feminine form "*citoyennes*", which corresponds to the current tendencies which seek to banish any grammatical form using a discriminatory connotation. We are well aware of the influence of Francophile Canadians, perhaps even more so of Canadian women, in this development, which consists of refusing the grammatical principle that prevails in France (where masculine encompasses feminine). With the use of a gendered approach to terminology, what is gained in terms of gender equality, is lost to the convenience of style.

Insofar as the Moroccan Constitution is concerned, this choice raises a problem in that it should be general, and set in a dichotomy "*woman-man*" or "*Moroccan (feminine)- Moroccan (masculine)"*. Concerning the association man-woman, it occurs three times, and, although "*droits de l'Homme*" (Human rights) is mentioned ten times in the fundamental text, without reference to the woman, it is normally used with a capital "H"(which may be interpreted as encompassing women). On the other hand, the "*Moroccans*" is used four times, without reference to the feminine: in three articles

concerning Moroccans residing abroad (Articles 17-18 and 163), and in relation to the Amazigh, presented as shared heritage "*of all Moroccans without exception*" (Article 5).[8]

Concerning equal access to political rights, Article 30 stands out as not only in favour of women, but in favour of foreigners with rights that function at two levels. First, they enjoy fundamental liberties recognised by Moroccans, in accordance with the law. Second, they benefit from an international reciprocity convention and may participate in the local elections. This may be interpreted as a hand being held out by Morocco to members of the international community for a symmetrical integration of foreigners. If such a gesture could be understood, and if such a proposition could be taken up by many, a lot of things would change in the world. Finally, the Constitution refers to the law in all matters relating to the extradition and right of asylum of foreigners, which should spare Morocco from the temptation of organising the status of foreigners through regulations, often as a matter of emergency and in reaction to public opinion. Besides, civil rights are dealt with mainly in Article 32, which is devoted to the family.

Equal right to work and to employment, particularly in the public sector, is not mentioned in a single article, but it is covered in three articles devoted, respectively, to citizens in general, the family, and young people (Articles 31 to 33). From one article to the next, assertions are fairly convergent, although Article 31 is the most clear concerning public positions: "*right […] of access to public functions according to merit*". The social rights of citizens, obviously, accord special importance to education: "*right[…] to a modern education, accessible and of quality […and] to work and the support of public powers in matters related to search for employment or self-employment*" (Article 31*)*. The text on the family is explicit: "*Fundamental education is a right of the child and an obligation of the family and of the State" (Article 32).* Finally, concerning the young people, it is incumbent on the public powers to take appropriate measures to "*help the young to integrate within the active and associative life and provide support to those in difficulty of school, social or professional adaptation"* (Article 33). The effective implementation of these commendable principles and ambitious commitments, depends on the means that the Moroccan State, local

[8]The father of the present monarch created, in 1994, the Hassan II foundation for Moroccans Residing Abroad, presided over by Princess Lalla Meryem. Ever since this date, the expression "Moroccans residing abroad" has been commonly used. This, most certainly, has led the Constitution to use the expression without reference to the "*Marocaines*" (feminine). Moreover, in Arabic, as well as in French, masculine encompasses feminine. Thus, the verses of the Quran stipulate "O ye believers", targetting both men and women believers.

collectivities, associations and families are able to mobilise. We well know that education for all is one of the most important challenges that Morocco has to take up with tremendous efforts.

Assertion of the independence of the judiciary power

Judicial power is the area where there is the most obvious contrast between the dispositions of the three first Moroccan Constitutions and the 2011 text.. This is also the area where the Moroccan text differs most from what some have rather hastily considered the "*French model*". From 1962 to 1996, successive Constitutions took up again, almost word for word, the six similar articles, without introducing any change, except for substituting members elected by the "*magistrates of Sadad*" by members elected by "*magistrates of the first degree jurisdictions*" (Article 86 of the 1996 revised text). The 1908 project restricted itself to providing for the existence of a "*minister of complaints called minister of interior*" (Article 59) and notifying the Consultative Council with the obligation, as of its first year, to take care of the organisation of the statute of tribunals of kasbahs, of the Crown Prosecution Service, and of tribunals of *cadi* and *aduls* (Article 91). There is, then, a complete difference between texts of the past and the twenty two articles of the current Title VII, entitled "*Of the independence of justice*". These articles introduce a two-fold change: first through the will to take up again each disposition of the old fundamental laws without any change in their order, so as to transform their logic towards full authority for the judges, away from any pressure, and then, through the appearance of long developments concerning the "*rights of persons liable to trial*".

The old structures, as they appeared in the pre-2011 fundamental laws, have all undergone important additions. The first article in the title devoted to "*the justice"* was restricted to indicating that "*The judicial authority is independent from the legislative and executive powers*" (Article 82 of the 1996 Constitution). Given its terminological simplicity, this disposition was humbling for the judges, because it was founded on the notion of judicial "*authority"* rather than "*power*" (similar as a matter of fact, to the French version of 1958). The disposition was also ambiguous, since the term "*executive power*" referred to the government alone, not to the head of State against whose influence the judges do not seem to be protected. The new article (107) gives more value to the term "*judicial power*", and retains the reference to independence towards the legislature and executive. Allusion is, henceforth, made to the monarch as "*guarantor of the independence of the judicial power*", which refers back to the formula used with regard to the President of the French Republic. However, it does not answer all questions

and we cannot honestly interpret it as an invitation to protect this independence.

The two following articles, between 1962 and 1996 (Articles 83 and 84), that indicate that judgments are pronounced and executed "*in the name of the king*", and that magistrates are appointed by royal decree upon proposition by the Supreme Council of Judicial Power, are omitted from the 2011 text. Reference to the King, completed by an assertion of submission to the law, is to be found later in the rights of persons liable to trial (Article 124). Then comes the assertion of the immovability of the bench magistrates (Articles 85 in the 1996 Constitution and 108 in 2011). Four articles follow, that constitute a small code of ethics for judges (Articles 109-112). If we restrict ourselves to discussing the submission of the public prosecutor's department to written instructions emanating from their [the judges'] hierarchy, the granting of authorisation to professional associations, and the prohibition of adherence to political parties or trade unions, we would be missing what could be the most promising of the introduced innovations.

Half a dozen paragraphs formulate a number of prescriptions. In these paragraphs, judges are ordered not to accept any injunction or instruction, not to submit to any kind of pressure, to compel themselves only to the implementation of the law, to base their decisions only on an impartial application of the law, and to conform to their duty to behave with reserve and in accordance with judicial ethics, in the exercise of their freedom of expression. There is, in these dispositions, enough material to cover two or three hours of teaching about ethics within the framework of training procedures for the high civil service. The effect of these entreaties depends mainly on the capacity of young magistrates to adopt their values. This, on their part, will be even more commendable, as this was not really the prevailing state of mind among a judicial staff whose practices and methods were even more difficult to know and since the latter were an outcome of a French colonial heritage with justice that was respectful of order and the dominant values within the society.

Two dispositions in Article 109 are worth-examining, given their highly operational dimension. First, there is the option for any judge, who feels that his independence is being threatened, to refer the matter to the Supreme Council of Judicial Power. Then, there is the possibility of sanction, not only against anyone who would attempt to influence a judge, but also against the judge himself, should he fail in his duty of independence and impartiality. Obviously, everything depends on the use that the Supreme Council makes of these dispositions. It will not make much of them, if it only sees them as vague orientations and if it intervenes only in case of corrupt practices or the attested and systematic embezzlement of public funds. Things will be different if it takes into account the various forms of pressure, injunctions and

influence, particularly directed at young or ambitious magistrates.. The Constitution provides tools that allow the imposition of a form of compulsory virtue. Everything depends on the attitude adopted by the Supreme Council of Judicial Power.

Four long articles are devoted to the Supreme Council of Judicial Power, contrasting with the ones that appeared in the preceding Constitutions. In this respect, of course, it is the composition of the body that first draws attention. In its previous configuration, favoured since 1962, the institution which carried the title "*Supreme Council of Magistracy",* as is the case in most Francophile countries, there were eleven members including six elected magistrates. The remaining five, nominated by the King (who was president by right), were the minister of justice as vice-president and the three major members of the Supreme Court (first president, public prosecutor and president of the first chamber, as stated in Article 86 of the 1996 Constitution). Populated by such eminent figures, the Council was most certainly not meant to play a fundamentally anti-establishment role, but could not serve as a mere registration office either. In any case, the new composition, provided for in Article 115, attests to the will to open up the institution to different personnel. Although the King is still president by right and the three major magistrates of the final Court of Appeal remain, the Minister of Justice is no longer summoned and, most importantly, ten elected members (out of a total of twenty) complete the Council. Among the new members, two are appointed in their official capacity, presumably because of their concern about the defence of liberty: they are the Ombudsman and the president of the National Council for Human Rights. The remaining five members are selected by the King for their competence, impartiality, integrity, and attachment to independence and primacy of justice. We must admit that requiring so many qualities sets a high standard and it will be interesting to scrutinise the King's nominations.

The stakes are even more important as the Constitution defines the competences of the new body in wide terms, the most important seeing to the implementation of the guarantees granted to magistrates, particularly their independence, appointment, promotion, retirement, and discipline. The extent of the Council's ability to take care of all these aspects will determine the possibility of putting an end to most of the imaginable means of pressure. It is worth noting that the Council's individual decisions are likely to be subject to an appeal for abuse of power before the administrative jurisdiction (Article 114). Its scope of competence extends to a counselling function, covering everything related to the situation of justice and the judicial system. It will play an important role, particularly as it will not be subordinated to potential demands emanating from the King, the government, or parliament. It enjoys a right of initiative regarding the issues that need addressing, in the

reports due for submission and in the recommendations to be transmitted. Finally, Article 116 recognises the Council's autonomy in administrative, financial and even personnel matters, with the possibility of calling for help from "*experienced inspector magistrates*". It is answerable only to itself.

Emergence of the rights of persons liable to trial

The "*rights of the person liable to trial*" constitute one of the most innovative aspects of the new system. The dispositions of Articles 117 through to 128 could have been inserted at the beginning of the Constitution, in Title II on rights and liberties or, in Articles 23 and 24 mentioned earlier. These articles develop already ancient guarantees against arbitrary arrest, detention or search, or those submitting the private home and correspondence to the control of the judicial authority, the protection of the private home or of personal correspondence. This statement may lead to putting forward the hypothesis that, either deliberately, or for reasons of writing convenience, the Moroccan Constitution has tried to distinguish between what constituted a continuation of programmed evolutions, or what should have been considered as real breaks. In any case, the enumeration of the rights of persons liable to trial definitely belongs to the second category. The principles are set from the very beginning: "*the judge is responsible for the protection of the rights and liberties, as well as of the judicial security, of persons liable to trial*" (Article 117), which, therefore, assigns them the function of defence of the citizens as a priority. This specific and peremptory formula replaces the old one inherited from the rather negative French tradition of the "*judicial judge, protector of liberties*", a formula that is unnecessarily hurtful to administrative courts. The new Article 117 includes a useful addition, to the effect that "*The judge is [legally] in charge [...] of the implementation of the law*". This latter reference introduces still others that complete or nuance rights and prerogatives "*In cases in which this is provided for by the law...*" (Article 121), "*... except when the law provides otherwise*" (Article 123), or else "*...within the conditions provided for by the law*" (Article 125) ...

Some may feel it unfortunate that the principles conceived for protecting citizens against all kinds of abuses that they are likely to be victims of, are formulated in a pure and simple way. On the other hand, everything depends on the extent of trust in the law, which is the expression of popular sovereignty and guarantor of the general interest. After all, it is from the very first words of the preamble that the Constitution proclaims "*his irreversible choice to set up a democratic legitimate state*". It may be considered a rule of common sense to refer back to the law every time there are modalities that require specifying and, particularly when it is necessary to define the financial means that need mobilising, for example, in matters of judicial assistance.

Such assistance is decisive for ensuring the first guarantee afforded to the person liable to trial by the Moroccan Constitution: access to justice. The latter is, first of all, the object of a general rule implicitly valid before all jurisdictions. Then, it is specified that this also concerns the administrative judge through making possible an appeal against "*any judicial act, of a statutory or individual character, adopted in administrative matters*" (Article 118). This latter specification makes it possible for decisions of a political nature, linked to considerations of national interest, to evade control when necessary. French jurisprudence itself has preserved its old monarchic denomination for these very decisions, making a reference to the "*restraint of princes*" as a justification of certain acts of the administration. Added to this, is the fact that this access is free of charge, at least when this is provided for by the law and when the person liable to trial/litigant cannot pay (Article 121).

Another essential aim of the document is the protection of all persons who stand before a judge regarding both the enquiry and trial procedure, and the passing of sentence. Concerning the enquiry, there is an assertion of the principles of presumption of innocence (Article 119), and, from a procedural perspective, the rule of subordination of the Criminal Investigation Department in relation to the Public Prosecutor's Department and the examining magistrates (Article 128). Concerning the trial procedure, the hearings must be public (Article 123), the rights of the defence are guaranteed (Article 120), and, the most important, is that the right to a "*fair trial*" is proclaimed. This is an idea that has been borrowed from Anglo-Saxon law, with reference to the notion of "*due process*", as a matter of fact, taken up again in the whole of European law. Finally, the sentence must be pronounced within a reasonable time limit (Article 120), which is yet another prescription widely borrowed from Anglo-Saxon law. It must be well-founded and pronounced in a public hearing (Article 123) and, finally, in case of judicial error, it provides the right to compensation, to be incurred by the State (Article 122)

The constitutional dispositions defining the rights of persons liable to trial cannot be separated from the operating rules of justice, particularly anything in relation to the means and organisation of the courts. The fundamental law makes provision for the fact that it is the responsibility of the public authorities to provide all the necessary assistance, both during the trial and for the execution of sentences (Article 126). It is also specified that the ordinary or specialised jurisdictions are created by the law, and that no jurisdiction of exception may be created (Article 127). This latter prohibition may be linked to the Moroccan Constitution's omission of about half of the dispositions devoted to justice (Articles 88-92 in the 1996 text), and those devoted to the organisation of the Supreme Court of Justice. The latter court was designed to legally prosecute members of the government accused of

having committed crimes and offences in the exercise of their functions. The device was a fairly classical one, with an indictment by the two chambers of the parliament with a two-thirds majority, and a judgment by the Supreme Court whose members were elected by the said chambers. This device does not figure in the 2011 document.

Everywhere in the world, this type of political justice always raises certain suspicion. Either the elected members are suspected of mutually protecting themselves and systematically absolving each other, whatever the accusations and evidence, or they are accused of using jurisdictional procedures to settle scores. The aim may be, for example, to allow the majority to get rid of the most cumbersome elements of the opposition for good. In these conditions, and with special reference to members of the political staff, it is without doubt preferable that they are dealt with in a system that is as close as possible to common law. This is provided for in Article 94, which laconically stipulates that "*The members of the government are criminally responsible before the jurisdictions of the Kingdom for the crimes and offences committed in the exercise of their functions*", adding, however, that "*The law shall determine the procedure relative to this responsibility*". This formula allows for the assumption that adaptations in the case of ministers will be of a procedural nature, and should not imply the organisation of jurisdictions. Public opinion will, undoubtedly, be more trustful if it develops the impression that government personnel are not privileged in any way.

Belonging to a nation with "multiple tributaries"

Given that Morocco is amongst the oldest nation-states, the problem of where its nationals belong does not arise. Moreover, the criminal attempts of the coloniser to introduce divisions within the population, notably with the Berber Dahir of 1930, appeared to bring settlement on this particular issue. As we well know, no problem is ever completely settled in this domain, particularly with the general movement of people that has led to a tremendous increase in demands by different communities to achieve recognition of their specificities. Besides, Algeria made a step forward with the introduction of Article 3bis, which acknowledged the existence of the Amazigh language. Whatever its motivations, the appearance of Article 5 in the Moroccan Constitution on official languages illustrates a striking novelty and important change. We are aware of the role of the Arabic language as an element of national unity in the Maghreb, considered as a symbol of the restoration of independence and of belonging to the *Umma*.

After the confirmation that "*Arabic is the official language of the State*" (Article 5; until now, this statement was included at the beginning of the Preamble), and after calling on "*the State [to] work towards the protection and development of the Arabic language, as well as the promotion of its use",* it is also evenly indicated that "*likewise* [sic], Amazigh *is an official language of the State, being a common heritage of all the Moroccans without exception".* Each word in the latter sentence deserves special comment. Suffice it to underline that the formula on the common *heritage* recalls the one used in the very recent Article 75 of the French Constitution, which presents regional languages as belonging "*to the heritage of France*", and is neither enhancing nor encouraging insofar as their vitality is concerned. Doubtless, the situation is different in the case of Morocco.

Similar to everything that has to do with the Nation and its components, national unity remains the most dominant preoccupation. Worth remembering in the following paragraph. is the final formula that this language must "*in time fulfill its function as an official language*". Therefore, the Constitution has no illusions concerning necessary time limits. The penultimate paragraph reveals other orientations concerning language policy: preservation of Hassani "*as an integral part of the unified Moroccan identity*" (worth noting, here, is the use of the adjective "*final*": cultural diversity must contribute to the unity of the nation), protection of dialects and cultural expressions prevailing in Morocco, mastery of the world's most commonly used foreign languages with, in this respect, three objectives: communicating, joining the knowledge society and opening up to other cultures … We have indulged in the simplification of a very rich text, whose authors have obviously sought to express all nuances and balances from a cultural and, particularly, linguistic point of view. The article ends with the announcement of the creation of a National Council for Languages and Moroccan Culture. The document went so far in seeking to introduce a linguistic balance, either to avoid the seeds of division through prohibiting parties founded on a linguistic basis (Article 7), or because of concern for establishing a balance, through urging the High Authority for Audio-Visual Communication to see to it that linguistic pluralism is established (Article 28).

At the same time, the Constitution integrates this new dimension through emphasising the cohesion which must spring from this diversity. The preamble was written in a classical style, fully insisting on the links that hold sway between Moroccans: "*attached […] to its national unity, the Kingdom of Morocco intends to preserve […] its national identity*". The document insists on various elements that are, thus, gathered with an implicit hierarchy: "*Its unity, founded on the convergence of its Arab-Islamic, Amazigh and Saharan-Hassani components, has been fed and enriched by its African,*

Andalucian, Hebraic and Mediterranean tributaries". From Article 1, the tone is set with a reference to "*national unity with its multiple tributaries*". The educational system is called on to serve this important mission: it must enhance "*attachment to the Moroccan identity and to the permanent and unchanging moral traits*" (Article 33). At the same time, each assertion of this identity goes together with the proclamation of a will to enhance tolerance and dialogue with other civilisations of the world.

It is in the preamble that this concern with opening up is indicated most clearly, with a grading in the enumeration of recognised partnerships, which reflects a form of increased widening of the scope of potential interlocutors; the first named being the fewest, and those with whom links are, naturally, the closest. Those named last integrate throughout the whole planet, obviously with less perspective on close cooperation. In first place, come countries of the Maghreb Union, then the sister countries of the Arab-Islamic *Umma*, followed by the peoples and countries of Africa, notably those of the Sahel and Sahara. Next, are the countries from the Euro-Mediterranean neighbourhood, and finally "*all countries of the world*". For each group of nations with which Morocco hopes to establish relationships, subtle nuances indicate priorities - from the building of the UMA ("*Union of the Arab Maghreb*") "*as a strategic option"* to the classical "*human, economic, scientific, technical and cultural exchanges*" with the world,.going through to belonging to the *Umma*, solidarity with the rest of Africa and Euro-Mediterranean partnership. Each word is carefully chosen. In the same line, Article 23 prohibits anything that may denote refusal of such opening up: "*Incitement to racism, hatred or violence is prohibited. // Genocide and all other crimes against humanity, war crimes and all serious and systematic violations of human rights are punished by the law*" (Article 23)

In order to better ensure the cohesion of the Moroccan nation, of which Article 1 glorifies the "*collective life [which relies] on the unifying permanent traits*", the Constitution acknowledges a series of rights in favour of the family, young people, and persons with special needs. Concerning the family (Article 32), the image that emanates is a rather classical one, given that this is not the place to look for anything related to the status of women. Rather, one should refer to the developments stating the principle of equality. The image of the family being promoted here is one that is founded on the "*legal bond of marriage"*, which justifies the use of the title as the "*basic unit of society*". On this basis, the State assigns itself a number of obligations, the first being the protection of judicial, social, and economic structures. All this would seem rather ordinary, if the principle of equality was not included for "*all children, whatever their family situation*". This constitutes evidence of obvious progress, in comparison to the old rules that favoured the legitimate

child, as opposed to the natural child, *a fortiori* adulterine. To this effect, an Advisory Council has been created.

Concerning young people, (Article 33), most of the dispositions provided for in this respect are worded in fairly general terms.. They are concerned with economic, social and cultural rights. These three objectives are, more or less, seen again in the various aspects developed in the same article (Article 33). They are about the participation of young people in the development of the country alongside various aspects - including the three just mentioned, but also at the political level, as well as access to knowledge about different points of view, including sport and leisure. Integration seems to be the key word here and the Constitution emphasises its importance in relation to "*the active and socially organised life*", to the extent that everybody realises that what we have here is a decisive challenge in a country characterised by a very young population with high aspirations. An Advisory Council has been created, covering both youth and socially organised action, which would seem rather odd if one isn't convinced that the blending of these two notions, to a large extent, determines the future of the regime and the country, as has been demonstrated by the events of the Arab Spring. If we add special assistance to the young with specific problems, we have a fairly complete idea of the article under discussion (Article 33) and a transition to the next area of analysis. .

The article is devoted to policies "*designed for persons and categories with specific needs"* (Article 34). Two types of problem are grouped together, concerning situations that are not, in themselves, problematic, but that may become so, since we are dealing with women, mothers, children and the elderly. On the other hand, we have people who are real victims of physical, sensory-motor and mental disabilities. To the former, a promise is simply made to treat and prevent their vulnerability. Concerning mental disabilities, the ambition is rehabilitation and integration into social and public life. It is worth-noting that the Constitution is particularly generous, with firm commitments for potential beneficiaries subject to legal protection..

Current Moroccan fundamental law redefines the major priorities of the country's international policy. The first three Constitutions were rather cautious concerning the international role of the Sherifian Kingdom, restricting themselves to indicating its intention to be "*an active and dynamic member*" of international organisations, assigning itself an objective of realising African unity and intending to "*work towards maintaining peace and security"* (Preamble). The only change that occurred between 1962 and 2011 was the revision of 1996, with the endorsement of the charters of international organisations and the assertion of an "*attachment to Human Rights as universally recognised*". The 2011 Constitution went further by slightly lengthening and developing the Preamble and adhering to "*an*

imperative to strengthen the role assigned to it [Morocco] on the international scene". As indicated earlier, the text announces a number of partners, following a careful grading. Above all, it ends with an assertion of the primacy of international conventions, duly ratified within the internal law of the country. This is an essential innovation, unless two specific dispositions are used to weaken it: the first subordinates this supremacy to "*respect of its [Morocco's] national immutable identity*", which could turn out to be a source of exceptions related, in particular, to religious considerations. The second provides for a harmonisation of pertinent dispositions of national legislation with international law, which could generate time lags. Still, the fact that the Preamble indicates in the conclusion that "*it is an integral part of the present Constitution"* evinces the will to grant these dispositions an authentic compulsory power.

A new form of citizenship

Traditional jurists are used to opposing republican regimes that gather citizens to monarchic systems, where there is discussion about their subjects. Beyond the archaic nature of this distinction, it is clear that the Sherifian monarchy, henceforth, places citizens at the heart of its constitutional system. Right from Article 1, it is proclaimed that the constitutional regime of the country is founded on a "*citizen and participative democracy*", adding a notion that recurs too often to be coincidental: "*correlation between responsibility and accountability*". From a political point of view, and beyond the grammatical rule which, as already mentioned, always makes a distinction between "*citoyens*" (masculine) and "*citoyennes*" (feminine), the terms linked to the concept of citizenship are amongst the most frequently cited, often associating rights and duties. Amongst the first of these terms, we may cite the possibility of "*introducing motions in legislative matters*" (Article 14) or "*petitions to the public powers*" (Article 15). However, it is mainly through elections that citizens may express their choices. A long article (Article 11) aims at guaranteeing *strict neutrality* on the part of public powers, *equitable access* to the public media, freedom of electoral campaigns and voting operations, and presence of independent and neutral observers, "*in accordance with recognized international laws"*. The article ends with a threat of sanctions against those who would violate these rules and with an invitation to the public authorities to promote participation in voting.

Concerning participation in public life, it is worth noting the existence of three articles devoted to Moroccan residents living abroad. There is almost nothing like this in constitutions on the African continent. These articles attest to the will of the Sherifian State to maintain a relationship with its nationals, whatever the period of time they have spent abroad. The first article

on this topic stipulates that the kingdom shall grant protection to its citizens residing abroad, will see to it that their human and cultural bonds are maintained with the kingdom, and that these bonds reinforce friendship and cooperation between Morocco and their host countries (Article 16). The following article recognises their full citizenship and states the modalities making it possible for them to be electors and candidates at every political level (Article 17). Finally, the third article aims at allowing them to participate in both advisory and good governance institutions created by the Constitution, or by law (Article 18). If we recall that Article 30 visibly aims to prompt foreign states to grant some form of voting rights for Moroccans nationals, with, in return, a promise of reciprocity, we get an idea about the judicial means that have been mobilised by Morocco, in order to facilitate an adequate integration of its nationals in the host countries and ensure "*the preservation of their national identity*" as ambassadors of their own country. All this could constitute a model to be emulated by other constitutions and nations, whilst international cooperation would also benefit from it.

Article 31 provides a long enumeration of the rights of citizens to health (particularly medical cover), social security, education, decent housing, work, water, a healthy environment, sustainable development, etc. Reference to this latter adjective provides an opportunity to recall what has already been underlined in relation to the right to property and its economic complement: the ecological dimension is introduced at several stages in the Constitution. Above all, the enumeration of various rights concerning the most daily aspects of citizen life (housing, water, health, etc.) raises the problem of the capacity of the public authorities to guarantee these basic rights, in a country still under development - despite high rates of growth. In a number of Constitutions that have been adopted in the Southern hemisphere, particularly in Francophile Africa, these constitutions have generously increased the number of promises and guarantees which, as everybody knows, go far beyond the reach of the public powers given the means at their disposal they are able to mobilise.

Given this situation, two opinions may be put forward: the first would consider that these oversized declarations of rights have a programmatic character that they assign, to the rulers, objectives that must one day be achieved. The second would regret this inflation of unrealistic rights that would be impossible for citizens to claim. This is likely to weaken the set of liberties indicated in the declaration, since we may assert, by extension, that it does not include any real obligations for the State. In order to avoid such a situation, the 2011 Moroccan Constitution supported these very ambitious rights with a formula that presents them as objectives— as obligations of means and not of results. The complete formula attests to this: "*The State, the public institutions and the territorial collectivities work towards the*

mobilisation of all available means in order to facilitate access of all citizens (feminine) and all citizens (masculine) to the conditions that make it possible for them to enjoy the right [etc.]. These are not, strictly speaking, debt rights of which the citizens may claim benefit from the State. All they can claim is that a great number of protagonists (State, institutions etc) endeavour to mobilise existing means, in order to facilitate their access to conditions that are likely to make it possible for them to enjoy the deemed rights: this is not constraining. We may assess this through a comparison of these rights with those that are better protected (e.g., with reference to the right to security both of persons and of property, which is recognised for all) "*The public powers insure the security of populations and of the national territory within respect for the fundamental liberties and rights guaranteed to all*" (Article 21). In this context, the obligation is more specific, as we are dealing with what is currently referred to as the major/ first duty of the State: security.

On good governance

The term "*good governance*" occurs twelve times in the 2011 Constitution. Although this is a relatively new concept in its current meaning, it enjoys a strongly attractive power. In this respect, the fact that it spread so quickly may provoke fear that its decline may be as quick. Similarly, there are those who consider it as a fuzzy notion, in which people try to include anything they like. Although its objectives are noble, the means by which it can be achieved are varied. Still, its advocates are characterised by the generosity of their intentions and, it is in this perspective, that we may examine the use that the 2011 document makes of it. Some references are too general to provide a specific definition. Examples of these are when "*good governance"* is mentioned in the Preamble as one of the foundations of the institutions of a modern state, or when Article 1 presents it as one of the foundations of the new constitutional regime, when the wish is expressed to institutionalise norms of "*good security governance*" (Article 54), or finally, when the Accounts Court is called on to protect the principles and values of good governance. We may also include a number of articles that put various institutions under the sign of good governance (Articles 18 and 161 to 167).

Actually, an entire title of the Constitution (Title VII) is devoted to this notion.. In the first four articles, good governance is conceived as a means of contributing to the improvement of public services: everybody should have access to them, without consideration of gender or place of residence, and with respect for the norms of quality, transparency, accountability, and neutrality (Article 154). Persons responsible for these services are called on to demonstrate respect for the law, neutrality, transparency, integrity, and

concern for the general interest (Article 155). Public services must be attentive to the needs of users and must be submitted to control and evaluation (Article 156). A charter of public services sets out the obligations of public administrations (the Constitution certainly means "*of the State*"), of territorial collectivities and of public organisations (Article 157). The following article aims at fighting corruption by having all persons exercising a public function to draw up a declaration of their possessions and assets before, during, and after the exercise of such function (Article 158). It is, therefore, logical to compare this article with a lengthy one (Article 36) that aims at fighting corruption through a condemnation of conflicts of interest and dealings, a repression of financial offences in administrations, particularly those related to the transfer and management of public calls for tender, and a stigmatisation of influence peddling, as well as abuse of a dominating position and monopoly. Similarly, Article 63 provides for the existence of special rules of incompatibilities concerning members of the Chamber of Councillors.

Certain concepts, normally associated with good governance, are not used at all in this context. There is very little resort to the notion of the rule of law, which made a strong comeback at the end of the Twentieth Century and which is, actually, referred to less in the most recent Constitutions. The 2011 Moroccan text incorporates "good governance" at the beginning of the Preamble. Besides, it asserts "*the principles of constitutionality, hierarchy and obligation of publication of the judicial norms"* (Article 6). The technical consultation, often mobilised for the benefit of good governance, is mentioned in general terms in Article 13, stating that "*The public powers work towards the setting up of consultation bodies with the aim of associating the different social protagonists in the elaboration, implementation, execution and evaluation of public policies"*. The Constitution refers back to this in relation to the Supreme Council of Security (Article 54) calling on the Councils of territorial collectivities to resort to these mechanisms (Article 139).

To get back to Title XII, it ends with an enumeration of ten bodies presented as being in charge of the protection and promotion of Human Rights, of good governance and, finally, of human sustainable development and participative democracy. Most of these institutions are responsible for the protection of a specific freedom, the supervision of an individual category, or the promotion of a specific public policy, or more often than not, of all three. They are already included in the Constitution, generally at the end of the article concerning this freedom, category, or public policy. We may be surprised, then, that they have been gathered under Title XII, with each having its own field of intervention and the objectives it is meant to promote, when it might have been more logical to provide the appropriate information in the article, or in the relevant articles. A possible judicial reason for grouping all these institutions could be that the Constitution actually provides

for a number of dispositions that are common to all of them: each is called on to submit an annual report to the parliament for debate (Article 160. It is up to the law to define their composition, their organisation and, if need be, any cases of incompatibility (Article 171). Finally, it is specified that "*the bodies in charge of good governance are independent*" (Article 159). Doubtless, it may appear more convenient to define the elements that must characterise all the rules and regulations of these institutions, grouping them under the same set of articles, although the same result could be achieved by making regular references to the relevant article.

We come to consider that, through this enumeration, the Constitution wished to highlight the new policy that the country had committed itself to, consisting in multiplying the number of independent institutions that are alternately in charge of supporting and controlling public authiorities. There is an obvious tendency that prevails all over the world which began in the US. The European Union widely resorts to it, and it is notably used by France under the name of "Autorités Administratives Indépendantes" (AAI, Independent Administrative Authorities). Although they are given different names (authority, agency, council, institution, etc.), Morocco demonstrates a unity of thought and intention that prevails over their creation although some, such as the Council of Competition, already existed, at least officially, before 2011 and have now just risen to the rank of a constitutional institution. Others are of a more specific nature - such as the National Council for Human Rights or the Ombudsman in charge of public liberties - in that they have a more political orientation.

Since the author of the 2011 text intended to make a big impression, we believe we are justified, at the risk of being redundant just like the Constitution itself, in presenting, here, a list of the six institutions grouped under three types of activities: Under the protection and promotion of Human Rights, figures the National Council of Human Rights and the Ombudsman, which has already been mentioned in Article 115, the Council of the Moroccan Community Abroad whose activities are indicated in Articles 16 and 18, and the Authority for Parity and Struggle Against any Form of Discrimination, created by Article 19. Under institutions of good governance and regulation, we have the High Authority for Audio-Visual Communication, mentioned in Article 28, the Council of Competition whose creation was provided for in a Dahir published in 2000 (but which needs further reinforcement), and the National Agency for Integrity and Prevention and Struggle Against Corruption, created by Article 36. Amongst the institutions promoting human sustainable development and participative democracy, we find the High Council for Education, Training and Scientific Research, the Advisory Council for the Family and Childhood, created by Article 32, and the Advisory Council for Youth and Community Life, created by Article 33. We may add, in

particular, institutions that exhibit specific characteristics: the High Council of Ulemas, (Article 41), the Regency Council (Article 44), the High Council of Security (Article 54), the Supreme Council of Judicial Power (Article 113) and, finally, the Economic, Social and Environmental Council, to which the whole of Title XI is devoted (Articles 151-153).

Conclusion:

If the potential blunders of the law are likely to exacerbate injustice and bitterness, nobody would believe that the mere promulgation of a new Constitution, not even of new codes, is enough to fix all the basic problems that destabilizes a society. For all that, it is not illogical to initiate a policy of reform, beginning with the text at the head of national judicial norms. This is exactly what the political leaders wished for, and most certainly, the way things were understood by the electors. The fundamental law of 2011, which was spurred on by King Mohamed VI and adopted, is an extension of a number of reforms, particularly constitutional ones, which were initiated by his father. This is obvious, although Western analysts were more inclined to put forward innovations than to underline continuities, thus mainly focussing on novelties.

Perhaps because of a temptation to react to the classical tendencies of the mainstream media, we have quite strongly emphasized those reforms that have, in a way, been programmed, which the 2011 text completed and, at least, provisionally concluded. This, of course, does not imply any providential reconstitution of history. We cannot imagine that, exactly half a century ago, the young king could have anticipated in detail the various evolutions that his country has gone through, partly thanks to him, at political, economic and social levels. It, however, remains the case that the impression of stability and continuity that characterises Morocco, on a continent shaken by all kinds of conflicts, constitutes a remarkable asset for the country, whose citizens are well aware of this stability and continuity and are intent on preserving them, however fragile they may be.

Without doubt, a number of commentators will insist on focussing on all the effort that has been invested in achieving recognition for a long list of civil liberties and fundamental rights. The most classic amongst these liberties and rights, for example, freedom of the press, has been widened and modernised in consideration of new modes of communication. The most urgent protections (for example, against arbitrary arrest) have been specified and guaranteed, with a concern for realism. New preoccupations (for example, in terms of environment) have not been overlooked. Most

important of all, is that the list distinguishes between what the state is able to guarantee and areas where it cannot go further than commit itself to providing the means. Otherwise, the lack of realism implied in certain proclamations would lead to compromising the credibility of the whole endeavour, as is the case with similar declarations elsewhere.

From a perspective of the power balance, the new Constitution commits Morocco to increased parliamentarianism. The Constitution explicitly proclaims that the prime minister, henceforth named head of the government, and the assemblies shall have the means to fully assume their roles. Some will draw a parallel here with an English style monarchy, but they would be wrong. There is nothing more alien to Moroccan Constitutions than to imitate models from other continents. Although certain mechanisms may have been experimented with elsewhere, the refusal to indulge in any kind of mimicry remains the basis for the selected mode of writing in the Constitutional text. No source of important inspiration from outside the country itself is possible — neither from the left bank of the Mediterranean, nor from the other side of the Atlantic. This is a prerequisite for a people to identify with its fundamental law and appropriate it.

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