

The Moroccan Constitution of 29 July 2011

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The Moroccan Constitution of 29 July 2011 is the first constitution promulgated under the reign of Mohammed VI. The role of the circumstances under which it emerged should not be overestimated. The temporality of the Arab Spring does not apply to Morocco, and the 20th February Movement was not a response to the movement on Tahrir Square, even if it did attempt to slip into the chink of opportunity opened by the latter. When the first protest organised by the 20th February Movement took place, Morocco had already long been in a reform dynamic. This is the outcome of two measures that defused the situation. The first dates back to the last decade of the Hassan II regime and consisted of governmental integration of opposition parties. The second consisted of the attention placed on human development by the new sovereign since his accession to the throne. Regardless of the results, which may be mixed, these measures have had an effect on the manner in which the regime is perceived and on its legitimacy. The double political and social defusing has led to an expansion of the space for discussion, whose door was only ajar at the end of the preceding monarch's regime. In twelve years, Morocco has changed a great deal.

Although the Constitution of 2011 appeared liberal at first, embodying the regime's intended position regarding democracy and authoritarianism, its implementation – when viewed in a three-year retrospect – seems prudent and of a more parsimonious liberalism. It is part of a project to consolidate a system

clearly conceived as hybrid, in which monarchic leadership and parliamentarism each play a role.

The Context

A number of institutional developments have long indicated a reorientation of governance: regionalisation has implied and entailed an in-depth change of relations between those governing and those governed, such as the establishment of the National Human Rights Council and the Economic and Social Council. Although these councils were created after 20 February 2011, they were conceived well before the timeframe for their creation had been established. It was, however, on the basis of regionalisation that the sovereign, in his 9 March speech, announced constitutional reform. This announcement, in its breadth, affirmed the regime's liberal orientation. Whereas the 20th February Movement, beyond its agenda of protest, lacks a consensual and thus potentially mobilising platform. The weeks following the speech demonstrated the Movement's difficulty in taking up other demands of the same nature; its capacity to mobilise was clearly diminishing. It did, nevertheless, trigger an important movement of sectoral demonstrations in which people in different socio-professional categories demanded an improvement in their living conditions. This has above all served as an opportunity for the monarchy, allowing it to accelerate reforms based on explicit demands by the population and benefiting from the media coverage of a movement that, though it does not precisely represent "the population," has succeeded in gaining exposure.

Was this device necessary? For their relative importance, it is not certain that the reforms contained in the draft constitution would have been received

without causing commotion. Just consider the circumstances – the Casablanca attacks in May 2003 – that allowed the adoption of Morocco’s new Personal Status Code in 2004, whereas an initial attempt had been dropped under the pressure of a more or less interested, conservative coalition. In any case, the constitutional reforms go further: Tamazight has become an official language, gender equality has been affirmed, citizens can contest the constitutionality of laws in a constitutional court, the freedom of thought is recognised, the struggle against corruption has been encoded in the constitution... One can easily imagine how many interests and beliefs rigidified by habit these transformations can affect. They range from the Administration, which could frown upon independent judicial controls, to the Salafists, for whom identity is never restrictive enough, not to mention political personnel, who balk at change, often preferring not to upset their constituents. The monarchy was thus able to rely on the 20 February Movement to preventively defuse opposition to the draft Constitution.

The Content

The new Constitution displays three essential characteristics: the delineation of a broad scope of action for the head of government, who is given the means necessary to carry out their task and, above all, to control the parliamentary majority supporting them; the assertion of the sovereign’s powers of arbitration and influence; and the establishment of independent institutions in charge of protecting and developing rights. The separation of powers is not designed as much to separate the Executive, Legislative and Judiciary Branches as it is to limit their spheres of influence.

Hence the Executive Branch and Parliament are functionally linked, as they would be in a parliamentary regime, rather than checking or balancing each other out. The head of government is necessarily selected from among the members of the winning party, which is a parliamentary approach. Said head of government has the right to dissolve parliament. This is a rationalisation of parliamentarism, all the more necessary since Moroccan Administrations have always been coalitions. The right to dissolve parliament helps make the head of government the true

“master” of the majority party or coalition. The latter, moreover, has the option of engaging the government’s support on a bill of law, which is a strong means of constraint for Parliament, a motion of no confidence in the government almost certainly entailing a new round of elections. From this perspective, the new Constitution is truly innovative. Moreover, it differs greatly from preceding ones, which effectively aimed, above all, to protect the monarchy against the government and Parliament (even if it wasn’t at great risk anyway). This one, on the contrary, aims to consolidate a space for autonomous government in which the head of government is, *de facto*, directly responsible before those governed via elections. It is obligatory designation of the head of government from among the representatives of the party having won the elections that establishes this rationale, very similar to the British and German parliamentary systems, where voting for a party means simultaneously choosing the head of the executive branch. Voters will effectively know whom they are voting in as head of government and the latter will know that they will not be able to continue in that post without the voters’ support, since the King cannot freely appoint (or remove) them, and will not expect to keep the post even with the support of a coalition if their party does not win the elections.

This “weapon” seems destined to synchronise *politics* and *policies*, that is, political activity itself (politicians, partisans...) and the conducting of public policy; in other words, it could be a means to overcome the situation whereby public policy is conducted although it is not sufficiently effective. A constant problem of conducting public policy is that of the multiple channels of the State apparatus and the wastage arising therefrom. In the conduction of public policy, Morocco had until now given precedence to consensual action (establishment of consultative bodies of evaluation, negotiation with interested parties...) or “direct action.” Direct action is illustrated by the King’s intervention in the establishment of infrastructure or by removal of government officials carrying out their duties poorly. In any case, this latter mode of action is only effective in certain domains. It is not effective when applied in the healthcare, social welfare, justice and educational systems. Why? Because, in the healthcare sphere, for instance, attempting to rectify the poor functioning of hospitals would also entail reconsidering civil servants’ salaries

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and doctors' careers. To take another example, in the sphere of social welfare, which has been under construction since 1998, the issue is not just to establish a good system, but to strike a balance between what businesses can offer, the effort that the State can afford and the participation of beneficiaries, each of these three partners being caught in their own systems of constraints. In other words, the idea is to manage to mobilise different categories of actors involved in government action on the long term. This is never easy, particularly because the stability of those in power is often due to immobility involving not offending or annoying too many people, which is particularly true for State officials, who, each in their place, ensure the regime's stability, if not necessarily ensuring the Rule of Law. Thus, by creating a head of government and an executive different from the King, the constitutional reform, at least in theory, has created an actor who has an interest in abusing public officials in order to keep their post and maintain the pre-eminence of their party.

The parliamentary rationale of the Constitution's text is nonetheless limited by the powers assigned to the sovereign, although they do not undermine it. They should be perceived as the presidential powers were construed at the beginning of the 5th French Republic (between 1958 and 1962), at a time when the president was not the effective head of the parliamentary majority, but he did have great historical legitimacy. His powers were considered the means to best protect the country's fundamental interests by not placing them at the centre of partisan negotiations. In the same spirit, the establishment of a constitutional court to which citizens can turn, backed by the ample Declaration of Rights contained in the Constitution, guarantees the existence of an independent sphere for the protection and development of rights that also escapes the vagaries of

governance and electoral conservatism. Moreover, the Constitution has established numerous authorities to ensure good governance and the protection of rights (namely in the sphere of equality and human rights). These authorities are conceived as independent from the government and, for the most part, are designed to create a link with civil society.

The Current Situation

There is no denying, however, that the course of political life does not, for the time being, reveal any significant change. First of all, the majority of organic laws that must be adopted according to the Constitution have not yet been voted on. This is the case namely with the one concerning the Constitutional Court. Its role is apparently destined to be significant, insofar as citizens can contest the constitutionality of a law via a court case. The Declaration of Rights contained in the Constitution a priori opens a major sphere of dissent. In any case, the two organic laws establishing this recourse are not yet ready, such that the Declaration is, de facto, not yet effective. The same is true of numerous other spheres and other authorities based on organic laws. These laws, however, must perforce be adopted during the current legislature, which will lead either to a final bottleneck of more or less slapdash organic laws, or a constitutional reform extending their deadline for adoption. Note also that regionalisation, which partially justified constitutional reform, has not progressed.

Government action itself does not always seem to reflect the strengthening of the head of government, the latter remaining indebted to a coalition. The departure of the Istiqlal party from government and its replacement by the National Rally of Independents (RNI) resulted, for instance, in the loss of ministerial posts for the head of government's party. By the same token, although appointment of senior officials is shared, in application of the Constitution and via an organic law, by the King and the head of government, it is not certain that the latter's power of appointment is entirely independent. Indeed, the adoption of a new Constitution does not change practices overnight. In this respect, perhaps the Constitution of 29 July 2011 should be considered more a programme or objective rather than an accomplishment.