

The Tug-of-war between the Spirit of the Constitution and the Requirements of Society and Politics in Morocco

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ABSTRACT

This article discusses the compatibility of the “aspirations generated” by Morocco’s constitutional text with democratic practices over ten years after its entry into force. It begins with the hypothesis that while a constitution carries in its early stages the seeds for the development of political life and empowerment of its actors, the operationalization of new constitutional concepts and breaking with narrow past readings and populist discourses can only be achieved through practice. The article argues that attributing the 2011 Moroccan constitutional reforms exclusively to one particular actor is a mistaken narrow characterization that must be challenged, as multiple political powers, both official and unofficial and exercising varying degrees of influence within the broad balance of powers in the country, contributed to shaping the constitutional initiatives that were announced. Tangible indicators show that undertaking constitutional reform engages three interlinked dimensions: accretion, anticipation, and consensus. In other words, the fate of democracy is not only determined by historical and structural forces, but is rather a product of national struggles, resilience, negotiation, and choices that must be adhered to by the different actors. As experience indicates, early excitement over constitutional changes had to soon be tampered by the difficulties of enacting change within structurally fragile state institutions and mechanisms.

Keywords: *Moroccan Constitution, constitutional reforms, context, democracy, power, practice*

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INTRODUCTION

Every community or social group has complex patterns of behavior and strategies that its members follow in response to set scenarios.¹ Political science, according to Ian Shapiro, must answer questions related to the nature of these strategies and their impact on individuals and institutions and must find solutions, beyond simply producing new theories.² Shapiro argues that the development of political science as a discipline is conditioned on the quest to explain current phenomena and realities, rather than a preoccupation with developing theories or research hypotheses and categorizations.³

This also applies to constitutional law, where there is increasing awareness that abstract ideas should not be read in isolation from the context in which they emerge, given that political power is only one component of the overall social order,⁴ and it only bears analytical significance in relation to that order and its specificities. The result is a growing tendency to approach matters sociologically and to consider the political and historical context that shaped and informed a country's particular political dynamics.⁵

Within this framework, this article focuses on “the tug of war” between the spirit of the constitution and the requirements of society and politics, and systematically investigates the context and actors involved in the 2011 Moroccan constitutional reform. Acknowledging that the February 20 Youth Movement did not directly draft the constitution⁶ — a document that undoubtedly will become the focus of future historians⁷ — and that the dynamics of its engagement were essentially reduced to a mere protest movement, whether on the streets or on Facebook,⁸ this article also argues that the youth movement transcends the simple conception of “opposition against His Majesty the King”⁹ — an opposition that in the Moroccan context is empowered from above in exchange for loyalty and thereby reproduces the political system and consolidates its hegemony.¹⁰ In other words, it is important in the Moroccan case to cognize multiple forms of mobilization, conflict, and street protests as

¹ Maurice Duverger, *Political Institutions and Constitutional Law: Major Political Systems*, trans. George Saad (Beirut: University Institute for Studies, Publishing and Distribution, 1992), 8.

² Martin J. Smith, “Preface: Innovation and Dialogue in Contemporary Political Science,” *Political Studies* 58, no. 2 (2010): 235.

³ Khalil Al-Anani, “The Political Science Predicament: Between Ideology and Knowledge,” *Siyasat Arabiya* no. 41 (2019): 24.

⁴ Michel Mayai, *The State of Law: An Introduction to the Criticism of Constitutional Law*, 2nd ed. (Beirut: University Institute for Studies, Publishing and Distribution, 1982), 18.

⁵ Anne Amiel, “Hannah Arendt lectrice de Montesquieu,” *Revue Montesquieu*, no. 2 (1998): 120.

⁶ In a conversation in French conducted by Mustapha Bouaziz, Maati Monjib, and Slimane Bencheikh, with Abdallah Laroui, on the monarchy, political Islam, the February 20 Movement, and the Great Maghreb. *Zaman Magazine*, no. 18 (2012): 69.

⁷ Laroui argues that while the historians of the French Revolution stress the role of the crowd (*la foule*) and of neighborhood gatherings, they focus more on the impact of the constitution, for it left many documents, while the crowd spoke and its words disappeared into the winds of history.

⁸ An interview conducted by Mounir Aboulmaali with Abdullah Saaf, on the occasion of the fourth anniversary of the February 20 Movement, *Akhbar Al-Youm*, February 20, 2015.

⁹ Myriam Catusse, “Au-delà de ‘l’opposition à sa Majesté’: mobilisations, contestations et conflits politiques au Maroc,” *Pouvoirs* 2, no. 145 (2013): 2-3.

¹⁰ Catusse, “Au-delà de ‘l’opposition à sa Majesté’.

different expressions of opposition, within a political field where the authorities co-opted opposition parties to work within state institutions.¹¹ The February 20 Movement turned “the street” into a space for communication, protest and public political expression, independently of traditional institutions and organizations, whether those stemmed from the National Movement, or were intended to confront it.

The article hypothesizes that the political authorities’ haste to push through constitutional reforms responded to a desire to transform the social and political demands of the protesters into the state’s strategy. In other words, they sought to funnel all reforms through traditional political channels to ensure that the monarchy continued to absorb or neutralize opposition. Beyond discussing the role of the February 20 Movement in triggering the adoption of constitutional reforms, this article demonstrates that the ability of the monarchy to contain the movement was motivated by the hypothesis that failure meet to such demands could lead to social unrest and create an existential risk to the political system, whereas moving quickly to contain those demands represented a defensive strategy of neutralizing other political actors and incorporating them into the system.

Given the complexity of the Moroccan case, this article adopts an interdisciplinary approach that examines carefully the context and history that shaped constitutional reforms and developments, and incorporates a background review that allows us to reconstruct social processes that link past events with the present. This article then systematically examines whether the “aspirations generated” by the Moroccan constitution are compatible with practice and the realities of the stakes involved in transitioning to democracy, and considers the power dynamics and interrelations between multiples actors, both official and unofficial, with their varying degrees of influence.

The article addresses two temporal levels or dimensions that characterized the Moroccan Constitution of July 29, 2011. The first is the immediate context within which it was produced; the article first examines the rise of the “soft” power of the street and its strategy to demand change (I),¹² and, second, it analyzes the political regime’s strategy in managing extra-institutional opposition through “containment” and “neutralization” (II). The second dimension of analysis concerns the implementation of new constitutional ideals and their integration into political practice, with the purpose of determining the extent of decisiveness and clarity, or hesitation and ambiguity, that characterizes the relationship between the constitutional text and transition to democracy, through looking at indicators of political practice and sound implementation of the constitutional provisions in reality (III).

¹¹ Mounia Bennani-Chraïbi et Mohamed Jeggllaly, “La dynamique protestataire du mouvement du 20 février à Casablanca,” *Revue française de science politique* 62, no. 5-6 (2012): 870.

¹² Frédéric Vairel, *Politique et mouvements sociaux au Maroc* (Paris: Presses de Sciences Po, 2014), 20.

I. THE CONTEXT OF THE RISE OF THE NON-TRADITIONAL OPPOSITION STRATEGY IN THE PUBLIC SPHERE

A. THE FEBRUARY 20 MOVEMENT AND THE DEMAND FOR DEMOCRACY

The February 20 Movement can be described along three overlapping dimensions.¹³ The first is a conflict dimension, which refers to the positioning of the February 20 Movement in opposition to the state in terms of power and meaning;¹⁴ the second concerns the desire for change, driven by dissatisfaction of the protesters and supporters of the movement with the conditions of corruption and tyranny and their demands for democracy and social justice; and the third refers to the movement's ability to bring together distinct components of society:¹⁵ unaffiliated youth, the Association for the Taxation of Financial Transactions and Aid of Citizens (ATTAC), the Moroccan Association for Human Rights, the National Union of Moroccan Students, Amazigh movements, and political activists belonging to the non-governmental left, such as the Unified Socialist Left, the Socialist Democratic Vanguard Party, but also the Islamist youth belonging to the Justice and Charity Party, the Civilizational Alternative Party, and the Movement for the Nation,¹⁶ in addition to the youth of the Socialist Union of Popular Forces and the Islamist Justice and Development Party.

Using the perspective of “Olson’s Paradox,” it can be said that small groups are generally more likely to mobilize than larger groups, thanks to the mobilization possibilities offered by “selective incentives,” as well as the “closed shop” technique, which attenuates the free rider problem.¹⁷ The February 20 Movement overcame “Olson’s Paradox,” having brought together diverse social groups of different ideologies and generations that mobilized in around a hundred cities throughout 2011, united only in their opposition to authoritarian rule.¹⁸ Although the demonstrators demanded social justice and the rights to health and education, most of the movement’s demands focused on political rights, including demands for a more democratic constitution based on the sovereignty of the people, independence of the judiciary, and the separation of powers.¹⁹

Although the February 20 movement differed from its counterpart movements in the Arab world in that it did not call for “toppling” the regime, it nevertheless demanded the transformation of the Moroccan monarchy

¹³ Lilian Mathieu, *L'Espace des mouvements sociaux* (Bellecombe-en-Bauges: Éditions du Croquant, 2012), 12.

¹⁴ Mohamed Naimi, “The Limits of Rational Choice in the Sociology of Social Movements: The 20 February Movement and the Rif Movement in Morocco”, *Omran* 8, no. 31 (2020): 102.

¹⁵ Mohamed Basak Manar, *The 2011 Constitution in Morocco: What Context? For What Content?* (Doha: The Arab Center for Research and Policy Studies, 2014), 3.

¹⁶ Thierry Desrues, “Le mouvement du 20 février et le régime marocain: contestation, révision constitutionnelle et élections,” *L'Année du Maghreb*, VIII (2012): 381.

¹⁷ Olson, Mancur, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1965).

¹⁸ Naimi, “The Limits of Rational Choice,” 101; Abd al-Ilah Setti, “Parliamentary Monarchy in the New Moroccan Constitution,” *Siyasat Arabiya*, no. 20 (2016): 35.

¹⁹ Mohamed Madani et al., *The 2011 Moroccan Constitution: A Critical Analysis* (Stockholm: International IDEA, 2012), 10.

from a ruling executive monarchy to a democratic parliamentary monarchy. Such transformation would entail a redistribution of power away from the monarchy, while simultaneously strengthening parliament, granting it the necessary powers to effectively implement public policies with accountability.²⁰

These demands were not new to the Moroccan context.²¹ However, the difference in 2011 was that the movement for reform was no longer monopolized by political parties, which had been replete with compromises with the monarchy, but was rather associated with informal popular actors.²² This accelerated the pace of reform significantly, with the February 20 Movement achieving, in the span of just a few weeks, what parliament had struggled to achieve for years.²³

B. THE BROADER REGIONAL CONTEXT

The 2011 Moroccan protest movement came in the context of broader mobilization across the Arab world. Although the starting points and immediate triggers of these protests that swept Arab countries at the time were different, the driving factors behind these protests share significant commonalities.²⁴ Since gaining independence, citizens of the majority of Arab states have lived under authoritarian political regimes, many of whose policies negatively affected the mobility, productivity, and competitiveness of these countries' economies and deepened social disparities.²⁵ Facing significant development challenges, many of these countries opted for customized models of limited democratic transformations in order to address economic challenges and challenges of population growth, demographic shifts, youth unemployment, accelerated urbanization, changes in social values and relations, and the emergence of stronger forms of popular dissent and individualistic self-expressions.²⁶

In Morocco, the youth took to the streets calling for a different Morocco, a redistribution of wealth and power, more accountable institutions, different media, different education, and more.²⁷ Similar to other regional experiences, the mobilization of 2011 in Morocco revealed that the form, content, and scope of the protest movements, as well as those participating in them, had evolved to a degree that the reform path followed in previous years was no longer sufficient to meet popular demands.

²⁰ Ahmad Maliki, "A Reading of the Overall Architecture of the New Moroccan Constitution," *Tabayyun*, no. 4 (2013): 92.

²¹ Elhabib Stati Zineddine, *Protest Movements in Morocco and the Dynamics of Change within Continuity*, 1st ed. (Doha/Beirut: The Arab Center for Research and Policy Studies, 2019).

²² Samir Belmalih, "The Moroccan Monarchy and the Challenges of the Arab Movement," *Masalik*, nos. 21-22 (2012): 36.

²³ Muhammad Shuqair, "The February 20 Movement between Confronting Tyranny and Overthrowing Corruption," *Wajhat Nazar*, no. 51 (2012): 25; see also, Said Yaktin, "Democracy in the Waiting Room: The Constraints of Moroccan Social Transformation," *Sharafat Series*, no. 47 (2014): 17.

²⁴ Zaid Al-Ali, Mahmoud Hamad, Yussef Auf, eds., *Yearbook of the Arab Association of Constitutional Law, 2015-2016* (AACL and IDEA International, 2017), 10.

²⁵ Assiya Belkhair, "The Arab World and Confronting Poverty: From the Colonial Legacy to the Challenges of Economic Globalization," *Al-Mustaqbal Al-Arabi*, no. 439 (2015): 43.

²⁶ Muhammad Nouredine Avaya, "The Political and Social Actors in the Current Arab Transformations," *Social Transformations in the Arab World, Comparative Experiences*, 1st ed. (Casablanca: Al-Baydawi Press, 2012), 15.

²⁷ Mourad Diani, "February 20, or the Dilemma of the 'Endless' Democratic Transition in Morocco", *February 20 and the Consequences of Democratic Transition in Morocco*, 1st ed. (Beirut: Arab Center for Research and Policy Studies, 2018), 17.

C. THE LOCAL CONTEXT IN MOROCCO

Over the past two decades, Morocco has achieved tangible progress in terms of constitutional and democratic reforms, as highlighted by multiple institutional actors in the course of consultations with the Special Commission on the Development Model (CSMD); nonetheless, it has also been noted that multiple challenges persisted in relation to “the discrepancy between the spirit of the constitution and the promises it holds, on the one hand, and the reality of the exercise of power, freedoms, and prerogatives, on the other. This mismatch prevents constitutional institutions and regulators from performing their full role.”²⁸ The Commission’s General Report, additionally noted “the lack of clarity in decision-making procedures,” which “leads to an uncertain political environment and fuels the growing mistrust of citizens towards institutions, as evidenced by the rate of participation in legislative or regional elections.”²⁹

While the Moroccan national movement has, since the Kingdom’s independence in 1956, consistently stressed that sharing responsibilities requires power-sharing, the monarchy chose another logic for itself.³⁰ In the words of the late King Hassan II in his book, *The Memory of a King*:

There were not two forces, but rather two currents. The first was patient and represented by my father, who believed that time is the best way to achieve good results. While the other current was impatient ... their demands were proportionate to their level of awareness of things, they had a natural tendency to accord great importance to details, they were interested in secondary matters at the expense of fundamental ones and, at times, dialogue carried no understanding, for we flew at different heights. It was truly a tragedy for Morocco.³¹

It is no coincidence, then, that the need arose for formulating new relations between the state and society, which manifested itself in the inclusion of “yesterday’s rivals” within the framework of rotational government. However, although the declared goal of consensual rotation was to facilitate competition between political forces, their appointment in governmental positions did not translate into decision-making powers,³² given the constitutionally enshrined primacy of the King in decision-making processes.³³ This explains the failure of political compromises to achieve pluralism and the incapability of elections to produce harmonious coalition governments.³⁴

²⁸ Special Commission on the Development Model of the Kingdom of Morocco, “The New Development Model (General Report)” (2021), 25.

²⁹ Special Commission, “The New Development Model.”

³⁰ Special Commission.

³¹ Éric Laurent, *Hassan II, King of Morocco: The Memory of a King, Interviews Conducted by Éric Laurent*, 2nd ed. (Riyadh: Saudi Research and Publishing Company, 1992), 24.

³² Abd Al-Ahad Al-Sabti, “The Arab Peoples and the Return of the Event,” eds. Abd al-Hay Mouden, Abd al-Ahad al-Sabti and Idris Ksiks, *Questions on the Start of the Arab Spring* (Rabat: Publications of the Faculty of Arts and Humanities, 2012), 49-50.

³³ See, for example: [Constitutional History of Morocco](#) (ConstitutionNet — IDEA International).

³⁴ Abdullah Saaf, “How are Decisions Made in Arab Regimes: The Moroccan Case,” ed. Nivin Masaad, *How Are Decisions Made in Arab Regimes, A Case Study: Jordan-Algeria-Saudi Arabia-Sudan-Syria-Iraq-Kuwait-Lebanon-Egypt-Morocco-Yemen*, 1st ed. (Beirut: Center for Arab Unity Studies, 2010), 528.

Before 2011, there was an interest in addressing social problems and creating greater spaces for democratic forces to bring forth political and social demands. However, it appeared that the reforms did not aim to substantially transform the foundational structure of the constitution, despite the flexibility demonstrated by the political regime in addressing the gross violations of human rights committed in the previous era, shaping new definitions of authority, responding to women's demands by reforming the Family Code (*Moudawana*), and initiating broad discussions on economic development prospects.

In parallel to the above, it should be noted that Morocco is currently at a historical turning point. On the one hand, there is a demographic shift towards a predominantly young population, and on the other hand, there is a clear generational divide between one (earlier) generation that was associated with the national movement and the struggle of liberation and state-building, and another that is now associated with the reign of King Mohammed VI and his circle of "classmates" who became known as the *Manlami* monarchial elites.³⁵ The death or end of the first generation can now be safely declared.³⁶

These social transformations, combined with poverty, illiteracy, lack of adequate housing, and mistrust of state institutions and policies, have led to various forms of protests.³⁷ In the words of Rémy Leveau:

After independence, we used to hear parties and trade unions claiming to exercise power in the name of the masses who had limited representation, yet the monarchy removed these parties and trade unions without much difficulty, thanks to the support of rural populations and the armed forces.³⁸ [The monarchy] refused to ally itself with any specific political bloc and instead continued to work to secure a type of "pluralism" that encompassed those who express full loyalty to the royal institution and to the King himself,³⁹ thus easily dominating all frameworks of everyday life.⁴⁰

This model reinforced an inverted relationship between political mediation and popular representation, whereby the legitimacy of "mediators" and "representatives" derived from the top, rather than from society. Historically, there were three pioneering political parties in Morocco: the Shura and Independence Party, the Istiqlal Party, and the Moroccan Communist Party. Currently, there are about thirty-six different parties. It is unclear whether this fragmentation of political parties was a result of the success of the monarchy in controlling the institutional hierarchy of Moroccan politics, whereby parties are left with the mere role of "marketing" specific political choices,⁴¹ or whether the parties are

³⁵ Abdelkader Boutaleb, "Youth and Politics: The Decline of Party Membership in Moroccan Society," *Siyasat Arabiya*, no. 38 (2019): 66.

³⁶ Jacques Palazzoli, "La mort lente du mouvement national au Maroc," *Annuaire de l'Afrique du Nord* 11 (1972): 233-234.

³⁷ Economic, Social and Environmental Council of the Kingdom of Morocco, *Annual Report* (2011), 68.

³⁸ Rémy Leveau, *Le fellah marocain défenseur du trône*, trans. Muhammad bin Al-Sheikh (Rabat: Wojhat Nazar Publications, 2011), 281.

³⁹ Leveau, *Le fellah marocain*, 291.

⁴⁰ Leveau, 281.

⁴¹ Abd Al-Rahim Al-Ammari, "On the Need to Criticize the Dual State: The September 7, 2007 Elections in Morocco and Reality in the General Political Settlement in Morocco," *Moroccan Journal of Public Policies*, no. 4 (2009): 239.

fragmented due to their own partisan competition and internal struggles.⁴² At this time of accelerating social change, political parties are increasingly pressured to renew their discourses, introspections, and approach to political engagement in order to maintain their relevance and a minimal level of political influence. Few political parties in Morocco today command even minimal levels of support within the broader society and few have demonstrated any ability to engage with public policy planning or hold public institutions accountable. Many of these parties are themselves in deep need of internal reform. According to the Moroccan Institute for Policy Analysis, around 69% of Moroccans do not trust political parties, only 25% trust trade unions, and about 23% trust the government.⁴³

In the context of the imbalance of powers between the monarchy and political parties, it is no surprise that existing forms of formal political organization are unable to represent or mobilize their constituencies or exercise any form of power.⁴⁴ As a result, a younger generation in Morocco has begun to seek to independently shape its engagement with national politics and formulate its own rules and objectives. Here, the question is whether those who participated in the February 20 Movement were successful in forming the epicenter of political pressure and mobilization that was left void by established political parties.

II. THE STRATEGY OF THE POLITICAL REGIME IN MANAGING EXTRA-INSTITUTIONAL OPPOSITION

Since the outset of the February 20 Movement in Morocco, the monarchy continued to monopolize political decision-making, while acting swiftly to contain and respond to protests and expressions of dissent.⁴⁵ The sections below discuss the monarchy's multifaceted response to the protest movement.

A. THE DECISION TO REVISE THE CONSTITUTION

The most important strategic decision taken by the political authority in Morocco was to resort to Article 103 of the 1996 Constitution⁴⁶ to enact constitutional amendments. The rapid response to the demands of the February 20 Movement aimed to transform the list of social and political demands, which were put forth by the protesters on the street, into the state's strategy. In doing so, the regime was seeking a return to the traditional political channels that were put in place since 1962 and following the start of institutional modernization in Morocco, whereby political processes are managed within a unified framework under centralized control by the monarchy.⁴⁷ After having succeeded in diffusing violence on the streets, the monarchy presented itself as the exclusive and

⁴² Abdul Latif Aknoush, "[The Death Throes of the National Movement Parties](#)," *Anfas Press*, October 22, 2016.

⁴³ Moroccan Institute for Policy Analysis, "[Index of Confidence and Quality of Institutions: Preliminary Results](#)".

⁴⁴ Constitution of Morocco (2011), Article 7.

⁴⁵ Mohamed Al-Akhsassi, "Reforms in Morocco: Outcomes and the Future," *Al-Mustaqbal Al-Arabi*, no. 444 (2016): 26.

⁴⁶ Article 103 of the 1996 Constitution gives both the monarch and parliament the right to initiate constitutional amendments.

⁴⁷ Muhammad al-Tuzi, *Monarchy and Political Islam in Morocco*, trans. Muhammad Hatami and Muhammad Al-Shakrawi (Casablanca: Al Fanak Publishing, 2001), 70-95.

principal shaper of political strategy and public policy.⁴⁸ As such, the King quickly contained the movement's demands⁴⁹ and redirected them through official institutional channels.⁵⁰

In a clear attempt to absorb the initial waves of escalating public anger and to circumvent the involvement of new actors, the constitutional reform approach announced by the King in his speech on March 9, 2011, was rather pragmatic. It constituted a direct approach that combined communication and engagement, in contrast to the written memoranda approach,⁵¹ which the parties of the National Movement had resorted to in the nineties.⁵² By evoking the multiple perspectives and different interpretations of constitutional experts in terms of caring for “the form or content of the constitution,” my approach interrogates the impact of protest, as represented by the movement on constitutional reforms, both at the level of discourse and text. To understand that impact and interpret its dimensions, I will focus on the constitution-drafting process as defined in official royal discourse, as well as on the contents of the constitution, and how they relate to the dialectic between the “royal” constant and the “protest” variable.

Some have argued that the public debate on constitutional amendments has moved from the traditional parties/state⁵³ equation, to the “institutionalization of dialogue and consultation” on constitutional features that usher the monarchy into a new constitutional era that combines legal and popular legitimacy. This is a new equation, with new stakeholders, represented on the ground by the youth and societal movements that Morocco is experiencing. At the same time, one must note that the parties on the left have demanded a “parliamentary monarchy” for decades.⁵⁴

The March 9, 2011, speech by the King can be presented in practical terms as a starting point and a minimal response to the demands expressed by the Democratic Bloc between 1991 and 2009, with the demands of the February 20 Movement as its ceiling. The proposed commission on constitutional amendment was criticized for being an unelected, non-political, and technical body, with a composition dominated by a generation of traditionalists who formed the constitutional norms of the seventies and eighties era, raising concerns that the commission would inevitably fall short of the monarchy's reform ambitions.⁵⁵ These criticisms later subsided upon the appointment

⁴⁸ Abdallah Hamoudi, *Exiting Authoritarianism: Morocco is Looking for a Way Out, in: The Cultural Bet and the Delusion of Breaking* (Casablanca: Dar Toubkal for Publishing and the Faculty of Arts and Human Sciences of Mohammed V University, 2011), 169-187.

⁴⁹ Vincent Geisser, “Les protestations populaires à l’assaut des régimes autoritaires: une révolution pour les sciences sociales?,” *L’Année du Maghreb*, VII (2012): 23.

⁵⁰ Michel Crozier et Erhard Friedberg, *L’acteur et le système, les contraintes de l’action collective?* (Paris: Seuil, 1977), 79.

⁵¹ Muhammad Al-Marini, *The Bloc and Constitutional Reform* (Casablanca: Moroccan Publishing House, 1999), 104.

⁵² Mohamed Colferni, “The Dynamics of the February 20 Movement’s Opposition in Morocco to the 2011 Constitution,” *Siyasat Arabiya*, no. 17 (2015): 83.

⁵³ Hassan Tariq, “A Return to the History of the Debate on the Procedure for Drafting the Constitution,” *The 2011 Constitution between Authoritarianism and Democracy*, eds., Hassan Tariq and Abdul Ali Hamidin, 1st ed. (Rabat: Public Dialogue Series Publications, 2011), 77.

⁵⁴ Hassan Tariq, “Constitutional Review between the Constitution of the Democratic Bloc and the February Constitution,” *The 2011 Constitution*, 109.

⁵⁵ Chafik Boukrine, “Political Reform and Democratic Transition in Morocco in Light of the 2011 Constitution,” *Moroccan Journal of Local Administration and Development*, no. 116 (2014): 176.

of trusted academic and constitutional expert Mr. Abd al-Latif al-Mnoui as chair of the commission and the inclusion of women and leftist, reform-oriented Moroccan constitutionalists. The commission also took a consultative approach and held dialogues with diverse political actors, including parties and associations, which generally prevented politically motivated attacks on the draft amended constitution.⁵⁶

On the other side, there were those who remained skeptical of the declared “new approach” to constitutional drafting and the monarchy’s efforts to increase diversity in the process, pointing to unilateral announcements in the monarch’s speech on the constitutional reform initiative,⁵⁷ as well as the roadmap for the drafting and implementation of the new constitution.⁵⁸ What researchers have termed “the phase of the institutionalization of dialogue and consultations” requires further scrutiny, as, despite declarations to the contrary, spaces for meaningful conversations, disagreement, and expression of diverse points of view remained restricted.⁵⁹

Firstly, the royal initiative, in terms of the process of constitution-making, did not depart significantly from the established practices of the past.⁶⁰ The King announced the constitutional review process,⁶¹ as has been the case since the first constitutional amendment process in Morocco in 1970, and parliament was ignored from the outset.⁶² The manner in which the monarchy responded to the street protest movement did not address the demands of the February 20 Movement,⁶³ which called for “a democratic constitution in form and content,” referring to the need to elect a constituent assembly to draft the constitution, as was the case in Tunisia and Egypt.⁶⁴ The official response was limited to appointing an advisory commission to draft a new constitution (or rather amend the 1996 Constitution).⁶⁵ The commission lacked decision-making power and its mandate was limited to the technical aspects of constitutional reform—mainly drafting proposed amendments.⁶⁶ Secondly, the commission was unable to integrate the February 20 Movement or the political currents that supported it, such as the legally-banned Justice Group, the United Left, and the Democratic Vanguard Party.⁶⁷ Thirdly, the royal discourse itself avoided any mention of a direct link between the constitutional reform initiative and national protest movements or protest movements in the

⁵⁶ Boukrine, “Political Reform and Democratic Transition,” 176.

⁵⁷ Manar, *The 2011 Constitution*, 8-9.

⁵⁸ Mohamed Madani, “The New Constitution: Concentration of Power and Weak Guarantees,” *The New Constitution and the Illusion of Change*, ed., Omar Bendourou (Rabat: Wojhat Nazar Publications, 2011).

⁵⁹ Manar, *The 2011 Constitution*, 12.

⁶⁰ Abdul Latif Hosni, “The February 20 Movement in Morocco: Roots-Path-Horizons,” *Wojhat Nazar*, no. 50 (2011): 6.

⁶¹ Ruqaiya Al-Mossadeq, “A Subsidiary Constituent Authority or an Overriding Original Constituent Authority,” *The New Moroccan Constitution in Practice*, eds., Omar Bendourou, Ruqaiya El Mossadeq, and Mohamed Madani (Rabat: Multaka el Torok Publications, 2014), 11.

⁶² Madani, *The New Constitution*, 86.

⁶³ Hosni, “The February 20 Movement,” 6.

⁶⁴ Hosni, 6.

⁶⁵ Abdul Rahim al-Alam, *The Monarchy and its Surroundings in the Amended Moroccan Constitution* (Rabat: Wojhat Nazar Publications, 2015), 8.

⁶⁶ Mohamed Koulvorni, “The Logic of Constitutional Reform in Morocco between the Emirate of the Faithful and the Parliamentary Monarchy,” *Nawafez*, nos. 52-51 (2012): 176.

⁶⁷ Madani, *The New Constitution*, 87.

Arab region, so as not to concede that the initiative came in the context of meeting any demand for comprehensive or deep reform of state powers and institutions.⁶⁸ In the speech of March 9, as well as subsequent royal speeches, the King linked the constitutional review process to expanded “regionalization,” and considered this a natural development in the country’s path toward democracy and development. He also did not explicitly refer to the demands of the February 20 Movement or other Moroccan political forces.⁶⁹ However, one cannot ignore the implicit recognition of the impact of internal political mobilization and the acceleration of external events on the decision to reform the constitution.

The King’s March 9 speech positioned the constitutional reforms in the context of continued “major national gains” that were achieved “thanks to the establishment of a renewed power structure, deep political and development-oriented reforms, and historical reconciliation that led to strengthening political engagement within the existing constitutional framework.”⁷⁰ Nonetheless, the correlation between the announcement of the constitutional review process, the escalation of the protests, and the development of the demonstrators’ slogans, is strong and valid. The date and timing of the speech, as well as the decision to announce constitutional revisions, were exceptional and sudden, indicating a sense of urgency to address demands that could no longer be ignored. In other words, the amendments to the constitution can be seen as a preemptory step to pull the rug out from under the February 20 Movement and prevent the further escalation of demands.⁷¹

B. INSTITUTIONAL AND SOCIAL INITIATIVES

Parallel to the constitutional amendments, the Government of Morocco signed the April 2011 Agreement with the General Union of Moroccan Workers, which signaled the government’s commitment to meet key demands of the union in relation to labor reforms. This move, and the adoption of new measures concerning workers’ rights and social protection measures,⁷² generally led to a decline in popular engagement with social movements at the time, including the youth movement of the Justice and Development Party, the Socialist Union of Popular Forces, the Moroccan Labor Union, the Democratic Confederation of Labor, and the Democratic Federation of Labor.⁷³ The regime also adopted measures oriented towards human rights protection; it formed an Interministerial Delegation for Human Rights,⁷⁴ elevated the status of the advisory National Human Rights Council,⁷⁵

⁶⁸ Belmalih, “The Moroccan Monarchy,” 13.

⁶⁹ Manar, *The 2011 Constitution*, 8.

⁷⁰ Excerpt from the Royal Speech of March 9, 2011.

⁷¹ Manar, *The 2011 Constitution*, 16.

⁷² Abdullah Saaf, *The Left in Morocco, Necessity and Tensions* (Rabat: Dafater Seyasiya Publications, 2015), 101.

⁷³ Abdul Latif Hosni, “On Sabotaging Trade Union Organizations, the Position of the Moroccan Labor Movement regarding the February 20 Movement”, *Wajhat Nazar*, no. 59 (2014), 35.

⁷⁴ For more information, see the website of the Interministerial Delegation for Human Rights, <https://didh.gov.ma>.

⁷⁵ See website of the National Human Rights Council, <https://www.cndh.ma>.

and established the Institution of the Mediator of the Kingdom.⁷⁶ It also enacted several laws to combat corruption and released 190 detainees, including five political leaders who were arrested in 2009 and charged with terrorism offenses in connection with what had been called the Belliraj case.⁷⁷

One additional and rather surprising move by the government was to integrate a number of unemployed citizens into the public sector through direct employment mechanisms, and to make significant funding commitments to the Compensation Fund,⁷⁸ both of which contradict the prevalent government discourse that focused on the economic crisis, employment challenges, and the need to ease the burden on the state budget. In response to the demands of trade unions, the government further pledged to raise wages, mainly with the purpose of maintaining social peace, even though these measures eventually led to increasing the budget deficit to 6.1%, an unsustainable burden in the long term.⁷⁹ It became apparent that the government at that time did not seriously consider the risks or repercussions of these measures on state finances, as much as it focused on their political utility. As summarized by the late Idris Benali, and echoing what the French refer to as “*pilotage à vue*,”⁸⁰ when the uprising reached Morocco and people took to the streets to demand an end to corruption, the government simply raised wages and hired those unemployed as a quick measure to restore calm.

C. THE “NEUTRALIZATION” APPROACH TO ISOLATE THE MOVEMENT

In addition to taking specific economic and social measures to alleviate popular anger and frustration, the political regime sought to “neutralize” the February 20 Movement by isolating it from other parties and actors that could align themselves with the movement.⁸¹ And while it is rather understandable that certain segments of the population would withdraw from the protests after having achieved some material gains, such as employment or salary increases, the dynamics behind the subsequent silence of certain organized political forces are more complex. The Justice and Development Party, for example, struggled with internal conflicts in formulating its approach to the call for protests on February 20, leading to the resignation of three party leaders from the party’s general secretariat. It was revealed that while one wing of the party favored taking to the streets to support reform demands within the framework of a parliamentary monarchy, another wing rejected direct participation in the protests in favor of a mere expression of support, in fear that the protesters might escalate their demands in a manner that might threaten the country’s stability and national security.⁸²

⁷⁶ The Institution replaced the former *Diwan al-Mazalim*, which had the mandate of redressing citizens’ grievances, particularly in relation to government institutions’ exercise of their authority. See website of the Institution of Mediation, <https://www.mediateur.ma/ar>.

⁷⁷ Manar, “The Outcome of Current Actions.”

⁷⁸ For more information, see the website of the Compensation Fund, <https://www.cdc.gov.ma>.

⁷⁹ Economic, Social and Environmental Council Kingdom of Morocco, *Summary Annual Report* (2011), 8.

⁸⁰ Jill Press interview with the late Driss Benali, October 6, 2011, available at: <https://cutt.us/iGAsG>.

⁸¹ Desrués, “Le mouvement du 20 février,” 387.

⁸² An interview conducted by Al-Mokhtar Benabdlawi with Abdel-Ali Hami Eddine on “The Reality of the Current Moroccan Political Stampede,” *Rihanat*, no. 24 (2012): 36.

The above illustrates an example of the dynamics within political parties at the time, which generally led to most parties taking a cautious approach to the protest movement, often remaining silent and distant, while later overwhelmingly supporting the monarchy's constitutional reform initiative despite its lack of clarity.⁸³ Party leaders thus appeared to have broadly settled on a view of politics as a means to manage their relationships with the state, behaving like an isolated group of elites who look for any opportunity to get closer to the state.⁸⁴ This approach by political leaders is apparent in the various communiqués and statements issued by political parties.⁸⁵ It is also reflected in the silence of the rest of parties, whether those traditionally associated with the government or opposition, and their general lack of engagement with the protests movement. Nonetheless, while political parties did not exert any pressure on the government at the time, they continued to retain some political relevance and influence during the phase of the constitutional referendum. What is more, the engagement of parties such as the Islamist Justice and Development Party and the conservative-traditionalist Istiqlal Party, for example, subjected certain outcomes of constitutional drafting to bargaining, especially in relation to provisions on Islam and the strengthening of national identity.⁸⁶

III. ASSESSING THE FLAW: IS IT IN THE CONSTITUTIONAL TEXT, PRACTICE, OR INTERPRETATION?

Over a decade following the issuance of Morocco's amended Constitution of 2011, questions remain in relation to the degree of its success in changing political realities and translating its aspirations into effective democratic transformation. In addressing these questions, one must acknowledge that whereas the text of a constitution is an expression of an intention to transform and develop political structures and practices,⁸⁷ constitutional analysis is only practically relevant in relation to actual practices, both in terms of constitutional interpretation and the ability and willingness of state institutions and entrenched political traditions to transform themselves accordingly.

Chapter 19 of the earlier 1996 Constitution, in relation to the powers of the monarch,⁸⁸ was technically disposed of in the 2011 Constitution. This article — which was initially of symbolic value but was later transformed into a source of

⁸³ Al-Mosaddeq, "A Subsidiary Constituent Authority," 25.

⁸⁴ Hassan Tariq, "The Post-February 20 Phase," *The 2011 Constitution*, 53.

⁸⁵ For more information on the organizations that support the February 20 Movement and the reactions of social and political actors, see Desrues, "Le mouvement du 20 février," 363-364.

⁸⁶ Al-Mosaddeq, "A Subsidiary Constituent Authority," 26.

⁸⁷ Mohammed Atrakin, *Issues in Moroccan Constitutional Jurisprudence*, 1st ed. (Contemporary Publishing House, 2020), 353.

⁸⁸ Article 19 of the Constitution of 1996 provides, "The King, 'Amir al-Mu'minin' (Commander of the Faithful), shall be the supreme representative of the nation and the symbol of its unity. He shall be the guarantor of the perpetuation and continuity of the State. As defender of the faith, he shall ensure respect for the Constitution, He shall be the protector of the rights and liberties of citizens, social groups, and organizations. The King shall be the guarantor of the independence of the nation and the territorial integrity of the Kingdom and its rightful boundaries."

considerable constitutionally enshrined powers and religious authority of the King, akin to that of an Islamic “Caliph”⁸⁹ — is a prime example of a dynamic constitutional text with evolving interpretation and application by the monarchy. There are two possible and divergent readings of the architecture of the monarch’s powers in the 2011 Constitution.

According to the first, the absence of a clear and explicit transition of the conception of the role of the King from the religious realm (the King as a Caliph) to the political realm (the King as the head of state) suggests that the religious realm continues to dominate the approach to the powers of the monarch,⁹⁰ especially in light of Article 41 of the 2011 Constitution, which refers to the King as *Amir al-Mu’minin* (Commander of the Faithful). The King continues to exercise his powers through the *Dabirs* (Royal Decrees), which allow him to exercise broad powers as Commander of the Faithful, in accordance with Article 41 of the new constitution, alongside his functions of the head of state, enshrined in Article 42. But this distinction does not imply a difference in their nature or effects.⁹¹ The King, whether in his capacity as “Commander of the Faithful” or “head of state,” retains broad powers that allow him to remain in effective control of the political system.⁹²

The second reading, by contrast, argues that the 2011 Constitution introduced a shift in the manner by which the King can discharge his powers. As Commander of the Faithful, the King, according to this reading, must respect the whole constitution, including the framework of parliamentary powers. That is, he may not command his religious powers to regular matters of civil life, even as Articles 41 and 42 of the new constitution effectively replace Article 19 of the 1996 Constitution. According to this reading, what is currently problematic is that established political actors have not yet disposed of their own past reading of the King’s role and continue to exercise “self-control” in their political practices, thus giving the impression that the pre-2011 constitutional dynamics continue to prevail.⁹³

Regardless of the difference between the two readings, they converge at a common axis: political practice reflects the prevailing political culture, which subjects parties to unwritten constitutional norms that are manifested in the yielding of power by traditional political forces and the prevalence of the discourse of consensus and compromise. Changes in the text remain unable to alter the structures of power effectively, especially as the monarchy continues to interfere in parliamentary elections to reserve major strategic cabinet positions — such as interior, defense, endowments and Islamic affairs, and foreign affairs — to candidates known for political non-affiliation and their loyalty to the royal establishment.⁹⁴

In the following sections, I will discuss some examples of discrepancies between the text of the 2011 Constitution and the subsequent resulting practice.

⁸⁹ Atrakin, *Issues in Moroccan Constitutional Jurisprudence*, 13.

⁹⁰ Mohamed Al-Ghali, “The Constitution of the Kingdom of Morocco for the Year 2011 in Light of the Arab Spring: The Dialectic between the Constant and the Variable,” *Tabayyun*, no. 4 (2013), 118.

⁹¹ Mohamed Madani et al, *The 2011 Moroccan Constitution: A Critical Analysis* (Stockholm: International IDEA, 2012). p. 25.

⁹² Ahmed Bouz, “The Democratic Choice in the New Moroccan Constitution,” *The New Moroccan Constitution*, 11.

⁹³ Abdellatif Aknouch, “The Constitutional Practice of the Monarchy and the Political Class in Morocco”, available at: <https://cutt.us/kINZc>.

⁹⁴ Al-Ghali, “The Constitution of the Kingdom of Morocco,” 116.

A. THE LEGISLATIVE AUTHORITY

According to Article 70 of the 2011 Constitution, parliament “exercises legislative authority.” The parliament votes on laws, monitors government action, and evaluates public policies. It could be said that in the 2011 Constitution, the parliament gained some expanded powers in relation to the government, but not in relation to the King. The latter retained almost all the powers he had in relation to parliament, with the exception of the transfer of the status of “representative of the nation” from the King to parliament.⁹⁵ By extrapolating the texts of the constitution, specifically Chapter 3 on the monarchy, there is absolutely nothing to prevent the King from legislating, notably by issuing unilateral and binding *Dahirs*. Moreover, although the constitution expanded the legislative scope of the laws passed by parliament, political practice tends to narrow it, especially since many political actors exploit political conveniences to derogate from the text of the constitution and disavow the “supreme nature of its provisions.”

For example, most of the “nation’s representatives” were more than willing to go along with an illegal reading of the constitution and the by-laws of parliament regarding proxy voting. However, Article 60 of the constitution explicitly stipulates that members of parliament derive their representation from the nation, and that “their right to vote is personal and may not be delegated.”⁹⁶ Likewise, consultations between the Minister of Interior with political parties regarding the laws governing the 2021 elections further illustrated the lack of willingness of many members of parliament to wield their constitutional power in relation to the government.

More broadly, these recurring dynamics confirm that it is not enough to have a more progressive constitutional text to guarantee the path toward democracy, in the absence of meaningful restructuring of political power dynamics and without guarantees of transparent and competitive elections to ensure effective popular representation.

B. THE EXECUTIVE AUTHORITY

In accordance with constitutional theory, the Constitution of 2011 charges the government (cabinet of ministers) with the primary responsibility of formulating and implementing public policies. Under Chapter 5 of the 2011 Constitution, which outlines the obligations of the executive authority, Article 89 stipulates that the government “exercises executive power; it works under the authority of its president to implement the government program and to ensure the implementation of laws. The administration is placed at the government’s disposal, and it also exercises supervision and guardianship over public institutions and contracting.”

In practice, however, it is not entirely clear whether the government is in fact empowered to shape public policy and the framework of governance of the Kingdom. As discussed above, some political forces have dismissed the constitutional reform on the grounds that the government does not really govern and that the monarchy continues

⁹⁵ Bouz, “The Democratic Choice,” 116.

⁹⁶ Constitution of Morocco (2011), Article 60.

to exercise several forms of formal and informal dominance over the various constitutional institutions. While other political forces, including the Justice and Development Party, appear to see untapped potential that could be optimally used to shift public policies meaningfully to meet the expectations of the February 20 Movement,⁹⁷ a close reading of the 2011 Constitution does not support the conclusion that a proper parliamentary monarchy was established. The monarchy, in accordance with Chapter 3 of the Constitution, remains outside the horizontal separation/distribution of powers and is not subject to any other authority.⁹⁸ The King continues to exercise discretion and considerable influence in enacting major public policies, which have broadly remained outside of the orbit of the executive authority. During the Covid pandemic, for example, response measures and decisions to manage the pandemic were issued by institutional bodies under the direct chairmanship of the monarch. As in matters relating to national security or “strategic” interests of the Kingdom, decisions are often directed by the King or his “assistants” directly, irrespective of their constitutional capacity or mandate to carry out such functions.

CONCLUSION

In order to fully assess Morocco’s constitutional reforms of 2011, it is necessary to examine the political context and application of the resulting constitution. This article argues that the constitutional reforms in Morocco did not alter the deep structures regulating the distribution of power within the Kingdom, but rather favored ostensible change within a framework of continuity, meaning that the constitution was prepared and approved only to ensure the continuity of the monarchy. The goal to co-opt the February 20 Movement into the “traditional” opposition operating within existing state institutions was broadly achieved through two main strategies. The first was to reduce most of the political and social demands of the movement into a constitutional reform issue, and the second was to weaken the movement and exploit ideological differences between its various components, especially after the emergence of the struggle for political leadership. The monarchy managed to ensure its security and stability through pushing all political actors, including opposition parties, to operate within the rules it preset. While the constitutional reforms of 2011 merit recognition as a significant step towards achieving greater political participation and progress, the outcomes of the reforms demonstrated the limits of the constitutional text in altering political practice. Political actors continued to uphold the culture and traditions of Morocco’s unwritten constitution and to exercise informal political powers. One can then conclude that the constitutional contract cannot be an end of its own, but rather is only one entry point towards altering authoritarian practice and achieving hopes of an effective and lasting democratic transition.

⁹⁷ Mohamed Basak Manar, “[The Governmental Experience Led by the Justice and Development Party in Morocco: Context, Initial Outcome, and Possible Consequences](#),” *Siyasat Arabiya*, no. 3 (2013): 76.

⁹⁸ Maliki, “A Reading of the Overall Architecture of the New Moroccan Constitution,” 100.

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