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“The Place of Islam in a Contemporary Arab Legal System”

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INTRODUCTION

In 1956, Morocco recovered its independence from France. The Spanish occupants also left parts of the northern and southern Moroccan provinces. Colonial occupation had then lasted 44 years. Under the terms of the 1912 treaty of protectorate, it was clearly understood that the occupation would lead to a modernization of the Moroccan institutions. Despite the presence of French (and Spanish) troops, and despite the direct intervention of the colonial administration in public affairs, Morocco was to keep a status of limited sovereignty within which a seemingly functioning monarchical regime was maintained. Centuries long and religiously assimilated monarchical legitimacy had then been kept and further reinforced. All other ‘makhzenian’ institutions were to draw their force from official forms of investiture conferred upon them by the ‘Alaouite Sultan’ of the country, whom in turn, drew his legitimacy directly from the Muslim ‘Umma’.

In the dawn of independence, various nationalist claims called for sensible institutional reforms of the political system. Such leaders as Allal El Fassi, ‘Zaim’ of the nationalist ‘Istiqlal’ party had clearly stated in 1946 in his Cairo broadcast declaration that *“As soon as we recover our independence, we will build a Moroccan regime in coordination with our people and with king Mohammed V”*[1]. For his part, the leader of the Moroccan communist party, Ali Yata, had addressed a memorandum to the U.N. in 1950, in which was mostly underlined the need for *“a Moroccan national constituent assembly elected through the universal suffrage and the forming of a Moroccan government responsible before it”*[2]. The message was then extremely clear that Morocco had no other issue than to embark into democratic reforms as soon as it recovered its independence. For his part, the then reigning ‘*Sultan*’,

Mohammed V, "Imam of the Muslims and protector of the religion" [3], openly requested independence and promised the setting of "a free Morocco...with democratic institutions in line with the fundamental principles of Islam and the expectations of modern times" [4]. Not only had he then confirmed one of his prior declarations that "time for democracy had come for all peoples" [5], but he put himself in accordance with the stipulations of the "Independence Manifesto" which clearly formulated the demand for "the institution of a consultative political regime...in which the rights of all elements of the people and all the social classes will be protected and their obligations specified" [6]. The king further stressed his will after independence to go ahead and institute a "democratic regime within the framework of a constitutional monarchy based on the separation of powers" [7]. Thus democracy and Islam were very recurrent elements in most Moroccan political speeches. They were to logically find means of application in practical institution building of independent Morocco.

Yet, a latent confrontation for leadership and political domination was potentially perceptible. Neither the 'Alaouite' Throne was willing to step too much down from centuries long attributes of legitimacy, nor the then strengthened 'Istiqlal' party was ready to give up on the momentum set forth in his favor by the popular struggle for independence. In practice, and despite the wide ranging influence of the latter, popular legitimacy of the reigning family had never been questioned. Furthermore, popular and nationalist claims had constantly invoked the return of the royal family from exile (in Madagascar) and its investiture to preside over the destiny of the nation. Within popular belief, the fact that the members of this family were direct descendents from the prophet "Sidna Mohammed", added to the religiously inspired source of legitimacy, from which most key institutions were to later stem out and get constitutional consecration. It is thus within the force and depth of this legitimacy that legal arguments had been sought to confirm the supremacy of the royal power of the "Commander of the faithful" [أمير المؤمنين] over all other institutions. Stability of the system, continuity of the State and the necessary embarking in bold democratic reforms called upon a strengthened source of political initiative. The enactment of a series of Constitutions (I) paved the way for the structuring of a modern Islamic State. Relevant Islamic values were also subtly integrated within the consecrated deployment of powers (II). The then recently installed 'Supreme Court' was to also play a key role in the further refining of some religiously inspired governing patterns (III). The local pluralist traditions also favored the trends which were to progressively generate a model of moderate Islamic quest for democracy, which functioning style bears genuine peculiarities (IV).

I. The Constitutional Input:

Since its independence, Morocco has progressively carried out its constitutional building process. Immediately after the installation of the first government, a "National Consultative Council" [المجلس الوطني الإستشاري] was established as early as August 1956. Even though all of its 76 members were appointed by the king, they had the merit of representing all fringes of the national political spectrum, of controlling the executive branch and of exercising consultative missions. A "Supreme Court" [المجلس الأعلى للقضاء] (1957) and a "Constitutional Council" [المجلس الدستوري] (1960) were also established during this period. Their role was to mainly contribute to reinforcing various aspects of the due process of law. Parallel to these institutional enactments, was also announced the Royal Charter in May 1958 which consisted mainly in a royal declaration of intentions "to endow the country

with political institutions allowing the people to participate directly in conducting public affairs". Then, in a public speech, pronounced in May 1960, the king fixed a deadline for the implementation of the sought constitutional reform: the end of 1962.

Since then, 5 constitutions have been adopted by referendum (1962, 1970, 1972, 1992 and 1996). They progressively shaped the scope of Moroccan constitutional institutions. Within their stipulations, the Moroccan Constitutional monarchy aspires to function in the model of a Parliamentary system. Yet, the reference to Islam remains a key element. Both the preamble of the Constitution and article 6 of the same document clearly refer to the deeply rooted Islamic values: "An Islamic and fully sovereign State...", "Islam shall be the State religion...". In one of his recent speeches, the young king, Mohamed VI, clearly stated his aspiration to reinforcing the democratic institutions of his ancestral monarchy: "Based on this clear vision of our religious references, Islam and modernity complement each other, forming one of the major tributaries which flow into the mainstream of the universal reference. The process takes place in perfect harmony with its most important pillar, namely democracy, for which we have opted as an irreversible choice and as a keystone of the Moroccan constitutional monarchy"[8]. Thus, the Constitution defines Morocco as "a democratic, social and constitutional Monarchy" (article 1), in which "sovereignty shall be that of the People who shall exercise it directly, by means of referendum, or indirectly, through the constitutional institutions" (article 2), and in which "political parties, trade unions, local government bodies and professional chambers shall participate in the organization and representation of the citizens" (article 3). "The Constitution shall guarantee to all citizens the freedom of movement, the freedom of opinion, the freedom of association and the freedom to belong to any union or political group of their choice" (article 9).

Institutionally, and under the arbitration of the Monarchy (whose powers and attributions are precisely defined by articles 19 to 35 of the Constitution), the legislative and executive powers are respectively invested in the Parliament and the Government. **The Parliament** consists of two Chambers: the House of Representatives (whose members are elected by universal suffrage for a five year term) and the House of Councilors (whose members are elected for nine years, with one third renewable every three years). Three fifths of the members of the House of Councilors shall be constituted by members elected, in the regions, by electoral colleges comprised of local representatives, while the other two fifths shall be constituted by members elected regionally by electoral colleges comprised of representatives of professional chambers and trade unions. As of **the Government**, it is composed of the Prime Minister and the Ministers and is answerable to the King and to the Parliament. Within the line of classical parliamentary system political patterns, the Moroccan government may engage its political responsibility in front of the legislative body in either one of two ways: through a vote of confidence regarding a statement of general policy or through a censorship motion, by which the House of Representatives may object to the pursuance of the Government's responsibilities. Both motions may lead, if approved, to the resignation of the government (articles 75 and 76 of the Constitution). An original approach to Government responsibility has also been instituted through the voting of a "cautioning motion" by the House of Councilors, which leads to a parliamentary debate on the raised issue, but does not have any voting effect. As of **the Judiciary**, it is "independent from the legislative and executive branches" (article 82). A Supreme Court and a Constitutional Council oversee, at the head of the Judiciary pyramid, that the principles of constitutionality

and of due process of law are strictly respected by all partners, within a due respect of legality as well as of the Islamic inspiring sources of positive law.

II. Pertinent Islamic Sources of Inspiration:

Islam is the religion that “Allah” entrusted His messenger Mohamed with, through the “Holy Coran”. Its precepts are triple: the convictions (العقائد) that the Moslem believes in, the prayers (العبادات) which he accomplishes in veneration of Allah and the behaviour and relationship that define his rapports with others in his (or her) daily life (السلوكات والمعاملات). A wide range of precepts are thus set forth by the “Coran” as well as by the “Hadith” for the Muslim to comply with. Through the Islamic “**Sharia**” (الشريعة الإسلامية), the “Mouminoune”(Believers) are instructed to follow the religious path which leads to the right choices. God has reminded His Prophet and Messenger Mohammed to follow this religious path set forth for him and for his followers: « Then we put thee on the right way of religion ; so follow thou that way, and follow not the desires of those who know not » (Sourate Al Jathiah, Verse # 18):

ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

‘Sharia’ has grown to mean « religious law » which basic sources are the « Coran » and the « Hadith » (Sunna) ; other sources such as the « Ijma » (Consensual interpretation of the religious issues by the ‘Oulemas’) and the « Ijtihad » (creativity by the most knowledgeable) are also considered as valid sources by some Islamic rites. Conviction (العقيدة), spirituality (التعلق بالقيم الروحية) and legal stipulations (الأحكام) also constitute fundamental elements and basic components of the Islamic society. Applying the “Sharia” therefore means for the Muslim a thorough application of his Islamic spirituality and religious beliefs. It is also a mode of life and a moral conception of existence. Besides from its theological aspects, the Islamic faith embraces several temporal prescriptions and teachings. Among other aspects of State organization, these precepts deal with the “Shoura” (consultation) and the “khilafa”(succession or community commandment).

a. The Notion of “Shoura” (الشورى) in the Holy Coran :

“Shoura” may be translated literally as ‘Consultation’. In some instances, it has been interpreted as conveying the western value lying underneath political participation and its democratic implications. It represents a fundamental principle of the organization of the Islamic community. It is mentioned in various “Sourates” of the Holy Coran.

In the verse 159 of Sourate “Ale Imrane” (آل عمران), it is clearly instructed to the Prophet that he should consult his community in affairs : « It is part of the Mercy of Allah that thou dost deal gently with them. Wert thou severe or harsh-hearted, they would have broken away from about thee. So, pass over their faults and ask for Allah's forgiveness for them. And consult them in affairs. Then, when thou hast taken a decision, put thy trust in Allah. For, Allah loves those who put their trust in Him ».

فبما رحمة من الله لنت لهم ولو كنت فظاً غليظ القلب لانفضوا من حولك، فاعف عنهم واستغفر لهم وشاورهم في الأمر، فإذا عزمت فتوكل على الله إن الله يحب المتوكلين

This notion is also encountered in the verse # 38 of Sourate « Asshoura » (الشورى), which refers to the ideal community which conducts its affairs by mutual consultation: « Those who respond to their Lord, and establish regular prayer, who **conduct their affairs by mutual consultation, who spend out of what We bestow on them for sustenance** ».

والذين استجابوا لربهم وأقاموا الصلاة وأمرهم شورى بينهم ومما رزقناهم ينفقون

It has been commonly established that the principle of « Shoura » was applied to its fullest by the Prophet Mohammed both in his public and his private life. He constantly consulted with his “Sahaba” (Companions). After the “Hijra” from Mecqa to Medine he continued consulting with the “Ansar”. He was also fully acted upon by his successors: “Al Khoulafaa Arrachidoune” (الخلفاء الراشدون), who were the early rulers of Islam. In his comment about the principle of “Shoura”, the Islamic theology thinker Hassan Al Basri implies that “God’s order to His prophet to consult with the Muslim community means more of a consultation pattern for them to follow in their own societal behaviour” [9].

At that time, the public conduct was to be determined by mutual consultation between the partners, were it to be in state affairs, in business or even in domestic affairs. “If they both decide on weaning by mutual consent and **after consultation, there is no blame on them**” (Sourate Albakara, Verse # 233).

فإن أرادوا فصلاً عن تراض منهما وتشاور فلا جناح عليهما.

Two basic elements are thus included in the concept of “Shoura”: the right for the “Umma” to express itself on such important matters as the choice of its leaders and its right to self management in accordance with its will and ultimate interests. Such situations are evidently in perfect line with the expectation of classical type political democracy. The introduced reforms in the Moroccan political system have so far demonstrated some readiness, and certain adaptability, of an Arab-Islamic environment for new democratic visions. These newly introduced styles of representative government have tended to represent convenient forms of application of the Islamic concept of “Shoura” to contemporary state affairs management.

b. The Notion of “Khalifa” in the Practice of Islamic States :

Literally, the word “Khalifa” refers to the successor or the deputy. In both cases, the idea of taking over someone else’s duties is implied by the term “Khalife”. This notion is recurring in various verses of the “Holy Coran”. But, this does not necessarily imply any sacred character that is conveyed to the notion by Islam. Temporal considerations have oriented certain political systems in the Muslim world to conferring a sacred connotation to this institution for legitimacy purposes.

The exegesis of the “Holy Coran” shows the reference to this notion of “Khalifa” at least on two occasions: The first use of the expression occurs in the verse 30 of Sourate “Al Bakara” (البقرة) when it conveys God’s will to have a vicegerent on earth: « Behold, thy Lord said to the Angels : I will create a **vicegerent on earth**..... » [و إذ قال ربك للملائكة إني جاعل في الأرض خليفة] . Another reference to this notion comes in

the 26th verse of Sourate “Sad”: « *Ô David, We did indeed make thee a vicegerent on earth; so judge thou between men in truth (and justice), nor follow thou the lust (of thy heart), for it will mislead thee from the path of Allah* »

يا داوود إنا جعلناك خليفة في الأرض؛ فأحكم بين الناس بالحق ولا تتبع الهوى فيضلك عن سبيل الله

Doctrinal disagreement has been prevailing since the cradle of Islam on whether the “khilafa” is meant to be to God on earth or only to His prophet. Some religious thinkers have contained themselves to a narrow interpretation of the “Coran” which might convey that it is a “khilafa” to God that is meant by the “Sourates” that refer to it. Present day reference to religious and spiritual foundations of the exercised temporal power try to maintain this belief for evident legitimacy purposes. Notions such as “Amir Al Mouslimine” or “Amir Al Mouminine” contribute evidently to the institutional longevity of theocratic approaches to political power. Yet, other schools of thought have persistently excluded any possibility for anyone to claim a “khilafa” to God for the simple reason that succession may be conceived for “*those who disappear or die, while God is everlasting and never dies or disappears*” [10]. Therefore, the “Khalifes” have always been known to be the successors of the authority holders. With the geographic expansion of the Islamic territories, multiple “Khalifes” have also been called upon to govern the various Islamic communities. Specific rules of designation have therefore been set forth for the “Imama” through the various historic phases of Islamic history. As for “Ahl Al Ikhtiyar” (أهل الاختيار) (those who are called upon to choose the leader, or, in modern terminology “the electoral college”), they have to comply with these conditions: justice (العدالة), knowledge (العلم) and wisdom (الحكمة). Concerning “Ahl Al Imama” (أهل الإمامة) (the potential candidates for leadership), they have to comply with further conditions than those expected from the “choosers”: along with the conditions of justice, knowledge and wisdom are set forth other conditions pertaining to good governance, courage, origins and good physical and mental health [11]. The choice of the rulers is thus entrusted to the “Ahl Al Aqdi Oua Lhall” (أهل العقد والحل) [literally meaning those within the community entitled to doing and undoing, the decision makers]. In Moroccan institutional practices, the Islamic ‘majliss of Ulemas’ plays a key role in the fulfilment of this function. It is of utmost importance to notice that, as of May 1, 2004, a first woman made her entry into the National Council of ‘Ulemas’ by appointment of king Mohammed VI, while 35 others entered the no less closed world of regional councils of ‘Oulemas’.

The allegiance (“Beya”, “Walaa”) is initially owed to the person of the king and confirmed by the ‘Ulemas’ of the nation. Representatives from all provinces renew it formally in an annual allegiance ceremony held on the Throne day celebration. Through this act, the commander of the faithful [أمير المؤمنين] becomes referred to as the “Sovereign”. With reference to western democracy terminology, the sovereignty which is naturally invested in the people (J.J. Rousseau, “*Du Contrat Social*”), is transferred through the act of ‘Beya’ {Allegiance} to its new depositary who, in turn, redistributes its attributes. That is mainly the interpreting trend unequivocally asserted by constant jurisprudence of the Administrative Chamber of the Moroccan Supreme Court.

III. Jurisprudential Consecration of the Adopted Values:

Islam is and remains a main source of inspiration of Moroccan legislation. Whether it is the constitution or whether it is organic laws, normal laws,

executive rulings or jurisprudential court cases, the whole system is built upon the respect of a hierarchy of legal norms that put the reference to the Coran in a privileged position. Various constitutional references to Islam comfortably seat its precepts among the highest binding sources of legal obligations and the judges have also been very keen on following these precepts. As previously referred to, one fundamental element of the Moroccan institutional organization lies within the notion of “Amir Al Mouminine” [أمير المؤمنين] (Commander of the Faithful) stipulated for by article 19 of the constitution. With the only exception of referendums, through which the population may still be called upon to express its political will, nominally, and through the mechanisms of the “beya”, the king will detain all powers which he, in turn, will distribute back, in the name of the people, to the constituents of the three branches of government, within a carefully deployed scheme of separation of powers (Charles De Montesquieu’s ideal terrain of predilection). Power transmission is then based on the notion of “delegation”; all three executive, legislative and judicial branches exercise a merely delegated power from the legally invested authority of the attributes of sovereignty: “Amir Al Mouminine”, who is, at the same time, “*Defender of the Faith*” (Article 19). Multiple court cases as well as various doctrinal writings have firmly established this firm ruling. Neither the Parliament, nor the Government nor the judiciary exercise attributed power per se. They merely act as depositaries of delegated power by the sovereign. The electoral process also becomes vested by a new and original meaning: elections do not directly confer positions; they only constitute a popular designation of those whom the sovereign may confirm in their legislative functions. A “dahir” of nomination is therefore issued to validate the issue of the ballots and invest the incumbents with their new powers. How has this legal reasoning been asserted and defended?

It is within the Supreme Court that such a justification of power ventilation has been set forth. Since the creation of this high judiciary institution [12], its five Chambers [13] have established high level rulings and assured the cohesiveness of the national judiciary system. Within its spheres of competency, its administrative chamber has been particularly invested with the competency of controlling the respect of law, within the executive branch of government, by all administrative authorities. It has been empowered by law to make rulings on claims for cancellation of ultra vires acts filed against administrative authorities, disputes related to administrative contracts and claims for compensation of prejudice caused by public entities' acts or activities. It has also been empowered to ascertain the consistency of administrative acts with legal provisions. On various occasions, however, this chamber has been requested to overrule decisions taken by the royal authority. Through its various attempts to solve these issues, it has developed a constant doctrine relative to the value of royal decisions, based on the notion of “Amir Al Mouminine” and on the notion of delegated powers.

The main question which arose then, regarding royal executive powers, was if it were conceivable to consider the king, within the Moroccan legal framework, as an executive (administrative) authority, given the fact that many executive functions are assigned to him by the constitution. Beyond the disputes affecting decisions taken by the king, it was, in fact sought the consideration of whether the king may or may not be an object of judiciary control. The long time established British doctrine of “*the king can do no wrong*” was to be irrelevant in this context, since the king of Morocco effectively exercises

important constitutional attributions. But, multiple other considerations dictated a cautious judicial approach to this question for the sake of preserving the stability and legal strength of a reform carrying institution. Three court cases then offered to the Supreme Court justices a unique opportunity to elaborate their doctrine on the sources and deployment processes of royal attributions. These were respectively the cases of:

- Abdelhamid Ronda vs. king Mohammed V, rendered by the Administrative Chamber of Supreme Court on June 18, 1960;
- Abdallah Bensouda vs. the minister of justice, rendered by the Administrative Chamber of the Supreme Court on July 15, 1963;
- Agricultural Propriety Abdelaziz vs. the prime minister and minister of agriculture, rendered by the Administrative Chamber of the Supreme Court on Mars 20, 1970.

In the first affair, the claim was directly made by a “Cadi” (judge) against a ‘dahir’ (decision) taken by the king suspending him from his functions. Well aware of the newly role assigned to the then recently created Supreme Court, in matters related to its competency regarding the quashing of illegal decisions taken by administrative authorities, and estimating that the king did not have enough legal grounds to base his decision on, Judge Abdelhamid Ronda decided to resort to justice. In a similar case, Abdallah Bensouda resorted to the same jurisdiction against a conservatory decision taken by the minister of justice and later reinforced by a royal ‘dahir’. In both cases, the administrative chamber of the Supreme Court rejected the recourse on the grounds that the attacked decision “emanated from the Sovereign and had the form of a dahir”; no further explanation or justification was given to that attitude of the justices to refuse to recognize their competency to appreciate royal acts even if these acts covered materially administrative matters. In their non expressed arguments, the king was just not to be considered as an administrative authority in the sense meant by the dahir of creation of the Supreme Court. The opportunity for the Supreme Court to further elaborate on its position was offered in a later case in which no decision had been directly taken by the king. The facts of this case go back to the mid-sixties during the period of exception, during which the Parliament had been suspended and all political powers were exercised either directly by the king, or, indirectly through the procedure of “delegation of signature”, by his prime minister. In Morocco, as well as in European continental law, and mainly in French public law, such situations of delegation of signature make of the depositary of the signing power a mere instrument who applies the received instructions. The acts taken within this procedure take position as acts emanating from the delegating authority. On this basis, the Supreme Court, in the Agricultural Propriety Abdelaziz vs. the prime minister and minister of agriculture affair considered the decree signed by the prime minister as a decision emanating from the king personally and admitted its competency to consider its legal value in light of its newly emerging position on such issues. In its rendered judgment, it considered that given the fact that “His Majesty the king exercises his constitutional powers in his quality of ‘Amir Al Mouminine’ [Commander of the Faithful], in accordance with the stipulations of article 19 of the Constitution, and that, in this quality, he can, in no way, be considered as an administrative authority in the sense meant by article 1 of the dahir of September 27, 1957 (instituting a Supreme Court)”; (and that) “given that the judicial functions are among the primary functions belonging to the Imam of the Faithful; that the judge only exercises them by simple delegation...” [14], the jurisdiction of the

Supreme Court does not extend to decisions taken by his majesty. It therefore rejected the claim on the grounds of incompetence.

IV. The Functioning of the System:

It evidently stems out from the exegesis of the text of the Constitution as well as from the meticulous observation of the mechanisms of power articulation and deployment in Morocco that the 'Palace' plays an important role within the system. Getting into Moroccan politics implies a necessary awareness that the 'Palace' remains a central piece, an important source of power and the sole distributor of privileges. Its strength constitutes a real and unavoidable guarantee of stability which, in turn, further fosters the deployment of more tangible democratic achievements.

Whether it is the bureaucratic apparatus of the executive branch, or the floating mechanisms of the legislative bicameral structures, or the maneuvering negotiations of the partisan formations, or the less apparent almighty power of the military, or the no less influential impact of various religious orders of "Ulemas", all sources of decisional flux or of influential impact stem out of the good grace that the 'Palace' might momentarily, or more permanently, express towards any of them. And within the 'Palace', the authority of the king remains a key constitutional element and a sole depository of the legitimate attributes of sovereignty. More recently, the king embarked in very bold and daring reforms of the religious institutions: "We have reached the stage of finalizing and launching a comprehensive, multi-faceted and integrated strategy which means so much to me. It is a three-part plan designed to overhaul and revamp the domain of religious affairs in order to shield Morocco against the perils of extremism and terrorism. It is also meant to preserve the distinctive Moroccan identity, which is characterized by moderation and tolerance...The aim of all these measures is not simply to provide our country with a well-thought-out, integrated strategy to help it meet all challenges in the domain of religion. We also want to contribute, in a rational and purposeful way, to redressing the image of Islam, which has been tarnished by vicious campaigns, triggered off by the extremism of villains and the hideous acts of senseless aggressors indulging in terrorism...I shall remain at the forefront of the struggle against all destructive currents that are alien to our society, which remains unwaveringly committed to the moderation and purity of Islam" [15]. The reason for such a daringly outgoing initiative to eradicate potential sources of risk stemming from possibly religious sources is that beneath a patiently supported fist twisting, there has constantly been an undeclared power struggle. The vigilant regime which has been methodically deploying the Islamic foundations of its legitimacy has been confronted, in the three past decades, with a no less organized set of varied Islamist groups, not only inspired by alien traditions, but also, potentially funded by foreign sources. Strangely enough, the sensible increase of their activism emerged after the collapse of the former Soviet Union. Has there been, then, a universal shift in political activist styles which found in the five prayer time gatherings that Islam offered an ideal godsend for clandestine cell organization? Or has there been a genuinely bursting Islamist activism deployed in the absence and/or the relative failure of official programs to meet some of the social needs of an increasingly poor population? The king's declaration has been extremely clear: "Does the Moroccan people...need to import rites which are alien to its traditions? We will not allow such a thing to happen... Those who might be tempted to advocate a rite which is alien to our people, shall be opposed as firmly as is warranted by our duty to safeguard the one and only rite of Moroccans...I WANT TO MAKE IT CLEAR THAT THE ISSUE OF THE RELATIONSHIP BETWEEN THE STATE AND RELIGION IN OUR COUNTRY IS SETTLED, SINCE THE CONSTITUTION STIPULATES THAT MOROCCO IS A MUSLIM STATE AND THAT ONE OF THE MAJOR DUTIES OF THE KING AS COMMANDER OF THE FAITHFUL (AMIR AL

MUMININ) IS TO MAKE SURE THAT THE FAITH IS PROTECTED. The Commander of the Faithful is, for the Moroccan nation, the sole religious leader to refer to[16]. Hadn't it been the certainty officially conferred to the royal status by the legally functioning system, and hadn't it been the legitimacy conferred to him by popular suffrage, the monarchical institution wouldn't have been in such a comfortable position to assert itself as a determining source of doctrinal inspiration and as a substantial element of institutional modernization and change generation. Modernizing vast aspects of Moroccan society has thus been essential tributary to multiple courageous royal initiatives. Yet, economic and social reforms remain so badly needed for the ongoing democratic process was to ever gain momentum.

Charles De Montesquieu [17] may certainly still find some of the projections of his ideas within the deployment of the Moroccan political system. Yet, genuine authenticity constantly reigns over the deployment of all power structure. Moroccan democracy thus represents a relevant case study model of a modern 'Orleanist' constitutional monarchy. The quest for democratic traditions in the MENA region may as well integrate some of the Moroccan success stories to other relevantly promising experiences in the region to foster appropriate clues for the democratic endeavor, presently sought for the area both by major western powers and by international organizations.

In practice, the system has been functioning extremely well. Despite a few dull periods in the recent past, most basic freedoms are presently guaranteed. National, local as well as international human rights organizations are normally carrying out their functions. Beyond all NGO human rights activities, the "Consultative Council for Human Rights", presently managed by well respected human rights activists permanently acts as an official human rights observatory and constantly reports to the king and keeps feeding public policy makers with pertinent guidelines. Pluralism has also been allowing for an effective deployment of diversity. Within the Parliament, as well as in the media and other public spheres, diverse, contradictory and, sometimes, conflicting opinions are freely expressed. The censorship powers of the two legislative chambers on the executive branch of government are extremely well extended: Beyond the weekly publicly televised question and answer sessions, parliamentary investigating and fact finding committees have proven a peculiar efficiency in truth determining regarding a few very hot corruption issues. A few of them have even been channeled to justice for its final word on them. Within parliamentary practices, the motion of censorship has also been deployed at various occasions to further control the action of government. Moroccan apprenticeship of democracy has been effectively launched, the learning process is under way, as are progressively rooted pluralist values and tolerance perceptions.

It is within this scope of political power distribution that the king has been maneuvering to implement democratic complements through the encouragement of NGO activities, the development of efficient literacy programs, the active follow up of massive educational reform, the persistent incitation to better schooling of young rural girls and, more recently, through tackling the much muddled issue of gender equity. A swift move is thus undertaken to accompany the newly evolving theoretical conceptions of democracy from their initial pluralist and participatory characteristics to the more extended approaches recently sketched out by western world policy makers [18].

**Hassan RAHMOUNI
Cambridge, May 7, 2004**

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- [1] - Allal El Fassi, Cairo call, in **صوت العرب** , Radio Broadcast from Cairo, 1946.
- [2] - Ali Yata, Moroccan Communist Party, Memorandum to the United Nations, Mars 1950.
- [3] - Article 6 of the draft Moroccan Constitution of 1908.
- [4] - Royal Speech delivered on November 18, 1950.
- [5] - Declaration to representatives of the Moroccan Communist Party, August 1946.
- [6] - The Manifesto of independence, presented on the 11 of January 1944 by a delegation of nationalist militants to all representatives of foreign nations in Rabat and Tangiers.
- [7] - Press briefing by King Mohammed V, May 15, 1956.
- [8] - Speech of the Throne, delivered in Rabat by king Mohammed VI on July 30, 2003.
- [9] - Mohammed Redha, "*Muhammad Rassoulou Allah*" (In Arabic), Dar Al Kitab, Beyrouth, 1945.
- [10] - Abou El Hassan Al Mawardi, "Al Ahkam Assoultania wa Al wilatyate Addinia"(In Arabic) [Sultanian Orders and Religious Emirates], first edited in 450 of the Hegire Calendar (11th century), modern re-edition by Dar Al Koutoub Al Ilmya, Beyrouth, 1982.
- [11] - Ibidem.
- [12] - Dahir (Royal Decree) N° 1-57-223 dated September 27, 1957 instituting and organizing the Supreme Court.
- [13] - Article 10 of the Dahir N° 1-74-338 dated July 15, 1974, organizing the jurisdictions of the kingdom of Morocco, specifies that these chambers are: the civilian law chamber, the personal and family status chamber, the criminal chamber, the social chamber and the administrative chamber.
- [14]- For the commentary of this decision, ref. Revue Juridique et Politique, 1970, p. 541.
- [15]- King Mohammed VI, Speech addressed to the 'Higher Council of Ulemas', April 30, 2004.
- [16]- King Mohammed VI, Throne Address, delivered on July 30, 2003.
- [17]- Charles De Montesquieu, « *L'Esprit des Lois* » (1748).
- [18]- Richard Haass, "*Reinforcing Democracy in the Islamic World*", Presentation to the "Council on Foreign Relations", Washington, D.C., December 4th, 2002.