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ما هي الملكية البرلمانية؟

WHAT IS A  
PARLIAMENTARY MONARCHY?

Saturday, May 13th 2017  
From 10 am

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Madinat Al Irfane, Rabat

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### Background

Morocco is a constitutional, democratic, parliamentary and social monarchy. » This is the first paragraph of the first article of the Moroccan constitution, adopted by popular referendum on the first of July 2011. The etymology of the "monarchy" is, however, unequivocal. It is the power of one. The following qualifiers introduce a variety of meanings, which the constitution expresses to some extent.

The goal of turning the Moroccan political regime into a democracy entered public debate in the early 1990's under the name of "democratic transition." Democracy sets itself unescapable since the fall of the Berlin wall, setting the country on the tracks of a long, painful transition process. The main goal is to substitute popular sovereignty to monarchic sovereignty without upsetting the Kingdom's fragile balance of power. The Moroccan regime is to redefine itself around new notions: human rights, "good governance," and a vivid civil society.

Narratives of "transition" come back to the fore following popular uprising in 2011, materializing first into the constitutional reform, then in its implementation. The notions above become parts of the constitution:

- For the first time, the primacy of ratified international conventions over domestic law is acknowledged. Gender equality makes important progress (articles 19 and 144 among others);
- Chapter XII of the Constitution is devoted to "good governance," alongside with many dispositions and institutions;
- Civil society enters the constitution as a frame for the exercise of participatory democracy, protected by law.

Institutional redesigning takes the shape of organic laws creating or reforming existing institutions, revision of important statutes (penal code, statute of the judiciary), and appointments in constitutional institutions (constitutional court, high council of the judiciary, council of competition, etc.).

The logics underlying the process are unclear: organic laws, drafted or adopted, raise questions about the interpretation of the constitutional text that guided their writing. This raises the question of the spirit of the law and, as such, of the emergence of a doctrine for constitutional interpretation.

Electorally, wide support for PJD makes the party a first-order actor, around which local and national coalitions are built. Yet, its clear-cut victory in the October 2016 elections fizzled out, as it was followed by close to six months of deadlock, and the formation of a widely criticized, heterogeneous coalition.

The composition of the Othmani government also reflects Moroccan party structure, and its weaknesses. With members sharing diverging, or even opposing views, this governmental coalition blurs the clarity and the consistency of the democratic process, all the more that the monarchy still enjoys a wide array of prerogatives.

Finally, implemented and announced institutional and political reforms are equivocal, and question the status of democratic reforms. Many actors and observers consider that consolidation of the rule of law, and of good governance is stalled.



## Seminary's justification and objective

Is Morocco a parliamentary monarchy? Per legal texts, the answer is yes. The country has a Parliament since 1963, and holds legislative elections regularly since the early 1990's. The Othmani government is indeed led by the party that won the legislative elections, and the coalition enjoys a numerical majority. Yet, social science suggests a more nuanced answer.

This seminar aims to structure the debate around this question, adopting an interdisciplinary and comparative approach. It is interdisciplinary by including law, political science and history, and comparative, by bringing together specialists of several parliamentary monarchies around the world.

Designed for a public of students and practitioners, this seminar aims at identifying and discussing critical issues surrounding the Moroccan transition, through politically relevant topics. We selected three topics for this first edition.

### 1. Winning elections or governing: the problem of article 47.

The Constitution of a parliamentary monarchy interrogates a very special relationship: the cohabitation of a hereditary monarchical sovereign with elected institutions. Given that a legal text is inseparable from its interpretation, the recent episode of government formation raises numerous questions; in particular, that of interpreting the constitutional text, especially article 47, when the electoral context shows party fragmentation and uninterested voters.

What could be the democratic interpretation of this text? How can elections participate in consolidating democracy? This question calls for at least three others: citizen support for the process, the availability of credible political platforms, and of politicians able to implement them.

### 2. Islam and Human rights: competing universalisms?

The Constitution states that Morocco abides by human rights as they are universally recognized, and acknowledges the primacy of duly ratified international conventions over domestic law.

The same text also acknowledges Islam as the state religion (article 3). The monarchical institution also inherits a religious legitimacy, through 'imarat al mu'minin.

This duality concentrates important cultural and symbolical issues; most importantly, questions of legal harmonization, and of reforming: from gender equality in family law, personal status, and the penal code, to the norms that govern public space. This "midway Islam," preached and guaranteed by amir al mu'minin appears to be a good synthesis, able to protect human rights on the one hand, and the Kingdom's "immutable national identity" on the other. How did other constitutional monarchies with a religious background tackle the issue, globally, and in the Middle East and North Africa?

### 3. "In the name of the King:" judicial independence in constitutional monarchies.

Reforming the judiciary has been a long running theme of the Moroccan public debate. Mohammed VI raised the question of a global reform on August 20th 2009. His speech outlines the reform. After the adoption of the 2011 Constitution, a "High Instance of National Dialogue on judicial system Reform" is created. It tasks itself with the themes introduced by the King a few years before. The instance issues a "Chart for judicial reform," which is an imposing catalog of measures to implement for judicial reform.

At the same time, progresses in legal upgrade take momentum. The previous legislature adopted many texts that frame the judiciary's work:

- Organic law relative to the constitutional court (August 2014), and the appointment of its members (April 2017);
- Organic law relative to the statute of the judiciary (March 2016);
- Organic law relative to the High Council of the judiciary (March 2016), and the appointment of its members (April 2016);

Is the Moroccan judiciary more independent after this reconfiguration?



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14:30 – 16:30

09:45 – 10:00

**ARRIVAL AND REGISTRATION**

10:00 – 10:15

**Welcome**Ebrahim Afsah, (*Assoc. Prof. of Law, University of Copenhagen*)Younes Benmoumen, *President of Tafra*

10:15 – 11:45

**FIRST PLENARY SESSION: (I) :**  
**How did the European monarchies become democratic? A discussion on history, constitutions and political practices**  
Keynote speakers I

**Sweden :**Joakim Nergelius, (*Prof. of Law, University of Örebro, Sweden*)**Norway :**Eirik Holmoyvik, (*Prof. of Law, University of Bergen, Norway*)**Danemark :**Helle Krunke, (*Prof. of Law and Head of PhD School, University of Copenhagen, Denmark*)

11:45 – 12:00

**Coffee break**

12:00 – 13:30

**FIRST PLENARY SESSION: (II) :**

Keynote speakers II

**Netherlands :**Paul Bovend'Eert, (*Prof. of Constitutional Law, University of Radboud, Nijmegen, Netherlands*)**United Kingdom**Andrew Blick, (*Senior Lecturer of History, King's College London, United Kingdom*)**Belgium**Patricia Popelier, (*Prof. of Constitutional Law and Vice-Dean, Antwerp University, Belgium*)

13:30 – 14:30

**Pauser déjeuner****WORKSHOP A:  
Winning the elections or governing? The issue of Article 47**Moderator: Marouane Mortabit, (*Member of Anfass, Blogger*)

Guest speakers:

Paul Bovend'Eert, (*Prof. of Constitutional Law, University of Radboud, Netherlands*)Hassan Tarik, (*Prof. of Law, University of Settat, Morocco*)**WORKSHOP B:  
Constitutionalism, Islam and Human Rights after the "Arab Spring"**Moderator: Hiba El Khamal, (*programm manager at the Heinrich Böll Stiftung (Morocco)*)

Guest speakers:

Rainer Grote, (*Prof. of Law, MPI for Public Comparative Law and Public International Law in Heidelberg, Germany*)Mohammed Moaqit, (*Prof. of Political Science, University of Ain Chock in Casablanca, Morocco*)**WORKSHOP C:  
"In the Name of the King": Rendering Independent Justice in Constitutional Monarchies**

FModerator: a representative from the NGO "Droit et Justice" (tbc)

Guest speakers:

Helle Krunke, (*Prof. of Law and Head of PhD School, University of Copenhagen*)Abdelaziz Nouaydi, (*Prof. of Law, Lawyer and former Member of the High Committee for the Reform of the Judiciary, Morocco*)

16:45 – 17:00

**Coffee Break**

17:00 – 18:30

**Wrap-up session****SECOND PLENARY SESSION:  
Can the Arab monarchies democratize?**  
Keynote speakers:Mohammed Madani, (*Prof. of Political Science and Head of Department, Mohammed V University in Rabat, Morocco*)Driss Maghraoui, (*Assoc. Prof. of History, Akhawayn University, Morocco*)Larbi Sadiki, (*Prof. of Political Science, Qatar University*)

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