

The Usurpation of Law Supremacy and Its Impact on Rising a Personalised Power in Morocco

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Abstract

Through this paper, we are trying to highlight the issue of the personalization of power in Morocco, taking into account the multiplicity of approaches in order to comprehend the issue at hand. The question of the personalization of power in Morocco should first be seen from the standpoint of compliance with the rules of constitutional legality and the principle of law supremacy since the political practice of the 1980s has consistently disregarded this principle. Thus, the repeated political practices, which fall within the actor's logic in pursuing profit and rejecting possible losses in their dealings with the rules of constitutional legality, has led to the emergence of implicit authority, the strengthening of an institution at the expense of other institutions in the State, as well as the factor of personalization which became apparent in Political practice in Morocco, as political practice has moved away from the heart of the law.

On the other hand, the institutional approach may not help alone in understanding the issue of personalization power, considering that the above approach confirms the "What should be", while other approaches, especially sociological ones, seek to understand the phenomenon and monitor its manifestations in society, and the cultural and symbolic structures that Help build a political authority. Based on the two approaches, we will try to analyze the personalization forms of power in Morocco taking into consideration the two approaches.

Keywords: Morocco; Politics; Political regime; Supreme law

Introduction

The personalisation of power has been dominating in centuries ago, The heads of states mainly the kings claim that their authority comes from the skies. The power in that sense remains a personal belonging¹. The holders of power reject any kind of sharing power whit the people, because of the divine rights, which give to the kings the right to represents the god's will on earth. This image of the king as the second God who needs to be obeyed has shifted radically with the rise of the modern era. In fact, the rise of modernity limits the king's power and brings down authority from the skies to its natural place, and thus the power turns from being an individual affair into a collective enterprise. However, in the third world, the power still have the characteristics of personal belonging due to the absence of sharing power with other institutions in the state. To tackle the domination of a single authority over other political actors, the scholarship has focused mainly on the institutional framework that shapes the personalized politics. And thus this perspective discusses the domination of power based on the various roles of a single institution in the political body. However this perspective has been criticized radically by the sociologists because the institutional perspective doesn't draw the whole image perfectly, in fact, it focuses specifically on legal norms and how things "should look like". On the other hand, the other perspective tends not to answer how things" should look like", but in contrast, it goes deeply into more understanding of the phenomenon at hand, and thus it focuses on

rituals and the system of values inside the society that help in fertilizing a personal authority.

Recent studies in western countries shed light on the role of Mass media in personalizing politics; this perspective doesn't rely on the institutional paradigm since it doesn't illustrate clear explanation for the question. However, in the third world, it seems the first paradigm will give prominent explanations since we are behind the new form of personalized politics in the developed countries. We are instead experiencing the old form of personalization. Therefore, the main potent element which can explain this problematic is "the institutional perspective", that is to say, the roots of personalized politics in Morocco might come from the constant violating process of the law supremacy, which leads automatically to power domination of a single institution over other institutions.

The personal power has been a taboo in terms of academic research, Just a few of studies concluded that the pattern of the political actions is actually beyond institutionalism. In this regard, we are going to examine to what extent the actors in the political system try to act politically outside the constitutional legality from 1983 up to now by giving examples of these acts. Meanwhile, the question of personalized politics in Morocco cannot be viewed just from the legal perspective, but it can be analyzed by relying on works of theologian studies that focus on the role of rituals and symbols in shaping a personalized power [1].

¹ Ana lines langer and susane Merkle, The personalization of politics in comparative perspective, campaign coverage in germany and the united kingdom European journal of communication 2014 vol.29 2 153-170 University of Erlangen Nuremberg-Germany.

By relying on the first interpretation we are going to argue that we are facing a hidden constitution, which gives much more powerful powers to the supreme institution in the state. In contrast, the hidden powerful tulle gives rise to a personalized power. On the other hand, we are going to rely on other different interpretations of theologian studies to understand more the roots of personalized politics.

Based on this methodology, we are going to answer the two principal questions below:

To what extent the constant usurpation of the crucial principle of the law supremacy creates in consequence a personalized power? And to what extent the rituals and the practices symbols of the political regime help in establishing the idea of personalisation?

To answer this problem we put two Main hypotheses:

The political actors by their constant derogation of the law supremacy and mainly the constitution since the 80s creates, in consequence, a personalized power which is too far away from being governed by the law. By usurping the legitimate constitutional rules, this constant process leads in consequence to a hidden constitution which is much more powerful in offering extra powers to the royal institution.

The various legitimacy of the political regime, and its constant use, give rise to a symbolic, wholly, and personalized authority.

The Usurpation of Law Supremacy and Its Impact

The constitutional practice in Morocco has been known by its denial of the supremacy of law. Since the 1980s, Moroccan political regime and the political elite have been usurping that crucial principle of the supreme law. Since that time, the principle of the supremacy of law has been shifted radically. During this period, the political context would experience the emergence of a new tendency in dealing with the constitution principally based on calculating the possible losses and benefits in implementing the supreme law. Based on this strategy, the political elite and the political regime try to deny the constitutional legality when it does not give extra benefits to both parties. Meanwhile, they try to accept these rules when it doesn't reject the political benefits. Thus, this tendency is totally based on an economic perspective which is known by the calculation of loss and benefit.

Based on this strategy, the political regime and its elite tend to subordinate the constitution to the political circumstantial requirement. This explains the constant usurpation of constitutional rules since the 1980s. By the constant usurpation of the supreme law, politics has been performed outside of the legal norms. These constant political acts have been removed from the law's heart; that means, the political acts are no longer put the supremacy of the law in the first principle in the political performance.

This process of bowing away from the crucial principle has begun in 1983 when the political elite demanded from the monarch to prolong the parliamentary term based on the 19th article in the constitution. Returning to the 19th article, it doesn't give real powers to

the king in order to perform the demanded action. From that point, the process of usurping the supremacy of the law has begun.

The article 19th of the previous 1970s and 1990s constitution says "The King, "Amir Al-Muminin"(Commander of the Faithful), shall be the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, He shall ensure the respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organisations. The King shall be the guarantor of the independence of the Nation and the territorial integrity of the Kingdom within all its rightful boundaries." From it, we can notice that the article shed light on the supreme representation of the Monarch institution and to a large extent it represents the symbolical dimensions of the king as a defender and uniter of the whole nation.

Due to the political interpretation of this article in the 1980s, the symbolical dimension turns into a real executive power given to the king. The Scholar Rokia Almosadek consider this incident as the turn of the constitutional legality explosion², this turn according to the same scholar give rise to two dimensions of treating the constitution, the first one is implicit, that can be performed outside the legitimate constitutional rules, Meanwhile, the supremacy of the law is subordinated to the political context. When it is against the elite, they tend to find solutions outside the legal norms. The second is explicit which is related to the rules of the constitution itself. That means, the explicit interpretation usually followed by the elite when it doesn't reject their political aims, so they tend to accept the legitimate rules when it doesn't lead to possible political losses [2].

On the other hand, the 19th article is similar to the symbolical representation of the king supremacy in Spain and England as well. For instance, The Article 56 from the Spanish constitution which says "The king is the head of the state, the symbol of its unity and permanence³." doesn't give executive powers to the king in order to be performed in the political sphere. In the same vein, the French constitution in his article 5 which says "The president of the Republic shall ensure due respect for the constitution, he shall ensure⁴ doesn't also claim a certain power to the president. Thus, these constitutional rules don't give executive powers to the king but it shed light on the rule of representing the whole nation as social unity [3].

Thus the symbolical dimension turned to be an implicit power that can be used according to the political context, this implicit power pushes the elite mainly the opposition in the 1990s to demand from the king to play a role of the arbitrator in creating laws that guarantee the transparency of election process. since there is no clear article in the constitution to perform such act by the king, and since the parliament has got the power in taking such decisions, the king replied by not accepting the demand legally but accepting the role politically speaking based on the 19th article⁵. This arbitrary process creates at the end a powerfully hidden constitution based on the 19th article itself which turned from a symbolical dimension into an article that establishes a personalized power in Morocco [4].

² Rokia almosadek, alternation maze , New Success Press, Casablanca, first edition 1996 p 35. (Arabic)

³ The spinach constitution Article N 56.

⁴ The French constitution Article N 5.

⁵ Rokia Elmosadek. Electoral integrity turn.Characteristics in the decline of direct legislative election management. Konrad adenauer, first edition 2006. P6. (Arabic).

This process continues to prevail especially with the creation of a variety of institutions based on the 19th article. In 2011 the monarch created the national human rights council based on the same article; meanwhile, the intermediary foundation was created with the same perspective [2].

After implementing the new constitution, the implicit power of a single institution prevails. This can be noticed in the methodology of dividing the 19th article into two articles 41 and 42 from the new constitution. The scholar Rokia Almosadek doesn't see the solution in dividing the previous article, but instead, the implicit power outlets ought to be surrounded⁶.

The implicit power of a single institution continues in our new political context, the implicit meaning of practising power outside the legitimate rules has been exercised recently in the Government creation crisis.

During this process the former government chief failed in shaping a new government, the monarch as a reaction has exempted him from his duties based on the article 42. Returning to this article⁷, we can notice that it doesn't give a real power to the king to perform such an act. Instead, the constitution doesn't tackle that particular incident. The government chief according to the constitution should not be exempted or dismissed from his duties, but instead, he resigns⁸. This explains, that the constant usurpation of the legitimate rules still continuing in the same vein. By practising politics outside the legal norms, the political elite tend to practice power according to the calculation of possible losses and benefits. The former example shows this image. Since the king has no power in dealing with such cases, using the implicit powers was the plausible solution for the monarchy, because the legitimate rules would not give answers and may take the country into another electoral process which seems very demanding and costly. Thus, this perspective of dealing with the law is totally related to an economic view which rejects the law when it doesn't suit the elite's aims [5].

The perspective of cost and benefit in dealing with the supreme law has led the political practice into powering the monarchy, which is already too powerful according to the constitution. Cost and benefits strategy has powered the implicit meaning of practising power outside the legitimate rules. In the same vein, this whole process of usurping the supreme law has created a personalized power which can govern even without a clear law, this power is much more powerful than the constitution itself, it turns to be the heart of practising power without putting into consideration the principles of constitutional legality. The constructing of a personalized power was achieved by the constant

help of the political elite itself, it is due to its constant demands that seek only to political benefits; the personalization of power is constructed as a result.

On the other hand, does the legal perspective help us to understand more the question of personalized power? It seems that the process of bowling away from the legitimate rules give one result which is the prevailing of a personalized power that governs implicitly and explicitly as well. But can we find other roots of the personalization of power? Can we understand where it comes from without relying much on the legal perspective?

Based on these questions we are going to shed light on another interpretation to give us more and clear explanation of the question that we are tackling in this paper. The other perspective of explaining personalized politics is not based on the legal view, but instead, we are going to tackle the problem based on the theologian perspective. According to this perspective, we are going to discuss the problem based on the Kantorowicz view⁹ in dealing with the monarchical institutions, and then we would find the possible implementations of his views in the Moroccan case [6].

The King's Two Bodies View and the Personalization of Power in the Moroccan Context

Max Weber criticized once the juridical approach for its narrowly legalistic and formalist content, because "As good as its intentions are, it is typical for the manner in which legal scholars treat political things, the more intelligent they are, the more they are blinded by formalism"¹⁰. Based on this perspective we assume that the legal interpretation doesn't draw the whole image clearly in explaining the personalization of power in the Moroccan case. But we cannot deny that it gives crucial elements to understand this issue at hand [7].

Meanwhile, to understand the personalized politics, we suggest studying the issue outside the legal norms, and thus, shedding more light on the characteristics of monarchies during the midlevel era which looks like to a large extent, the current characteristics of the Moroccan monarchy.

From theocracies to the most advanced democracies, the political systems are psychologically based on the belief that the source of power is of a transcendent order whose office is necessarily a sacred one, especially in the modern era¹¹. Furthermore, the representatives of the ruling class have the same mentality immortals do: they are the owners of functions, the masters of imaginary empire extended to public decisions which become signs of their power¹².

⁶ Rokia Almosadek. Same above resource.

⁷ The article 42 from the current constitution says "The King is the head of State, its supreme representative, the symbol of the unity of the nation, the guarantor of the permanence and continuity of the state, and the supreme rule among its institutions, ensures respect for Constitution, the proper functioning of constitutional institutions, the maintenance of democratic choice, the rights and freedoms of citizens, citizenship and groups, and respect for The kingdom's international undertakings.

The king is the guarantor of the independence of the country and the Kingdom's estate in its true frontier circle."

⁸ Amine abdel illah. The constant and the changeable in the Moroccan political system in light of the 2011 constitution. Moroccan political journal of local administration and development No. 121 March 2015 p: 75. (Arabic)

⁹ We are going to shed light on his perspective in his book "the king's two bodies, a study in mediaeval political theology".

¹⁰ Max weber's letter to Alfred weber, May 22,1907, cited in Scaff's fleeing the iron Cage, Reviewed by Andreas Kalyvas, Democracy and the politics of the extraordinary, Max weber, charl shmitt, and Hannah arendt. Published in the United States of America by Cambridge university press New York 2008, P155.

¹¹ Mohamed Daadaoui, Moroccan Monarchy and the islamist challenge Maintaining Makhzen power, published by palgrave Macmillan in 2011.

In a certain sense, a sort of invisible power confers legitimacy in the contemporary world. Although, the Democratic legislation does not include the concept of “mystical body”, Kontorowicz exposes the idea of the king two bodies and argues that this view was emerged in the medieval era, and specifically during the reign of Elizabeth the first. Kontorowicz based on the formulation of the two bodies first in the medieval jurisprudence, argues that the king has two bodies, the first is mortal and natural like any other human beings, and the second is supernatural and immortal [8]. *His body natural “if it be considered in itself”, is a body mortal, subject to all infirmities that come by nature or accident, to the imbecility of infancy or old age, and to the like defects that happen to the natural bodies of other people. But his body politic is a body that cannot be seen or handled, consisting of policy and Governance, and constituted for the direction of the people, and the management of the public weal and this body is utterly void of infancy and imbecilities, which the body natural is subject to, and for this cause, what the king does in his body politic, cannot be invalidated or frustrated by any disability in his natural body*¹³.

Thus, the body natural of the king consists of the natural body that every man has, so in this sense, he is subject to passion and death. Otherwise, the other body politic is immortal, for as to this body, the king never dies. Kontorowicz explains the case of the death of the king, as the demise of the natural body, but not the body politic [9]. In fact, in this case, there is a separation of the body natural now dead or now removed from the dignity royal to another body natural¹⁴.

From knotorowicz perspective in analyzing the sources of the king's powers, we can notice that he tends to argue that the sacredness of the power lies in the second body, the body politic. The sacredness of the power thus is associated with the invisible political body and with the mestry of the state¹⁵. The sacredness of the political body gives rise to an overflow of powerful tools to the king in order to be implemented in the political sphere. The king in this sense has got the divine right to govern over his Patriots. Furthermore, the idea of an immortal political body, give the impression of escaping death, the political power thus is protected by the supernatural powers, it would never be removed from its wholly sacred place, and the one who tries to do so, he would be cursed and punished by both the political body and the supernatural powers who gives the legitimate rights for the former to prevail and to represents its will on earth.

Knontorowicz explains that the notion of a symbolic body, which represents the immortal of the body politic, is a Christian theological concept because, for the Christians, the church is the body of Christ on earth. The symbolic body was inviolable and through this symbolic

body, the king exercised his responsibilities of divine rights¹⁶. From that perspective, we can notice that the king exercises the power based on his symbolic position as a messenger of God's will on earth; this allows him to exercise an absolute power outside the legal norms.

Knotorowicz explains that the overflow of the king's political body was a common image from the 10th century up to the 16th century when the political body of the king begun to be narrowed. In this process, knotorowicz, give three main periods of the evolution of the two bodies. The first was known between the 10th century and the 16th century, in this period of time, the Monarchy was shaped based on the image of the Christ, that means, the king was seen as the saviour, the father of the nation, and the sacred king who need to be respected in all his decisions because his authority has its source from the God's will. On the other hand, the second period was known from the 12th century up the 13th century. In this period of time, the idea of the two bodies has been rationed; the king in that sense was the law, or the master is the law. After the 16th century, the political context brings deep transformations in terms of how the exercise of power should be done. Thus, the process of rationalization bring in consequence the institutionalization of the king's two bodies, that means, the king would not represent the law directly, but instead, he represents the law and justice through other institutions like the government and the parliaments [10].

In Morocco, the political body of the king possesses of vast symbolic rituals which makes the political authority much more personalized. Based on the perspective of knotorowicz, we can notice that the monarch invest from the symbolic rituals to exercise power, and for the purpose of keeping it through time. To keep the power, they developed narratives to legitimize their authority and to bridge the gap between the holders of power and the subordinate; for the kings, the narrative was exploiting traditional norms¹⁷.

Furthermore, the monarch in Morocco tends to personalize the power through using three main symbols which become institutionalized. These symbols are, the commander of the faithful or Amir al'muminin, and his sharifian lineage or “Baraka”, and the annual ceremony of allegiance “bay'a” [11].

All these symbols work in a strong relationship to make power very personal¹⁸. Concerning the commander of the faithful, the king is not just any king; he is descendant of the prophet Mohamed, and this suggest implicitly that any criticism of the king is by default, a criticism of the prophet's family¹⁹, so in other words, it is a supreme divine right and a religious claim anchor its place atop the political pyramid as the ultimate source of political authority within the nation²⁰.

¹² M.E. MC Millan. Fom the first world war to the arab spring what's really going on in the middle east? Published by Palgrave Macmillan 2016 .

¹³ Kontorowicz, the king's two bodies. The king's two bodies, A study in Mediaeval political theology, Published by prineeton university press 1957.

¹⁴ Kontorowicz, the same resource.

¹⁵ Lorena stupam. The Medieval idea of Legitimacy and the king's two bodies. Philosophy,communication, Media sciences series volume, Saint Gerard of cenad: Tradition and innovation, Trivent publishing. Available online at <http://Trivent-publishing.eu/>.

¹⁶ ERNST Knotorowicz, erlier source.

¹⁷ M.E. MC Millan. Fom the first world war to the arab spring what's really going on in the middle east? Published by Palgrave Macmillan 2016.

¹⁸ M.E. MC Millan. Fom the first world war to the arab spring what's really going on in the middle east? Published by Palgrave Macmillan 2016, P 170.

¹⁹ Mohamed Daadaoui, Moroccan Monarchy and the islamist challenge Maintaining Makhzen power, same resource.

²⁰ Hind Aroub, Autocracy Ten years on: change and continuity in Morocco and Jordan. Seminats took place at the center for democracy development, and the rule of law, Stanford university on May 7th 2010.

Meanwhile, the various cultural symbols that are practised and reflected in the annual bay'a ceremony, give the impression that the king presents himself as the father over his people, who are treated far more as subjects than citizens²¹. Furthermore, we can notice a wholly sacred political body of the king through the significance of the symbols represented during the ceremony, the king in that ceremony rides his horse which symbolizes the power over his flock people who came to offer their allegiances. Meanwhile, the king is covered by a green tent, which symbolizes both, the colour of Islam and the shadow of God²² in his land. On the other hand, the five rakes that the elite perform signify the five usual prayers in the Islamic religion [12].

On the other hand Weber in his studies of the types of legitimacy, he argues that there exist three main types of legitimate power, the first is rational, the second is traditional and the third is the charismatic character of the leader [13]. The second implies, that authority explains its right to govern depending on a set of rituals, traditional values and resting on an established belief in the sanctity of immemorial beliefs²³. The monarchy in Morocco seems to use both the rational and traditional legitimacy, the former is being used by governing through legitimate institutions such as the government and the parliament, and organizing annual elections to elect deputies and shape the executive power. Meanwhile, the monarchy depends to a large extent on the traditional legitimate authority where power is based on a set of traditions and is sustained to promote loyalty to a chief and to solidify a system of personal authority²⁴.

Conclusion

To conclude, the question of personalised power in Morocco can be viewed from both the legal and the sociological perspective. From this perspective, we notice first that the constant usurpation of the legal rules of the constitution leads to a process of powering certain political institutions in Morocco, mainly the monarchy. This institution invested form the acts of its political elite which demanded from the monarch to act politically based on symbolical dimensions in the constitution. Meanwhile, the political elite from the 80s tried to usurp the norms of legality by using the cost and benefits strategy, that is to say, the political elite tries to follow the norms of legality when it doesn't endanger their political benefits. On the other hand, they tend to reject it when it threatens their political interests. By these constant political acts, the political power of the monarch was straitened outside the legal norms, this explains, that the symbolical dimensions of the regime become a real executive power. Thus, the political regime intervenes

politically from time to time in exploiting the symbolical dimension to exercise power. These constant acts from the political practice in Morocco produce a personalized monarchy. Meanwhile, the legal perspective doesn't give the whole image to understand the problematic of personalization, thus, the rituals of this institution are much important to understand the roots of the personalised power of the king. Based on this perspective we notice that the monarch exercises power based on strong rituals, traditions and symbols that give alternatives to the legal executive powers.

References

1. Holtz-Bacha C, Langer AI, Merkle S (2014) The personalization of politics in comparative perspective: Campaign coverage in Germany and the United Kingdom. *European Journal of Communication* 29: 153-170.
2. Almosadek R (1996) *Alternation Maze*. New Success Press, Casablanca, first edition, p: 35.
3. The spanish constitution 56.
4. Elmosadek R (2006) Electoral integrity turn. Characteristics in the decline of direct legislative election management, Konrad Adenauer, First edition, p: 6.
5. Abdelilah A (2015) The constant and the changeable in the Moroccan political system in light of the 2011 constitution. *Moroccan political journal of local administration and development* 121: 75.
6. Kantorowicz E (2016) *The king's two bodies: a study in medieval political theology*. Princeton University Press 22.
7. Kalyvas A (2008) *Democracy and the politics of the extraordinary*, Max Weber, Charles Schmitt, and Hannah Arendt. Published in the United States of America by Cambridge University Press, New York, p: 155.
8. Daadaoui M (2011) *Moroccan Monarchy and the Islamist Challenge: Maintaining Makhzen Power*. Published by Palgrave Macmillan.
9. McMillan ME (2016) *From the First World War to the Arab Spring: What's Really Going On in the Middle East?* Published by Palgrave Macmillan.
10. Stuparu L (2015) *The Medieval Idea of Legitimacy and the King's Two Bodies*. Philosophy, Communication, Media Sciences Series Volume, Saint Gerard of Cenad: Tradition and Innovation, Trivent Publishing.
11. Aroub H (2010) *Autocracy Ten Years On: Change and Continuity in Morocco and Jordan*. Seminar took place at the Center for Democracy Development, and the Rule of Law, Stanford University.
12. Calise M (2010) The personalization of power, *Studia Politica*. Romanian Political Science Review 10.
13. Bennett WL (2012) The personalization of politics: Political identity, social media, and changing patterns of participation. *The Annals of the American Academy of Political and Social Science* 644: 20-39.

²¹ Hind Aroub

²² Hind Aroub, same above resource.

²³ Mohamed, same resource P 30.

²⁴ Weber, *The theory of economic and social organization* reviewed by Mohamed p: 30.