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Governing Space by Exception: Neoliberal Reason and the Recentralization of Urban Decision-Making in Morocco

A Hermeneutic and Documentary Analysis of the Urban Planning Derogation Regime (Laws No. 47-18 and No. 22-24)

حُكم المجال بالاستثناء: العقلانية النيوليبرالية وإعادة تمركز القرار الحضري بالمغرب – تحليل هرمينوطيقي ووثائقي لنظام الاستثناء في مجال التعمير (القانونان رقم 47.18 ورقم 22.24)

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Abstract

Moroccan urban planning law rests on a classical promise: the uses of urban land are fixed in advance by a general and binding plan, adopted in the name of a public interest that passes, however briefly, through territorial deliberation and public inquiry. This article examines how the derogation regime instituted by Law No. 47-18 on Regional Investment Centres (2019) and recast by Law No. 22-24 (2024) reconfigures that promise. Combining the political economy of space, Foucauldian analyses of neoliberal reason and the literature on neoliberal bureaucratization and authoritarian neoliberalism, it develops a hermeneutic reading of the legal texts in three moments (lexical, intertextual and genealogical) and confronts it with a documentary corpus: the parliamentary record of Law No. 22-24, royal speeches and letters on investment governance, the Economic, Social and Environmental Council's study of 13,222 derogation files, a Court of Accounts evaluation and the activity reports of the regional investment centres. Three displacements emerge. The source of spatial normativity shifts from the plan to the investment project; the power to grant exceptions moves from the regional level to the Head of Government, within a dual executive whose strategic orientations are set by royal directives; and the public interest is redefined negatively, as a residual list of land that no exception may cover. The regime is not a deregulation but a re-regulation for the market, marked by a proliferation of procedures and

by the statistical invisibility of the exceptions themselves. The article proposes the concepts of procedural recentralization and residual public interest to account for this configuration.

Keywords: neoliberalism; urban planning derogations; executive centralization; legal hermeneutics; regional investment centres; advanced regionalization; public interest; Morocco.

ملخص

يقوم قانون التعمير بالمغرب على وعدٍ كلاسيكي مفاده أن استعمالات الأرض الحضرية تُحدَّد سلفاً بواسطة تصميم تهيئة عام وملزم، يُعتمد باسم مصلحة عامة تمرّ، ولو بصورة وجيزة، عبر التداول الترابي والبحث العلني. ويتناول هذا المقال الكيفية التي يُعيد بها نظام الاستثناء في مجال التعمير، كما أرساه القانون رقم 47.18 المتعلق بإصلاح المراكز الجهوية للاستثمار وبإحداث اللجان الجهوية الموحدة للاستثمار (2019)، وأعاد تشكيله القانون رقم 22.24 (2024)، صياغةَ هذا الوعد. ومن خلال الجمع بين الاقتصاد السياسي للمجال، والتحليل الفوكوي للعقلانية النيوليبرالية، وأدبيات البيروقراطية النيوليبرالية والنيوليبرالية السلطوية، يقترح المقال قراءة هرمينوطيقية للنصوص القانونية في ثلاث لحظات (معجمية، وتناصّية، وجينيالوجية)، يضعها في محكّ متنٍ وثائقي يشمل: المسار التشريعي للقانون رقم 22.24، والخطب والرسائل الملكية المؤطرة لحكامة الاستثمار، ورأي المجلس الاقتصادي والاجتماعي والبيئي المستند إلى دراسة 13.222 ملف استثناء، وتقييم المجلس الأعلى للحسابات لتجربة المراكز الجهوية للاستثمار، وحصيلة أنشطة هذه المراكز. ويكشف التحليل عن ثلاث إزاحات: انتقال مصدر المعيارية المجالية من تصميم التهيئة إلى المشروع الاستثماري؛ وانتقال سلطة منح الاستثناء من المستوى الجهوي إلى رئيس الحكومة، في إطار ثنائية السلطة التنفيذية، حيث تُحدَّد التوجهات الاستراتيجية لسياسة الدولة بموجب التوجهات الملكية؛ وإعادة تعريف المصلحة العامة تعريفاً سلبياً بوصفها قائمة حصرية متبقّية من الأراضي التي لا يجوز أن يشملها الاستثناء. ومن ثمّ، فإن هذا النظام لا يُمثّل رفعاً للقيود التنظيمية (dérégulation)، بل إعادةَ تقنينٍ لصالح السوق (re-régulation)، تتّسم بتكاثر المساطر وباحتجاب قرارات الاستثناء عن المعطيات المنشورة. ويقترح المقال مفهومي "إعادة التمركز المسطري" و"المصلحة العامة المتبقّية" لتفسير هذه التشكيلة.

الكلمات المفتاحية: النيوليبرالية؛ الاستثناءات في مجال التعمير؛ تمركز السلطة التنفيذية؛ الهرمينوطيقا القانونية؛ المراكز الجهوية للاستثمار؛ الجهوية المتقدمة؛ المصلحة العامة؛ المغرب.

Introduction

In the last days of 2024, a mechanism that had been frozen for more than two years returned to Moroccan urban law.[1241] It did not come back through an urban planning code, which Morocco still lacks, nor through an amendment to Law No. 12-90 on urban planning, the text that has governed the *plan d'aménagement* since 1992.[1242] It came back through a

[1241] The return of "exception permits" and their prior suspension were reported when the amending law entered into force: « فاتح يناير يبدأ العمل برخص الاستثناء », *Ecopress*, 31 December 2024. The official texts are silent on the reasons for the suspension, a silence that is itself treated here as a datum for interpretation.

[1242] Law No. 12-90 on Urban Planning, promulgated by Dahir No. 1-92-31 of 15 Hija 1412 (17 June 1992), *Bulletin officiel* No. 4159 of 15 July 1992, p. 313. The *plan d'aménagement* (Arabic *taṣmīm al-tahyi'a*) is the binding local land-

law on investment. Law No. 22-24, amending Law No. 47-18 on the reform of Regional Investment Centres, restored the power to grant "exceptions" to urban planning documents for industrial and hotel projects, and reserved the decision to the Head of Government alone.[1243] Where a rule is written says something about what the rule is for. Reading that "where" is the task of this article.

The paradox is easily stated. The 2011 Constitution founded the territorial organization of the Kingdom on "advanced regionalization", the free administration of territorial collectivities and the principle of subsidiarity.[1244] Yet the decision that matters most for territory, namely what may be built, where and for whom, has travelled upward. A growing literature has read Moroccan decentralization as a reform that redeploys rather than dilutes central control: a "Lampedusian" regionalization, an instance of "authoritarian upgrading", a process marked by the enduring legacies of the Makhzen.[1245] In parallel, critical urban studies have shown how Moroccan cities came to be governed as assets for capital through megaprojects, special agencies and slum-resettlement programmes.[1246] The two literatures rarely meet on the terrain of ordinary law.

The derogation regime is precisely such a meeting point. It has been studied as an administrative practice, through the Economic, Social and Environmental Council's (CESE) assessment of more than thirteen thousand files and through local studies of its effects on power relations.[1247] Two gaps remain. Most of this work predates the moment when the exception left the circulars and entered the statute book, and none, to the author's knowledge, has examined its 2024 recasting. Moreover, political economy tends to read

use plan; the French term is retained because neither "development plan" nor "zoning plan" captures its double nature as a servitude binding all owners (art. 19) and as a declaration of public utility (art. 28).

[1243] Law No. 22-24 amending and supplementing Law No. 47-18 on the Reform of Regional Investment Centres and the Creation of Unified Regional Investment Commissions, promulgated by Dahir No. 1-24-68 of 18 Joumada II 1446 (20 December 2024), *Bulletin officiel* (Arabic ed.) No. 7365 of 30 December 2024, art. 1 (amending art. 30). The legislator's term, "*al-istithnā'*", is kept in quotation marks: stronger than the French *dérogation* of the earlier circulars, it names not an adjustment of the rule but a carving-out from it.

[1244] Constitution of the Kingdom of Morocco, promulgated by Dahir No. 1-11-91 of 27 Chaabane 1432 (29 July 2011), *Bulletin officiel* No. 5964 bis of 30 July 2011, arts. 1, 136 and 140. "Advanced regionalization" renders "*al-jihawiyya al-mutaqaddima*", whose official French translation (*régionalisation avancée*) suggests a political autonomy that the organic laws of 2015 considerably qualify.

[1245] OJEDA-GARCÍA (Raquel) & SUÁREZ-COLLADO (Ángela), « The Project of Advanced Regionalisation in Morocco: Analysis of a Lampedusian Reform », *British Journal of Middle Eastern Studies*, vol. 42, n° 1, 2015, pp. 46-58; VOLLMANN (Erik), BOHN (Miriam), STURM (Roland) & DEMMELHUBER (Thomas), « Decentralisation as Authoritarian Upgrading? Evidence from Jordan and Morocco », *The Journal of North African Studies*, vol. 27, n° 2, 2022, pp. 362-393; IHARCHANE (Omar), « Decentralization in Morocco: Structural Deficiencies and Implementation Constraints », *Hikama*, vol. 5, n° 10, 2025, pp. 33-55, p. 33, who stresses « the enduring legacies of the Makhzen ».

[1246] BOGAERT (Koenraad), « New State Space Formation in Morocco: The Example of the Bouregreg Valley », *Urban Studies*, vol. 49, n° 2, 2012, pp. 255-270; BOGAERT (Koenraad), « The Problem of Slums: Shifting Methods of Neoliberal Urban Government in Morocco », *Development and Change*, vol. 42, n° 3, 2011, pp. 709-731; ZEMNI (Sami) & BOGAERT (Koenraad), « Urban Renewal and Social Development in Morocco in an Age of Neoliberal Government », *Review of African Political Economy*, vol. 38, n° 129, 2011, pp. 403-417.

[1247] CONSEIL ÉCONOMIQUE, SOCIAL ET ENVIRONNEMENTAL (CESE), *Avis : Étude d'impact des dérogations dans le domaine de l'urbanisme*, Saisine n° 11/2014, Rabat, 2014, p. 7; ES-SALLAK (Nada), « Dérogations en urbanisme et rapports de pouvoirs au Maroc. Le cas de la ville de Fès », *Les Cahiers d'EMAM*, n° 30, 2018, DOI: 10.4000/emam.1448.

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derogations through their effects and administrative law through their legality; the text itself, read as a condensed expression of a governmental rationality, is seldom the object.[1248]

The article therefore asks: *how does the statutory derogation regime instituted by Law No. 47-18 and recast by Law No. 22-24 reconfigure the institutional conditions under which urban space is produced in Morocco, and to what extent does it encode the hegemony of economic reason over urban public action?* The claim is deliberately bounded. The article does not measure the material production of space; it analyses the legal-institutional architecture that governs it and the documentary traces that architecture leaves. Its central hypothesis is that the regime relocates the source of spatial normativity from the plan to the investment project while the vocabulary of regionalization conceals a recentralization of the power to decide. Three sub-hypotheses structure the analysis: a normative displacement from plan to project (H1), an institutional displacement from territorial deliberation to executive decision (H2), and a semantic displacement from a substantive to a residual public interest (H3).

Section 1 sets out the theoretical framework. Section 2 presents the hermeneutic and documentary method. Section 3 reads the texts against the documentary record. Section 4 discusses a rival explanation and places Morocco in comparative perspective, before the conclusion.

1. Theoretical Framework: Plan, Market and Procedure

1.1 The Plan as the Legal Form of the Urban Public Interest

Henri Lefebvre's proposition that social space is a social product remains the most economical way of saying that whoever controls the production of space also shapes the reproduction of the social relations it houses.[1249] Lefebvre was no admirer of technocratic planning, and the argument here does not idealize the plan. It retains only the plan's normative wager: land uses are fixed *in advance*, *for all* owners, through a procedure that exposes the future of the city to some measure of public scrutiny.

In the continental tradition from which Moroccan public law descends, this wager has a name: the general interest. Jacques Chevallier showed that the notion functions as the "fundamental principle of legitimation" of state action and as the matrix of all discourses that legitimize instituted forms.[1250] Paul Ricœur's account of ideology clarifies why such a matrix matters: every group acquires consistency through the image it gives of itself, and « la

[1248] LASCOUMES (Pierre), « La Gouvernementalité : de la critique de l'État aux technologies du pouvoir », *Le Portique*, n° 13-14, 2004, § 21: « Chaque instrument est une forme condensée de gouvernementalité ». See also LASCOUMES (Pierre) & LE GALÈS (Patrick), « Introduction: Understanding Public Policy through Its Instruments », *Governance*, vol. 20, n° 1, 2007, pp. 1-21.

[1249] LEFEBVRE (Henri), *The Production of Space*, trans. D. Nicholson-Smith, Blackwell, Oxford, 1991 [1974], chap. I. Lefebvre did not idealize planning: he saw in the technocratic plan one of the means through which the state produces an "abstract space" (chap. IV), a caution that forbids any nostalgic reading of the classical plan.

[1250] CHEVALLIER (Jacques), « Réflexions sur l'idéologie de l'intérêt général », in CURAPP, *Variations autour de l'idéologie de l'intérêt général*, vol. 1, PUF, Paris, 1978, pp. 11-45, p. 11 (« principe fondamental de légitimation ») and p. 12 (« la matrice de tous les discours de légitimation des formes instituées »).

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fonction d'intégration se prolonge dans la fonction de légitimation ».[1251] The plan is the spatial form of that integrating and legitimizing image. It also embodies a principle of subsidiarity that the Moroccan Constitution now proclaims: a higher authority should act only « pour pallier l'insuffisance d'une autorité plus petite », and not in its place where the latter suffices.[1252]

Law No. 12-90 gives the model a precise legal form. The *plan d'aménagement* assigns land to residential, industrial, commercial, tourist or agricultural uses, delimits non-building zones, reserves land for public facilities, green spaces and protected sites, and fixes building rules.[1253] The draft is submitted to the communal council, which may make proposals within two months, and to a one-month public inquiry; once approved, the plan is worth a declaration of public utility for ten years, and every building permit must conform to it.[1254] Three generalities are condensed in this instrument: of scope (the rule binds all owners alike), of time (it anticipates rather than reacts) and of procedure (it passes through a public moment). The only derogation that Law No. 12-90 itself allows is technical, concerning sanitation and water supply.[1255] It is this anchorage of spatial normativity in a general rule that the derogation regime unsettles.

1.2 Neoliberal Reason and the Economic Production of Space

Neoliberalism is not the withdrawal of the state. Foucault's lectures dispelled that caricature: neoliberalism should not be identified with laissez-faire but with « permanent vigilance, activity, and intervention », and it shifts the principle of the market « from exchange to competition ».[1256] Thomas Biebricher's reconstruction confirms the point from within neoliberal theory: from Eucken's competitive order to Hayek's Mont Pèlerin remarks, the state is cast as the creator and guardian of competition, its role shifting from detached umpire to « an activist policeman of the market on high alert ».[1257] Transposed to territory, the same logic produces jurisdictional competition: territorial units differentiate their « policy-price » packages to attract capital, and competition, by design, yields winners and losers.[1258]

Two further elements bear directly on space. The first is epistemic. For Hayek, central planning based on statistical information « by its nature cannot take direct account of these circumstances of time and place », so that decisions must be left to « the man on the spot

[1251] RICŒUR (Paul), *Du texte à l'action. Essais d'herméneutique II*, Seuil, Paris, 1986, p. 386.

[1252] MILLON-DELSOL (Chantal), *L'État subsidiaire. Ingérence et non-ingérence de l'État : le principe de subsidiarité aux fondements de l'histoire européenne*, PUF, Paris, 1992, pp. 6-7.

[1253] Law No. 12-90, *op. cit.*, art. 19, items 1°, 2°, 4°, 6°, 8° and 9°.

[1254] *Ibid.*, arts. 24, 25, 28 and 43. Under art. 24, the council's silence is deemed to mean that it has no proposals, which shows how limited the deliberative moment already was in the classical model.

[1255] *Ibid.*, art. 47.

[1256] FOUCAULT (Michel), *The Birth of Biopolitics: Lectures at the Collège de France, 1978-79*, trans. G. Burchell, Palgrave Macmillan, Basingstoke, 2008, p. 118 (shift from exchange to competition) and pp. 131-132 (permanent vigilance, activity and intervention).

[1257] BIEBRICHER (Thomas), *The Political Theory of Neoliberalism*, Stanford University Press, Stanford, 2018, pp. 37-38. Biebricher also discusses Friedman's image of government as an « impartial umpire » (p. 37).

[1258] *Ibid.*, pp. 67-68.

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».[1259] Few texts state more clearly the premise of any urban derogation: the plan, a centralized and statistical knowledge of the city, is presumed blind to the opportunity that the investor sees. The second element is historical. David Harvey described the shift from urban managerialism to entrepreneurialism, in which public-private partnerships orient urban policy towards the speculative valorization of place.[1260] Neil Brenner and Nik Theodore insisted that such neoliberalism exists only as "actually existing neoliberalism", embedded in inherited institutions, while Jamie Peck and Adam Tickell distinguished its « roll-back » moment of destruction from its « roll-out » moment of institution-building.[1261] Both insights matter for Morocco, where neoliberal urbanism did not replace an earlier order but grafted itself onto a centralized administrative state.

The space thus produced has a recognizable form. Large urban development projects in Europe were implemented through special agencies and exceptional arrangements that bypassed statutory planning.[1262] In Morocco, Bogaert has shown that such projects « prioritize the exchange value of the city (how to sell the city) over its use value ».[1263] Pierre Rosanvallon's older diagnosis acquires here a literal spatial meaning: the market carries an ambition of decentralized and anonymous self-organization of civil society, « se posant en concurrent implicite du projet démocratique de constituer artificiellement la cité ».[1264] The plan is precisely the city artificially constituted.

1.3 Governance as Procedure: Bureaucratization, Exception and Executive Centralization

If neoliberalism is not the retreat of the state, neither is it the retreat of rules. For Béatrice Hibou, the rhetoric of "cutting red tape" has coincided with a proliferation of norms, procedures and formalities drawn from the managerial enterprise, a form of domination through abstraction and the « formalisation du gouvernement à distance ».[1265] One of her section titles condenses the argument: *plus on dérèglemente, plus on bureaucratise*.[1266] The

[1259] HAYEK (Friedrich A.), « The Use of Knowledge in Society », *The American Economic Review*, vol. 35, n° 4, 1945, pp. 519-530, p. 524.

[1260] HARVEY (David), « From Managerialism to Entrepreneurialism: The Transformation in Urban Governance in Late Capitalism », *Geografiska Annaler: Series B, Human Geography*, vol. 71, n° 1, 1989, pp. 3-17.

[1261] BRENNER (Neil) & THEODORE (Nik), « Cities and the Geographies of "Actually Existing Neoliberalism" », *Antipode*, vol. 34, n° 3, 2002, pp. 349-379; PECK (Jamie) & TICKELL (Adam), « Neoliberalizing Space », *Antipode*, vol. 34, n° 3, 2002, pp. 380-404, pp. 383 and 387-388.

[1262] SWYNGEDOUW (Erik), MOULAERT (Frank) & RODRIGUEZ (Arantxa), « Neoliberal Urbanization in Europe: Large-Scale Urban Development Projects and the New Urban Policy », *Antipode*, vol. 34, n° 3, 2002, pp. 542-577.

[1263] BOGAERT (Koenraad), « Globalized Authoritarianism and the New Moroccan City », *Middle East Report*, n° 287, 2018 (online, 13 October 2018). For the full argument, see BOGAERT (Koenraad), *Globalized Authoritarianism: Megaprojects, Slums, and Class Relations in Urban Morocco*, University of Minnesota Press, Minneapolis, 2018.

[1264] ROSANVALLON (Pierre), *Le capitalisme utopique. Histoire de l'idée de marché*, Seuil, coll. « Points Essais », Paris, 1999 [1979], preface « Le marché et les trois utopies libérales », pp. I-II.

[1265] HIBOU (Béatrice), *La bureaucratisation du monde à l'ère néolibérale*, La Découverte, Paris, 2012, Introduction, section « Une nouvelle bureaucratisation ». References to this work are given by chapter and section, which are identical in all editions.

[1266] *Ibid.*, chap. 3, section « Plus on dérèglemente, plus on bureaucratise ». In the same chapter, public-private partnership appears as the emblematic figure of contractual « décharge ».

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formula matters here because an urban derogation is, quite literally, a deregulation of the plan.

Jacques Chevallier and John Pitseys reach the same point from the side of law. The regulatory state replaces the abstract, general and « jupitérien » law of the classical state with a negotiated and flexible law of regulation,[1267] while governance works as a « mot-talisman » clothed in « le vocabulaire rassurant de l'objectivité technique » and as « une sorte de méta-droit ».[1268] The exception, moreover, is not a failure of planning. Ananya Roy has shown, for Indian cities, that deregulation and informality can be modes of planning through which the state reserves to itself the power to suspend and remap land use according to opportunity.[1269]

Governance arrangements of this kind have a Janus face: they empower some actors, notably investors and experts, while disempowering others, notably elected and civic ones.[1270] The political consequence has been theorized as authoritarian neoliberalism: the reconfiguration of the state through legal and constitutional devices that insulate economic decisions from democratic pressures.[1271] Cemal Burak Tansel's notion of *executive centralization*, a process in which decision-making power shifts to the central government while avenues for contesting its policies narrow, is particularly useful because it locates authoritarianism in a *mode* of decision rather than in the electoral credentials of the decider.[1272] Applied to Morocco, this lens joins Bogaert's diagnosis that authoritarianism « was not undermined by economic liberalization; it was re-institutionalized and rescaled ».[1273] Rather than the loose notion of “soft authoritarianism”, this article therefore uses a more precise one: *procedural recentralization*, a concentration of the power to decide that operates through chairmanship, substitution, deadlines and upward reporting rather than through prohibition.

[1267] CHEVALLIER (Jacques), « L'État régulateur », *Revue française d'administration publique*, n° 111, 2004, pp. 473-482, p. 480, drawing on Gérard Timsit's contrast between « droit abstrait, général et désincarné » and « droit négocié ».

[1268] PITSEYS (John), « Le concept de gouvernance », *Revue interdisciplinaire d'études juridiques*, vol. 65, n° 2, 2010, pp. 207-228, pp. 207 and 222. In Moroccan official Arabic, governance is rendered by the neologism “*ḥakāma*”, carefully distinguished from “*ḥukm*” (rule, government): the lexical distinction itself performs the depoliticization that Pitseys describes.

[1269] ROY (Ananya), « Why India Cannot Plan Its Cities: Informality, Insurgence and the Idiom of Urbanization », *Planning Theory*, vol. 8, n° 1, 2009, pp. 76-87.

[1270] SWYNGEDOUW (Erik), « Governance Innovation and the Citizen: The Janus Face of Governance-beyond-the-State », *Urban Studies*, vol. 42, n° 11, 2005, pp. 1991-2006.

[1271] BRUFF (Ian), « The Rise of Authoritarian Neoliberalism », *Rethinking Marxism*, vol. 26, n° 1, 2014, pp. 113-129; BRUFF (Ian) & TANSEL (Cemal Burak), « Authoritarian Neoliberalism: Trajectories of Knowledge Production and Praxis », *Globalizations*, vol. 16, n° 3, 2019, pp. 233-244. On the « strong state » in neoliberal thought and Heller's notion of authoritarian liberalism, see BIEBRICHER (Thomas), *op. cit.*, pp. 69 and 76.

[1272] TANSEL (Cemal Burak), « Reproducing Authoritarian Neoliberalism in Turkey: Urban Governance and State Restructuring in the Shadow of Executive Centralization », *Globalizations*, vol. 16, n° 3, 2019, pp. 320-335, p. 320 (abstract).

[1273] BOGAERT (Koenraad), « Globalized Authoritarianism and the New Moroccan City », *op. cit.* See also BOGAERT (Koenraad), « Urban Politics in Morocco: Uneven Development, Neoliberal Government and the Restructuring of State Power », *Afrika Focus*, vol. 24, n° 2, 2011, pp. 129-133, p. 129, on the need to ask « how authoritarian modalities of government have changed ».

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These bodies of work converge on the analytical grid summarized in Table 1, which matches each sub-hypothesis with its anchors, the indicators to be sought in the texts and documents, and the observation that would support it.

Table 1. Analytical grid: hypotheses, anchors and indicators

Dimension	Theoretical anchors	Indicators sought in texts and documents	Observation supporting the hypothesis
H1 – From plan to project (normative and temporal)	Hayek (1945); Harvey (1989); Swyngedouw et al. (2002)	Object and criteria of the exception; hierarchy of norms; grounds for lapse; deadlines	Eligibility defined by economic outputs; the exception prevails over planning law; time organized around the investor
H2 – From territorial deliberation to executive decision (institutional)	Hibou (2012); Tansel (2019); Vollmann et al. (2022)	Chair, membership, substitution, appeals, holder of the final decision; origin of the reform; parliamentary amendments	Elected bodies consultative; power to grant concentrated at the centre; reform designed and justified by executive directives
H3 – From substantive to residual public interest (semantic)	Chevallier (1978); Ricœur (1986); Lefebvre (1974)	Exclusions, silences (inquiry, publicity, evaluation); content of published activity data	Public interest as a negative list of reserves; exceptions absent from published data
Transversal – bureaucratization of the exception	Hibou (2012); Peck & Tickell (2002)	Procedures, deadlines and reports added between 2019 and 2024	Deregulation of the plan accompanied by a proliferation of procedure

Source: author.

2. Methodology: A Hermeneutic and Documentary Design

The question is one of meaning rather than frequency, and a single carefully chosen case is therefore appropriate. Law No. 47-18, as amended, is what Bent Flyvbjerg calls a critical case, one of strategic importance for the general problem: « If it is valid for this case, it is valid for all (or many) cases ».[1274] If the hegemony of economic reason over the production of space is legible anywhere in Moroccan law, it should be legible where urban planning law and investment law literally meet.

The interpretive stance is drawn from legal hermeneutics. Gadamer treated legal interpretation as exemplary for the human sciences because understanding always involves application and the fusion of the text's horizon with that of its interpreter; against the risk of reading into the text what one wishes to find, Emilio Betti's « Canon of the Hermeneutical

[1274] FLYVBJERG (Bent), « Five Misunderstandings About Case-Study Research », *Qualitative Inquiry*, vol. 12, n° 2, 2006, pp. 219-245, p. 230; on generalization from a single case, p. 228.

Autonomy of the Object » serves as a discipline.[1275] Ricœur's insistence that the alternative between understanding and the critique of ideology must itself be challenged provides the bridge to a *critical* hermeneutics, attentive to what a text legitimizes as well as to what it says.[1276] The interpreter's own horizon, that of a Moroccan public law researcher attentive to territorial democracy, is therefore stated rather than concealed: Gadamer's rehabilitation of prejudice makes it a condition of understanding, provided it is exposed to the resistance of the text.[1277]

The reading proceeds in three moments. The *lexical and structural* moment inventories key terms, grammatical subjects and modal operators and distinguishes manifest from latent content;[1278] it also asks Carol Bacchi's question, « what's the problem represented to be? », on the premise that « what we say we want to do about something indicates what we think needs to change ».[1279] The *intertextual* moment reads the derogation provisions against Law No. 12-90, the Constitution, Organic Law No. 113-14 on communes, the Investment Charter and the law on administrative simplification. The *genealogical* moment follows the exception from the circulars of 1999 to the statute of 2024 and treats silences as data. In practice, each provision was coded for four indicators derived from Table 1: the holder of the power (who decides), the criterion of legitimacy (what justifies the exception), the temporal regime (deadlines, lapse) and the addressee of accountability (to whom the decision is reported). An interpretation was retained only when at least two of the three moments converged on it, and when no document in the corpus contradicted it.

Hermeneutics alone would leave the analysis open to the charge of reading a law instead of a practice. The textual reading is therefore confronted with a documentary corpus of four types, summarized in Table 2.

Table 2. The documentary corpus

Type of source	Documents	Use in the analysis
Legal texts	Law No. 47-18 (2019) and Law No. 22-24 (2024), official Arabic versions; Law No. 12-90; Constitution (2011); Organic Law No. 113-14; Framework Law No. 03-22; Law No. 55-19	Hermeneutic reading (H1-H3)

[1275] VALAURI (John T.), « Interpretation, Critique, and Adjudication: The Search for Constitutional Hermeneutics », *Chicago-Kent Law Review*, vol. 76, n° 2, 2000, pp. 1083-1100, pp. 1090-1091, discussing GADAMER (Hans-Georg), *Truth and Method*, 2nd rev. ed., Crossroad, New York, 1989, pp. 306-309 (fusion of horizons) and 327-328 (exemplary character of legal hermeneutics).

[1276] RICŒUR (Paul), « Herméneutique et critique des idéologies », in *Du texte à l'action*, *op. cit.*, pp. 333-377, p. 333 (« N'est-ce pas l'alternative elle-même qui doit être récusée ? »). On Habermas's emancipatory interest as a source of critical distance, see VALAURI (John T.), *op. cit.*, p. 1085.

[1277] VALAURI (John T.), *op. cit.*, p. 1096.

[1278] GRAWITZ (Madeleine), *Méthodes des sciences sociales*, Dalloz, Paris, 11e éd., 2001, pp. 604-631, esp. pp. 618-619 on manifest and latent content.

[1279] BACCHI (Carol), « Why Study Problematizations? Making Politics Visible », *Open Journal of Political Science*, vol. 2, n° 1, 2012, pp. 1-8, p. 4.

Type of source	Documents	Use in the analysis
Royal speeches and letters; governmental texts	Royal Letter of 9 January 2002; Throne Speech of 29 July 2018; royal audience of 19 April 2018; speech of 14 October 2022; Government Council communiqué of 2 May 2024; ministerial statements (2019, 2024)	Genealogy of the reform and its justification (H2)
Parliamentary record	Bill tabled on 5 June 2024; votes and amendments at first and second readings (July and December 2024)	Contestation and amendments (H2)
Evaluative and activity data	CESE opinion on derogations (2014); Court of Accounts evaluation of the regional investment centres (2017); Head of Government's statement on 2019-2020 results; activity reports of the Casablanca-Settat (2022) and Rabat-Salé-Kénitra (2023) centres	Effects, criteria and visibility of exceptions (H1, H3)

Source: author.

Translations from Arabic and French are the author's. Three limits must be acknowledged. The analysis concerns the normative architecture and its documentary traces, not implementation on the ground. Individual derogation decisions are not published. Finally, the full explanatory memorandum and committee reports of Law No. 22-24 could not be consulted; the parliamentary record is reconstructed from official and press accounts of the readings.

3. Case Study: Reading the Exception

3.1 From Tolerance to Statute: A Genealogy (1999–2024)

The exception did not begin as law; it began as tolerance. The CESE notes that the derogation procedure was « documentée par une circulaire pour la première fois en février 1999 », and it was later formalized by circulars in 2001, 2003 and 2010.[1280] Between 2003 and 2013, 13,222 projects were examined, and 58 per cent obtained an agreement in principle.[1281] Three findings of that study frame what follows. Seventy-four per cent of the requests concerned land already covered by planning documents, so that the derogation was less a remedy for absent plans than a means of overriding existing ones; residential real estate was the main beneficiary; and the CESE deplored « l'absence de mécanismes de suivi et d'évaluation ».[1282] The jobs announced, 304,080 in total, were declared by applicants, and

[1280] CESE, *Avis*, *op. cit.*, p. 6; « Dérogations urbanistiques. Fin d'un privilège ? », *LesEco.ma*, n.d. Practitioners described the mechanism as « gestion urbaine d'adaptation », presenting it as a provisional adjustment of the plan: « Dérogations/urbanisme : à quand un encadrement strict du système ? », *Finances News Hebdo*, 1 August 2019.

[1281] CESE, *Avis*, *op. cit.*, p. 7, which also records 11 per cent of deferrals (« sursis à statuer »).

[1282] *Ibid.*, p. 9, which also records average approval rates of 55 and 51 per cent for real-estate projects in the two periods studied.

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some 900 hectares initially reserved for public use, « dont 420 ha d'espaces verts », were reconverted.[1283]

A second genealogical line runs through the institutions of investment. The regional investment centres were created by a royal letter of 9 January 2002 which asked the government to « déléguer aux walis certaines compétences ministérielles dans le domaine de l'investissement », while specifying that its instructions to the government and the walis were to be treated as instructions.[1284] The Court of Accounts later described the centres as external services of the Ministry of the Interior placed under the walis' authority, recorded that derogations to planning documents were still obtained through a separate urban planning procedure even after an investment commission had approved a project, pointed out that the wali chaired the regional investment commission, and observed that the involvement of territorial collectivities « reste limitée et dépend des priorités des élus ».[1285] The reform that followed was explicitly royal in design. In April 2018 the Head of Government submitted the reform proposals for royal review; on 29 July 2018 the Throne Speech called for « le regroupement des commissions concernées par l'investissement en une Commission régionale unifiée », for decisions by « la majorité des membres présents » rather than unanimity, and for a one-month deadline beyond which « l'absence de réponse […] tient lieu d'approbation ».[1286]

Law No. 47-18 of 2019 gave both lines a statutory form. Its Article 30 empowered the unified regional commission to grant urban planning exceptions to « productive investment projects that create jobs, in all sectors », with one important carve-out: residential real-estate projects were excluded, except social housing and programmes against unfit or dilapidated housing.[1287] The CESE's critique of real-estate capture had thus been answered as early as 2019. When the Minister of the Interior presented the new centres to employers in November 2019, he declared that the old centres had become « une machine à fabriquer de dérogations » for real estate, that the practice would end « une fois pour toutes », and committed the government to ensuring « qu'aucun acte ne se fasse au niveau de Rabat ».[1288] The exception

[1283] *Ibid.*, pp. 10-12.

[1284] Lettre royale adressée au Premier ministre relative à la gestion déconcentrée de l'investissement, 9 January 2002, pp. 1 and 3 (« celles destinées au gouvernement et aux walis soient assimilées à des instructions »). The *wali*, appointed by royal dahir after deliberation in the Council of Ministers, represents central power in the region: Constitution, *op. cit.*, arts. 49 and 145.

[1285] COUR DES COMPTES, *Évaluation de l'expérience des Centres régionaux d'investissement*, Rabat, 2017, pp. 8-9 and 17-18 (ministerial response). The report was presented to the King in December 2017: « El Othmani soumet à l'appréciation royale les propositions liées à la réforme des CRI », *Finances News Hebdo*, 19 April 2018.

[1286] « El Othmani soumet à l'appréciation royale les propositions liées à la réforme des CRI », *op. cit.*; Discours royal à l'occasion de la Fête du Trône, 29 July 2018, full text reproduced in *Boursenews*, 29 July 2018.

[1287] Law No. 47-18 on the Reform of Regional Investment Centres and the Creation of Unified Regional Investment Commissions, promulgated by Dahir No. 1-19-18 of 7 Joumada II 1440 (13 February 2019), *Bulletin officiel* (Arabic ed.) No. 6754 of 21 February 2019, p. 834, art. 30 (author's translation). The Arabic reads: « ما عدا المشاريع العقارية السكنية غير تلك المخصصة للسكن الاجتماعي ومحاربة السكن غير اللائق أو المباني الآيلة للسقوط ».

[1288] « Nouveaux CRI, dérogations urbanistiques, déconcentration… les annonces choc de Abdelouafi Laftit », *EcoActu*, 4 November 2019; « Laftit annonce que les nouveaux CRI ne donneront plus de dérogations au secteur immobilier », *H24info*, 6 November 2019 (« Nous allons arrêter une fois pour toutes avec cette pratique »).

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was then suspended, in practice, without any published instrument, and returned five years later in a form that Table 3 compares with its predecessor.[1289]

Table 3. The derogation regime in 2019 and 2024[1290]

Feature	Law No. 47-18 (2019)	Law No. 47-18 as amended by Law No. 22-24 (2024)
Eligible projects	Productive, job-creating projects in all sectors, except residential real estate other than social and unfit-housing programmes (art. 30)	Industrial and hotel projects only (art. 30)
Power to grant	Unified regional investment commission (art. 30)	Head of Government, exclusively, after a favourable opinion of the regional commission (art. 30)
Chair of the commission	Wali, who may delegate to the centre's director (art. 31)	Director of the centre (art. 31)
Representation of the region	Director general of the services of the regional administration (art. 31)	President of the regional council, inserted by parliamentary amendment (art. 31)
Excluded land	Public facilities, green spaces, development roads, irrigated, flood- or hazard-prone and protected areas (art. 30)	Public facilities, green spaces, flood-prone and protected areas, among others (art. 30)
Decision period	30 days from referral (art. 34)	20 days from receipt of the file (art. 34)
Reporting	Annual report of the centre (art. 4)	Semi-annual and quarterly reports to the supervisory authority and the wali (arts. 30 *ter*, 30 *quater*)

Source: author, from the official Arabic texts (author's translation).

Read diachronically, the sequence tells a story that neither text tells alone. The circular had the honesty of its fragility: it presented itself as provisional and could be withdrawn by the authority that issued it. The statute confers on the exception the dignity of the norm. The 2024 recasting does not reverse this movement; it narrows the eligible sectors and concentrates the power to grant. The two gestures must be read together.

1289 The press reported the suspension of the derogation function on the centres' online platform without any circular having been sent to the centres or urban agencies: « Dérogations urbanistiques. Fin d'un privilège ? », *op. cit.* For the suspension of more than two years preceding 2025, see « فاتح يناير يبدأ العمل برخص الاستثناء », *op. cit.*

1290 The comparison rests on arts. 1 to 5 of Law No. 22-24, which amend arts. 4, 15, 24, 29, 30 and 31 of Law No. 47-18, repeal and replace arts. 6, 7, 10, 13, 18, 25, 34 (paras. 3 and 4), 36, 37 and 39 to 41, and add arts. 4 *bis*, 15 *bis*, 30 *bis*, 30 *ter*, 30 *quater*, 42 *bis* and 42 *ter*.

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3.2 The Grammar of the Text: Who Acts, What Counts, What Prevails

Begin with words. Among the missions of the regional investment centres, Article 4 lists the promotion of the region's « جاذبية » (attractiveness) and the elaboration of « العرض الترابي المتعلق بالاستثمار », the "territorial offer relating to investment".[1291] In Law No. 12-90, territory is the object of an *affectation*, an assignment of uses decided in the name of the collectivity; in Law No. 47-18, it is an offer addressed to a buyer. The addressee of spatial law has changed. Biebricher's jurisdictional competition is written into the lexicon of a public institution, and the Investment Charter even reformulates territorial justice as the « réduction des disparités territoriales en matière d'attraction des investissements ».[1292]

Then consider hierarchy. Article 30 opens by granting the exception « بالرغم من جميع الأحكام التشريعية والتنظيمية الجاري بها العمل », notwithstanding all legislative and regulatory provisions in force.[1293] The clause is decisive. The plan, which under Law No. 12-90 binds every permit, becomes in Law No. 47-18 a norm that an administrative decision may set aside. Where the plan appears at all, it is either the thing derogated from or an absence that opens a space of decision, since the commission also rules on investment projects in coastal areas « لا تشملها وثائق التعمير », not covered by planning documents.[1294] The grammatical subjects confirm the shift: the investor files and appeals, the commission decides, the centre's director refers and reports. The plan acts nowhere.

What counts as a reason to set the plan aside? In 2019, productivity and job creation; in 2024, membership of two sectors. Both criteria are economic, and neither refers to urban form, the needs of the neighbourhood or housing. Hayek's « man on the spot » has found his legal form.[1295] The grounds for lapse, in turn, discipline the investor's timetable: the exception falls if no permit is requested within six months or no works begin within six months of the permit.[1296] Time, moreover, is asymmetrical. The plan requires two months of council review, a one-month inquiry and approval by decree, and projects itself over ten years; the derogation file must now be decided within twenty days.[1297] The documentary record shows how central this temporality has become: the Head of Government reported that the commissions' average examination time fell from 120 days in 2019 to 20 in 2020, and the Casablanca-Settat

[1291] Law No. 47-18, *op. cit.*, art. 4, para. 2, item (b), points 1 and 3. "*Al-ʿarḍ al-turābī*" is translated literally as "territorial offer": "*ʿarḍ*" is the economic term for supply, as in "supply and demand", and its use turns the territory into a good offered on a market.

[1292] Framework Law No. 03-22 on the Investment Charter, promulgated by Dahir No. 1-22-76 of 14 Joumada I 1444 (9 December 2022), *Bulletin officiel* (French ed.) No. 7152 of 15 December 2022, art. 1.

[1293] Law No. 47-18, *op. cit.*, art. 30, para. 1.

[1294] *Ibid.*, art. 29, item (b)(4), in its 2019 version.

[1295] HAYEK (Friedrich A.), *op. cit.*, p. 524.

[1296] Law No. 47-18, *op. cit.*, art. 30, which also provides that every exception decision must be « اسمياً ومعللاً » (nominal and reasoned) and forbids any modification of the project once the permit is granted.

[1297] Law No. 47-18 as amended by Law No. 22-24, art. 34; Law No. 12-90, *op. cit.*, arts. 24, 25 and 28. Deadlines are also framed by Law No. 55-19 on the Simplification of Administrative Procedures and Formalities, promulgated by Dahir No. 1-20-06 of 11 Rajab 1441 (6 March 2020), *Bulletin officiel* No. 6866 of 19 March 2020.

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centre reported an average of 5.5 days in 2022.[1298] The time of deliberation becomes, in the grammar of the reform, a cost.

Bacchi's question can now be answered. The problem the law represents itself as solving is administrative slowness in the face of investment; the Throne Speech of 2018 even made silence worth approval. What remains unproblematized is the legitimacy of the plan, the interest of those who live around the project and the externalities the plan was meant to internalize. The lexical, hierarchical and temporal indicators converge: the project overrides the plan. H1 is supported.

3.3 The Architecture of Decision: Executive Centralization in a Dual Executive

In 2019 the commission was chaired by the *wali*. Its members, convened according to the agenda, included governors, the presidents of the communes concerned, the director of the urban agency and the regional heads of deconcentrated services; the region was represented not by the president of its elected council but by the director general of the services of its administration.[1299] Article 36, retained in substance in 2024, allows the *wali* to order a member who refuses or abstains from deciding within his competence to act, and then to decide in his stead.[1300] Unity is obtained by substitution.

Law No. 22-24 changes the configuration in two opposite directions, and the parliamentary record shows who pushed which. The government's bill, adopted in the Government Council on 2 May 2024 and tabled on 5 June, placed the centres' boards under the Head of Government, entrusted the chair of the commissions to the centres' directors and reserved the decision on exceptions « exclusively » to the Head of Government, after a favourable regional opinion.[1301] At first reading, according to the official news agency, the exception provision was the main subject of debate, with opposition deputies seeking its removal; the bill nonetheless passed with 94 votes in favour, 2 against and 24 abstentions.[1302] The amendments adopted at second reading, after the bill's passage through the House of Councillors, removed the director general of the regional services from the commission and seated the president of the regional council instead, and made an environmental acceptability certificate mandatory for projects subject to impact assessment; the House of

[1298] « Réforme CRI : les investissements explosent à plus de 154 % en 2020 », *H24info*, 8 June 2021, reporting the Head of Government's statement to the House of Representatives; « Un bilan 2022 en croissance pour le CRI de Casablanca-Settat », Centre régional d'investissement Casablanca-Settat, 28 March 2023.

[1299] Law No. 47-18, *op. cit.*, art. 31, which lists « المدير العام للمصالح بإدارة الجهة ». The commission's Arabic name, « اللجنة الجهوية الموحدة للاستثمار », is rendered as "unified regional investment commission": "*muwaḥḥada*" refers to the gathering of all competent administrations into a single decision-making body.

[1300] *Ibid.*, art. 36. The *pouvoir de substitution* is a classical instrument of hierarchical control; its presence in a coordination body shows that coordination is ultimately secured by command.

[1301] « الحكومة توسع صلاحيات المراكز الجهوية للاستثمار" النواب" يمرر مشروع إصلاح المراكز الجهوية للاستثمار », *Al3omk*, 2 May 2024; « », *Al3omk*, 25 July 2024; for the tabling date, the record of bill No. 22.24 on *Nouabook.ma*.

[1302] « Chambre des représentants : adoption à la majorité d'un projet de loi sur la réforme des CRI », *MAP*, 25 July 2024.

Representatives approved them on 9 December 2024 by 120 votes with 57 abstentions.[1303] The elected region thus entered the commission by parliamentary initiative, at the very moment when the commission lost the power to grant. *The region may now say no; only the centre may say yes.*

The record also qualifies the argument. Parliament was not a mere chamber of registration: the opposition contested the exception itself, the second chamber reinserted an elected actor and an environmental condition, and nearly a third of the deputies voting at second reading abstained. These amendments are genuine re-regulations. They did not, however, touch the two features on which the architecture rests, namely the reservation of the power to grant to the Head of Government and the absence of any publicity of decisions. Contestation reshaped the margins of the regime, not its centre of gravity.

The appeal architecture completes the picture. A refused investor may lodge a grievance with the *wali* within fifteen days and then refer the matter to a ministerial commission chaired by the Head of Government.[1304] No symmetrical route exists for residents, associations or the communal council whose plan is set aside; they are left with ordinary litigation against decisions that are not published.[1305] The intertextual dissonance is sharp. Under Organic Law No. 113-14, the commune must ensure respect for planning documents and its president issues building permits; the exception obliges the same president to authorize what the plan he must uphold forbids.[1306] In 2019 the Minister of the Interior promised that no act would be taken « au niveau de Rabat »; in 2024 the most consequential spatial act was reserved to Rabat.

Is this recentralization authoritarian? The objection is serious: the Head of Government emerges from the party that tops the legislative elections and answers to Parliament.[1307] The answer offered here is twofold. First, the reform was designed and justified as the execution of royal directives. The government's own communiqué presented the bill as following the Throne Speech of July 2018 and the royal speech of October 2022, in which the King set the target of 550 billion dirhams of investment and 500,000 jobs for 2022-2026 and declared that the centres « sont appelés à superviser l'intégralité du processus d'investissement ».[1308] The

[1303] « Réforme des CRI : la Chambre des représentants adopte le projet de loi n° 22.24 en deuxième lecture », *MAP*, 9 December 2024; « Réforme des CRI : le projet de loi n° 22.24 adopté en 2e lecture », *EcoActu*, 10 December 2024.

[1304] Law No. 47-18 as amended by Law No. 22-24, arts. 37 and 40-41. In 2020, 93 investors appealed negative decisions to the walis: « Réforme CRI : les investissements explosent à plus de 154 % en 2020 », *op. cit.*

[1305] Law No. 41-90 establishing Administrative Courts, promulgated by Dahir No. 1-91-225 of 22 Rabii I 1414 (10 September 1993). As Chevallier notes, participation presupposes an « intérêt » that legitimizes it, and selective mechanisms « contribuent au criblage des participants »: CHEVALLIER (Jacques), « De l'administration démocratique à la démocratie administrative », *Revue française d'administration publique*, n° 137-138, 2011, pp. 217-227, p. 227.

[1306] Organic Law No. 113-14 on Communes, promulgated by Dahir No. 1-15-85 of 20 Ramadan 1436 (7 July 2015), *Bulletin officiel* (French ed.) No. 6440 of 18 February 2016, p. 260, arts. 85 and 101.

[1307] Constitution, *op. cit.*, arts. 47, 89 and 90.

[1308] « الحكومة توسع صلاحيات المراكز الجهوية للاستثمار », *op. cit.*; « Le Roi fixe un nouvel objectif : 550 MMDH d'investissements privés et 500 000 emplois en 2026 », *Médias24*, 14 October 2022. The strategic orientations of state policy are deliberated in the Council of Ministers chaired by the King, which also deliberates on the appointment of walis: Constitution, *op. cit.*, arts. 48-49.

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Head of Government thus appears as the institutional hinge of a dual executive: formal holder of the power to grant, within an architecture whose orientation is royal and whose territorial relays, the walis, belong to the Ministry of the Interior. One need not posit, in Hibou's ironic phrase, « un Makhzen omniprésent et omniscient » deciding each file to recognize that the reform was conceived outside the arenas of territorial deliberation.[1309] Second, and more importantly, the authoritarian quality lies in the mode of decision: unpublished, insulated from local deliberation, closed to third-party contestation. This is executive centralization in Tansel's sense, and authoritarian upgrading through decentralization in that of Vollmann and his co-authors.[1310] H2 is supported, in a stronger form than expected.

3.4 The Residual Public Interest and the Invisibility of the Exception

The law does not ignore the public interest; it protects it, and the manner of protection is revealing. Exceptions may not concern land reserved for public facilities, green spaces, flood-prone or protected areas.[1311] Read genealogically, the list codifies restrictions adopted after the losses documented by the CESE. Read hermeneutically, it inverts the relation between rule and exception. In Law No. 12-90, the only derogation is technical; in the derogation regime, the protected reserve is the exception to the exception. The public interest is no longer the principle that organizes space as a whole, but the inventory of what remains non-negotiable once everything else has become negotiable. This is what the article calls the *residual public interest*. Chevallier's diagnosis of a crisis of the ideology of the general interest takes here an unexpected form: the general interest survives as a list.[1312]

The documentary record adds a second finding: the exception is statistically invisible. The published activity data of the commissions are abundant. Nationally, approved investment rose from 59.7 billion dirhams in 2019 to 151.8 billion in 2020, planned jobs from 93,156 to 152,378, with industry (30 per cent) and tourism (19 per cent) leading the approved projects.[1313] In Casablanca-Settat, the commission held 70 meetings in 2022, examined 360 files and approved 261 projects worth 55.3 billion dirhams; industry accounted for 47 per cent and tourism for 17 per cent, and approvals were concentrated in the peri-metropolitan provinces of Berrechid (23 per cent), Benslimane and El Jadida (18 per cent each), against 14 per cent for Casablanca itself.[1314] In Rabat-Salé-Kénitra, 957 files were examined in 2023 for

[1309] HIBOU (Béatrice), *Le mouvement du 20 février, le Makhzen et l'antipolitique. L'impensé des réformes au Maroc*, CERI-Sciences Po, Paris, May 2011, p. 8; on « une vision radicalement négative du politique par les politiques eux-mêmes », p. 3. The term “Makhzen”, historically the royal storehouse, designates the apparatus of monarchical power and its networks; it is kept untranslated because no Western category captures its fusion of state, court and allegiance.

[1310] TANSEL (Cemal Burak), *op. cit.*, p. 320; VOLLMANN (Erik) *et al.*, *op. cit.*, pp. 362-393.

[1311] Law No. 47-18, *op. cit.*, art. 30, para. 2: « لا يمكن منح أي استثناء في مجال التعمير بهم أراض مخصصة للتجهيزات العمومية », followed by green spaces, development roads, irrigated, flood- or hazard-prone and protected areas.

[1312] CHEVALLIER (Jacques), « Réflexions sur l'idéologie de l'intérêt général », *op. cit.*, pp. 41-42.

[1313] « Réforme CRI : les investissements explosent à plus de 154 % en 2020 », *op. cit.*

[1314] « Un bilan 2022 en croissance pour le CRI de Casablanca-Settat », *op. cit.*

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over 81 billion dirhams.[1315] None of these reports gives the number, location or beneficiaries of urban planning exceptions.

Two observations follow. First, the plan reappears in the data only as an obstacle: in Casablanca-Settat, 47 per cent of refusals were linked to land, mainly its inadequacy with planning documents or its unavailability, and 37 refused projects were subsequently re-examined and approved.[1316] Second, the sectors to which Law No. 22-24 restricts exceptions, industry and hotels, are precisely those that dominate the commissions' approvals, 49 per cent nationally in 2020 and 64 per cent in Casablanca-Settat in 2022 on the figures above. The sectoral narrowing does not marginalize the exception; it aligns it with the core of the investment flow. Meanwhile the law requires nominal and reasoned decisions but no publication, no public inquiry comparable to Article 25 of Law No. 12-90 and no binding opinion of the communal council. The semi-annual and quarterly reports introduced in 2024 are addressed to the supervisory authority and the *wali*, not to elected councils or the public.[1317] Accountability runs upward, not outward. H3 is supported.

A final observation ties the hypotheses together. Between 2019 and 2024 the plan lost ground, but procedure gained it: commissions, secretariats, two-day transmission deadlines, five-day agenda notices, twenty-day decision periods, fifteen-day appeals, ministerial commissions, periodic reports and investment agreements.[1318] The deregulation of the plan has been accompanied by a dense regulation of the exception. This is, in Hibou's sense, the bureaucratization of the exception, and in Peck and Tickell's terms the roll-out of a new institutional architecture after the roll-back of the old.[1319]

4. Discussion: Rival Explanation and Comparative Perspective

4.1 The Price of Flexibility? Engaging the Rival Explanation

On a pragmatic reading, derogations are the price of flexibility. Moroccan plans are slow to produce and quickly outdated; the CESE itself acknowledged that the derogation procedure « a introduit une souplesse essentielle dans la gestion des documents d'urbanisme ».[1320] On this view, the 2019 exclusion of residential real estate and the 2024 centralization are corrections, designed to end the rent-seeking that the Minister of the Interior himself denounced.

The explanation captures part of the truth. It explains *that* flexibility exists, not *where* it is located, *whom* it serves or *how* it is controlled. Three objections follow from the analysis. First, flexibility could have been built into planning law itself, and the CESE recommended mobilizing existing instruments, including the plus-value contribution provided for by Article

[1315] « حصيلة أنشطة المركز الجهوي للاستثمار لسنة 2023 », Centre régional d'investissement Rabat-Salé-Kénitra, 29 March 2024.

[1316] « Un bilan 2022 en croissance pour le CRI de Casablanca-Settat », *op. cit.*

[1317] Law No. 47-18 as amended by Law No. 22-24, arts. 30 *ter* and 30 *quater*.

[1318] *Ibid.*, arts. 4 *bis*, 30 *bis* to 30 *quater*, 34, 37 and 39.

[1319] HIBOU (Béatrice), *La bureaucratisation du monde à l'ère néolibérale*, *op. cit.*, chap. 3; PECK (Jamie) & TICKELL (Adam), *op. cit.*, pp. 387-388.

[1320] CESE, *Avis*, *op. cit.*, p. 11.

59 of Law No. 7-81 on expropriation; the legislator instead located flexibility in an investment law, under investment criteria and « notwithstanding » planning law.[1321] Second, the anti-rent argument justifies centralization but not opacity: centralization without publication replaces one opacity with another. Third, the sectoral narrowing confirms rather than refutes the thesis, since it aligns the exception with the sectors that dominate investment flows.

It is equally important to state what the argument does not claim. It does not claim that every exception is illegitimate, nor that the palace decides individual files, nor that territorial bodies are powerless; the parliamentary amendments of 2024 show otherwise. The claim concerns the architecture: where the power to grant is located, which criteria govern it and what remains visible to the public. On that terrain, the rival explanation and the thesis defended here are not mutually exclusive. Flexibility was sought, and it was organized in a way that strengthens the centre.

Geoffroy de Lagasnerie's reading of Foucault adds a final nuance. Neoliberalism, he recalls, was born as a critique of reason of state, a theoretical formulation of the ethical concern « de n'être pas gouverné ».[1322] The Moroccan case inverts this genealogy: neoliberal reason is enlisted by the centre as an instrument for re-appropriating the decision on space. This is “actually existing neoliberalism” refracted through an inherited centralized state, which it strengthens rather than dissolves.

4.2 Four Ways of Derogating from the Plan

Morocco is not alone in derogating from its plans, and comparison guards against both exceptionalism and banalization. France offers the closest parallel. Since 2020, prefects may derogate from certain regulatory norms on grounds of general interest and local circumstances, and a 2025 Senate bill seeks to strengthen this power, including in urban planning.[1323] The 2023 law on green industry goes further: for industrial projects of major national interest, qualified by decree, the state issues permits and adapts local planning documents through an accelerated procedure.[1324] The convergence is real: in both countries, industrial investment justifies recentralizing spatial decisions. So is the divergence. The French procedure requires a binding opinion of the mayor at launch, an environmental assessment where necessary and electronic public participation.[1325] In France, the exception carries its procedural guarantees with it; in Morocco, it leaves them behind in the plan.

[1321] *Ibid.*, pp. 15-16; Law No. 7-81 on Expropriation for Public Utility and Temporary Occupation, promulgated by Dahir No. 1-81-254 of 11 Rajab 1402 (6 May 1982), art. 59.

[1322] DE LAGASNERIE (Geoffroy), « Néolibéralisme, théorie politique et pensée critique », *Raisons politiques*, n° 52, 2013, pp. 63-76, p. 65.

[1323] Décret n° 2020-412 du 8 avril 2020 relatif au droit de dérogation reconnu au préfet, *JORF* n° 0087 du 9 avril 2020; SÉNAT, Proposition de loi n° 493 (2024-2025) visant à renforcer et sécuriser le pouvoir préfectoral de dérogation afin d'adapter les normes aux territoires, deposited on 27 March 2025, art. 5.

[1324] Loi n° 2023-973 du 23 octobre 2023 relative à l'industrie verte, *JORF* du 24 octobre 2023, art. 19, creating art. L. 300-6-2 of the *Code de l'urbanisme*. The declared aim was to cut average authorization times from seventeen to nine months.

[1325] « Loi industrie verte : les projets industriels d'intérêt national majeur (PIINM) », *CMS Law-Now*, 2023.

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The British precedent is older and more radical: the Local Government, Planning and Land Act 1980 created Urban Development Corporations, appointed bodies that took over planning powers from elected boroughs, and Enterprise Zones with simplified planning.[1326] Turkey offers the authoritarian variant: renewal and "risky area" designations decided at the centre, under laws No. 5366 (2005) and No. 6306 (2012), produced what Tuna Kuyucu and Özlem Ünsal call state-led property transfer, within a broader process of executive centralization.[1327] Table 4 summarizes the comparison.

Table 4. Derogating from the plan: four configurations compared[1328]

Feature	Morocco (Law No. 22-24)	France (Decree 2020-412; Law 2023-973)	United Kingdom (1980 Act)	Turkey (Laws 5366 and 6306)
Legal vehicle	Investment law	Administrative decree; urban planning code	Local government and planning statute	Renewal and disaster-risk laws
Who grants	Head of Government, after a regional opinion	State (decree, prefect)	Appointed development corporations	Central government and ministry
Elected local bodies	Members of a consultative commission	Binding mayoral opinion at launch	Planning powers transferred away	Overridden or enlisted
Public participation	None specific to the exception	Electronic consultation; environmental assessment	Limited	Limited and contested
Dominant justification	Investment and jobs (industry, hotels)	Industrial sovereignty; ecological transition	Urban regeneration	Renewal; disaster risk

Source: author.

Three features single out the Moroccan configuration: the exception is legislated in an investment law rather than an urban law; its decision is concentrated at the summit of the executive just as constitutional discourse celebrates regionalization; and its procedures face upward rather than outward.

[1326] Local Government, Planning and Land Act 1980 (c. 65), Part XVI and Schedule 32. On the corresponding « hollowing out » of the state, see RHODES (R. A. W.), « The Hollowing Out of the State: The Changing Nature of the Public Service in Britain », *The Political Quarterly*, vol. 65, n° 2, 1994, pp. 138-151.

[1327] KUYUCU (Tuna) & ÜNSAL (Özlem), « "Urban Transformation" as State-led Property Transfer: An Analysis of Two Cases of Urban Renewal in Istanbul », *Urban Studies*, vol. 47, n° 7, 2010, pp. 1479-1499; TANSEL (Cemal Burak), *op. cit.*, pp. 320-335.

[1328] The table compares legal configurations, not outcomes. Sources are those cited in Section 4.2.

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4.3 Three Propositions on the Hollowing-Out of Urban Public Action

First, urban public action is not abolished but hollowed out. Because exceptions mostly concern land already planned, the plan becomes the backdrop that gives the exception its value: the more rigid the zoning, the larger the rent unlocked by derogation. Rhodes's image of the hollowing-out of the state applies at the scale of the city, with a difference: the substance migrates not towards markets or networks, as in the British case, but towards the centre of the executive.

Second, neoliberal reason in Morocco operates through procedural recentralization. The vocabulary of governance (coordination, unification, simplification, deadlines, reporting) carries a vertical consolidation of power, which is why it can coexist with the rhetoric of advanced regionalization without open contradiction. This confirms the reading of Moroccan decentralization as a reform that redeploys central control, and specifies one of its mechanisms.[1329]

Third, the public interest is redefined from a substantive principle into a residual perimeter supplemented by economic proxies. Jobs and investment amounts stand in for the deliberated good of the city, and the reserves listed in Article 30 stand in for its spatial coherence. Audrey Harroche has shown, in a very different field, how public policy can « gouverner par les inégalités » through instruments that govern perimeters.[1330] The derogation regime does something analogous in space: territories able to attract industrial and tourist investment will receive exceptions, while others will keep their plans and their marginality.[1331]

Conclusion

This article set out to read a law and to confront that reading with the record it has left. The three sub-hypotheses are supported. The project overrides the plan, as the lexicon, the « notwithstanding » clause and the temporality of the text show (H1). The power to grant exceptions has moved from the regional commission to the Head of Government, within a reform designed and justified by royal directives and contested in Parliament (H2). The public interest survives as a residual perimeter, while the exceptions themselves remain absent from published data (H3). The central hypothesis must nonetheless be qualified. The regime is not a deregulation but a re-regulation for the market, partially responsive to past criticism, which narrowed the eligible sectors in 2019 and again in 2024 while concentrating the power to grant.[1332]

[1329] OJEDA-GARCÍA (Raquel) & SUÁREZ-COLLADO (Ángela), *op. cit.*, pp. 46-58; HOUDRET (Annabelle) & HARNISCH (Astrid), « Decentralisation in Morocco: A Solution to the "Arab Spring"? », *The Journal of North African Studies*, vol. 24, n° 6, 2019, pp. 935-960, p. 935, on the « historical legacies of centralised control ».

[1330] HARROCHE (Audrey), *Gouverner par les inégalités. La mise en œuvre d'une initiative d'excellence dans l'enseignement supérieur et la recherche*, thèse de doctorat en sociologie, Institut d'études politiques de Paris, 2021, pp. 333-338.

[1331] On the uneven development produced by this mode of government, see BOGAERT (Koenraad), « Urban Politics in Morocco… », *op. cit.*, p. 132; on jurisdictional competition, BIEBRICHER (Thomas), *op. cit.*, pp. 67-68.

[1332] On roll-out neoliberalism, PECK (Jamie) & TICKELL (Adam), *op. cit.*, p. 388; on the bureaucratization that accompanies deregulation, HIBOU (Béatrice), *La bureaucratisation du monde à l'ère néolibérale*, *op. cit.*, chap. 3.

Two concepts summarize the theoretical contribution. *Procedural recentralization* names the way in which a state that speaks the language of regionalization can concentrate the power to produce space without prohibiting anything, through chairmanship, substitution, deadlines and upward reporting. *Residual public interest* names the way in which the general interest, once the organizing principle of the plan, survives as an inventory of untouchable reserves. Both give Hibou's insight that deregulation breeds bureaucracy a precise spatial and legal content, and both specify, at the level of ordinary law, the mechanisms through which decentralization reforms redeploy central control.[1333] Comparatively, the Moroccan case suggests that the global turn towards planning derogations in the name of investment and reindustrialization, visible in France as in Turkey, takes its political meaning from the procedural guarantees that accompany it rather than from the derogation as such. Methodologically, the article suggests that a critical legal hermeneutics, checked against a documentary corpus, can serve political science as a rigorous way of reading power in the letter of the law.

The limits of the study define a research agenda: derogation decisions should be collected; the explanatory memorandum and committee reports of Law No. 22-24 analysed; regional contrasts between dominant and peripheral regions tested; and litigation examined to see whether courts can reopen what the text closes.[1334] Normatively, if urban public action is to be reconstructed rather than mourned, exceptions must be brought back under the three generalities of the plan: publication of decisions and their inclusion in the centres' annual reports, a binding opinion of the communal council whose plan is set aside, a public inquiry above defined thresholds, and an ex post evaluation of promised jobs reported to elected councils rather than only to the centre.[1335]

A city is not only built; it is first decided. The question that Law No. 22-24 leaves open is not whether Morocco will continue to attract investment, but who, in the name of the city, will still be allowed to say yes.[1336]

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[1333] VOLLMANN (Erik) *et al.*, *op. cit.*, pp. 362-393; IHARCHANE (Omar), *op. cit.*, pp. 33-55.

[1334] This comparative design is pursued in the author's doctoral research, which examines whether the same neoliberal frame of reference produces a single model of the territorial public interest in two economically contrasted regions.

[1335] Several of these proposals echo the CESE's recommendations on admissibility criteria and the monitoring of derogated projects: CESE, *Avis*, *op. cit.*, pp. 15-16. On the renewal of public inquiry procedures as an instrument of administrative democracy, see CHEVALLIER (Jacques), « De l'administration démocratique à la démocratie administrative », *op. cit.*, p. 224.

[1336] The question is, in the end, that of the right to the city: HARVEY (David), « The Right to the City », *New Left Review*, n° 53, 2008, pp. 23-40.

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