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### Dissertation Title

**Authority Executive in the 2011 Constitution**  
**Comparative Legal Study in Light of the Constitutions 1962-1996**

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## Introduction:

In every society, the power is given to some persons who can not direct other members of the society, whether the social group to which the orders are directed is small or large, primitive or developed. It is the rulers who take power and apply it by force when necessary, hence the distinction between the rulers and the ruled<sup>1</sup>.

Where according to Jurisprudence that the political group can not be established without the authority to govern and direct its activities, it sets individuals the rules of law, controls behavior and protects the common good of various individuals.

Hence, every political society must have a system that defines the nature of governance and the relation between rulers and governed, and balances opposing ideas within the group (power) and (freedom).<sup>2</sup>

The law is an inevitable phenomenon in the organized human societies, which is the most important manifestation of management and the collective sense of society<sup>3</sup>, it is a necessity for the human nature of man and his need to live in a community<sup>4</sup>, what distinguishes political societies at the present time is the existence of a mass of written or unwritten rules aimed at identifying ways of receiving and exercising political power<sup>5</sup>, it is inconceivable to be a State without rules relating to

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<sup>1</sup> - Sahar Mohamed Naguib, *The Relationship between Authorities in Arab Constitutions*, Shatat Misr Press, 2011, P. 13.

<sup>2</sup> - Haj Qassim Mohammed, *Constitutional Law and Political Institutions: Basic Concepts and Political Systems*, Morocco Press, 4th edition 2009, P. 3.

<sup>3</sup> - - Ibrahim Suleiman, *Principles of Constitutional Law: A Brief Study of Constitutional Law and Political Systems*, The National Centre for Legal Publications Cairo, First Edition 2015, P. 19.

<sup>4</sup> - Nazih Raad, *General Constitutional Law*, Modern Book Foundation, First Edition 2011, P. 5.

<sup>5</sup> - Ali Hanoudi, *The General Theory of Constitutional Law*, Tetouan, First Edition 2015, P. 214.

the system of Government and the functioning of its authorities<sup>6</sup>, these rules constitute the so-called constitution, that is, the set of basic legal rules embodied in an official document issued by the State<sup>7</sup>, therefore, it accepts the amendment and the abolition at all times by laying down the basic rules of the state in accordance with their political, economic and social conditions prevailing at the time they were promulgated. There is no doubt that these conditions are evolving, which necessitates amending the constitutional rules so that they conform to the changes that have occurred in the general conditions of the state<sup>8</sup>.

Since each society has its own "Ideology" in which the political system of this society is determined, there is a difference in the systems of Government from one country to another, depending on their respective circumstances and the different ideologies between them<sup>9</sup>, and the multiplicity of political systems, and the possibility of development sometimes in a way beyond its basic controls<sup>10</sup>, constitutional law is no longer confined to the study of the constitutional document, but it also includes the study of various contemporary political systems and their constitutional problems, and shows the solutions that each one takes, hence it became the study of constitutional law is relevant, and is related to the study of political systems, for that the constitutional order is of dual importance at both the legal and political levels<sup>11</sup>, as it has great importance at the researchers in both fields of political studies and constitutional studies.

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<sup>6</sup> - Ibrahim Abdel Aziz Sheha, General Constitutional Principles, Knowledge Alexandria, 2006, P. 25.

<sup>7</sup> - Taher Zawakri, useful in constitutional law, House of Science for publication and distribution, 2011, P. 55.

<sup>8</sup> - Subhollah Gazi, Constitutional Law, First Edition 2015-2016, P. 55.

<sup>9</sup> - Haj Qassim Mohammed, op. Cit, P. 3.

<sup>10</sup> - Salah Bishri, Constitutional Law and Political Institutions: General Theory, New knowledge Press Rabat, 2014, P 184.

<sup>11</sup> - Haj Qassim Mohammed, op .Cit, P. 3.

And the interest of the academic and political elites on the subject of constitutional reform is legitimate because constitutional space is the only natural space for any democratic practice, for that the philosophy of law and the sociology of law firmly assert that the constitutional text is not an innocent text, but it is one of the powerful tools and mechanisms to resolve political, economic, and religious conflicts<sup>12</sup>, it also shows the philosophical and ideological basis of the system of Government within the state<sup>13</sup>, and the circumstances and conditions of each State during the adoption of a new Constitution, determine the way in which it governs its status<sup>14</sup>.

For more than eight years, the Arab world has been undergoing profound political and social transformations, these changes have been reflected in a number of popular revolutions and popular uprisings organized by a number of Arab countries such as Tunisia, Egypt, Libya, Algeria, Yemen and Syria, the mass movements in these countries are demanding wide-ranging political reforms, and sometimes by changing regimes in these countries<sup>15</sup>, because the rulers of these regimes have consumed the decades of modernity and freedom and human rights while maintaining the character of authoritarian and coercion legitimate<sup>16</sup>.

Finally, the Arab peoples wanted, and the revolution decided on decades of political oppression, social oppression and economic destitution, the

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<sup>12</sup> - Naguib Al Hajjawi, Interim Constitution and Constitutional Building, Moroccan Association of Constitutional Law, New knowledge Press, 2011, P. 9.

<sup>13</sup> - Salihah Bouakkata, Respect for the Constitution Introduction from the entrances to administrative reform, Moroccan Journal of Legal, Political and Economic Studies, No. 3, December 2017, P. 16.

<sup>14</sup> - Omar El Assri, Public Law and Political Institutions in Morocco, House Abi Burqaq for Printing and Publishing, 2nd edition November 2011, P. 47.

<sup>15</sup> - Bahaauddin Makkawi, The Democratic Transition in the Arab World: Challenges and Future Prospects, A Series of Constitutional and Political Studies, Journal of Legal Sciences, The series of constitutional and political studies, Al Omnia Press Rabat, No. 5, 2016, P. 186.

<sup>16</sup> - Nur Al Din Jalal, "Political Consensus": or the exercise of "authoritarianism" in another way (constitutional reforms between stereotyping and adaptation and the crisis of political representation, Journal of Point of View, No. 50, 2011, P. 31.

Arab street revolted, and was explicitly exposed to the overthrow of regimes and the overthrow of tyranny<sup>17</sup>.

Given the uniqueness of the Arab Spring and its momentum, it formed a school whose influence effected prospects throughout the Arab world and inspired young people who were angry at their countries' economic and social policies in Europe, America and elsewhere<sup>18</sup>.

The revolution in the countries of the Arab Spring began to define itself as moving outside the Constitution<sup>19</sup>, the people of Tunisia were the initiators of the spring of democracy in the Arab world and the awakening of peoples to demand freedom and dignity<sup>20</sup>, after the Tunisian martyr Bouazizi<sup>21</sup> burned his body, the fire broke out in the wild, and the fire spread to almost the entire Arab world<sup>22</sup>, the Internet played a key role in helping to fuel democratic uprisings<sup>23</sup>, although the situation varies from country to country, the nature and degree of engagement of each country vary<sup>24</sup>, this situation can be explained by a comprehensive and

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<sup>17</sup> - Hind Oroub, Post-Revolution: Conditions for Reconstruction, Journal of Point of View, No 50, 2011, P. 46.

<sup>18</sup> - Farid Amdashou, The Arab Spring: Context, Implications and Dimensions, Journal of Point of View, No 55, Winter 2013, P. 49.

<sup>19</sup> - Hassan Tariq, The New Arab Constitution: Questions of National Identity, Civil Society and Governance, Moroccan Journal of Public Policy, Special Issue 18, Fall 2015, P. 13.

<sup>20</sup> - Abdelali Hadi El-Din, The Political Context of the 2011 Constitution: From Presidential Monarchy to Parliamentary Monarchy, Arab and International Relations Forum, Constitutional Reform Experience in Morocco, First Edition 2015, P. 13.

<sup>21</sup> - Mohamed Bouazizi, a Tunisian youth born on 29 March 1984 and died on 4 January 2011, set fire to himself in front of the municipality headquarters of Sidi Bouzid on Friday, 17 December 2010, in protest at the confiscation of municipal authorities in the city of Sidi Bouzid for a car that he used for selling vegetables and fruits to earn his living, he died 18 days after setting fire to his body.

<sup>22</sup> - Abdullatif Hosny, Movement of 20 February in Morocco: Roots-Track-Horizons, Journal of Point of View, No 50, 2011, P. 4.

<sup>23</sup> - Hussein Majdoubi, The Critical Role of Media Communication in the Arab Democratic Revolutions, Journal of Point of View, No 49, 2011, P. 46.

<sup>24</sup> - Naguib Bouderbala, The Tunisian Revolution, Journal of Point of View, No 49, Summer 2011, P. 48.

total absence of a modern state model based on democracy and the authority of institutions<sup>25</sup>.

These revolutionary movements surprised the rulers and political observers, and even surprised the world's most powerful intelligence services in their performance and results, these devices believed until the fall of these regimes that they can control and adjust the situation in their countries.

However, despite the surprise of all these events, it can be said that the call for democratic transformation and the extension of freedoms were not born of the moment, as liberal and democratic ideas have been accumulating for nearly a century and reflected these liberal ideas clearly in the writings of Jamal Eddin Alafeghani<sup>26</sup> and Abdul Rahman Al-Kawakibi<sup>27</sup> and Mohammed Abdo<sup>28</sup> and Rafea Rafie Tahtawi<sup>29</sup> and Qasim Amin<sup>30</sup>, and other Arab and Muslim thinkers who, despite their differences in orientation and in the ways of thinking, have been calling

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<sup>25</sup> - Idris Jandari, The Labor of the Transformation towards Democracy in the Arab World: Revolutions in the Service of a Promising Arab Future, Journal of Point of View, No 50, 2011, P. 34.

<sup>26</sup> - Mohamed Gamal El Din Ben Saied Saftar Al Hussein al-Afghani Assad Abadi, he was born in 1839 / 1254, his death was on Tuesday 9 the March 1897, one of the prominent figures in the Egyptian Renaissance and of the Islamic thought of renewal.

<sup>27</sup> - Abdul Rahman Ahmad Bahai Mohammed Masoud Al Kawakibi, born on 23 Shawwal 1271 , corresponding to July 9, 1855 in Aleppo, died in Cairo acause of the poisoned coffee in his cup on Friday, June 13, 1902, and he one of the pioneers of the Arab Renaissance and its thinkers in the 19th century, and one of the founders of Arab nationalist thought, he was famous for his book "The tyrannical nature and the wrestlers of slavery", one of the most important Arabic books of the 19th century which discusses the phenomenon of political tyranny.

<sup>28</sup> - Mohammed bin Abdo bin Hassan Khair Allah, was born in 1849 in the village of Mahalla Nasr Shubrakhit in the province of the lake, and died in Alexandria in 1905, a scholar of Islamic jurisprudence, is one of the symbols of renewal in Islamic jurisprudence and a proponent of revival and reform in the Arab and Islamic world, after meeting with his teacher Jamal al-Din al-Afghani, he contributed to the establishment of an Islamic intellectual movement in the late 19th and early 20th centuries Aimed at eliminating the intellectual and cultural stalemate and reviving the Islamic Ummah to keep Requirements of present time.

<sup>29</sup> - Rafea Rafie Al Tahtawi, of the leaders of the scientific renaissance in Egypt under the reign of Mohammed Ali Pasha, he was born on 15 October 1801 and died in 1290 / 1873, in the city of Tahta, one of the cities of Sohag governorate in Upper Egypt, his relation is related to Hussein al Sabat.

<sup>30</sup> - Qasim Mohammed Amin, born in the town of Tora in Egypt on December 1, 1863 and died in Cairo on April 23, 1908, writer and Egyptian social reformer and one of the founders of the national movement in Egypt and Cairo University is also the pioneer of the women's liberation movement.



for freedom from the neck of ruling rulers and harmful social customs that have restricted societies and stopped their development in all fields<sup>31</sup>, the transition to democracy is now an inevitable bet, if political regimes do not seek to achieve it in partnership with their peoples, historical determinism is capable of achieving it, but through uncalculated surgical consequences<sup>32</sup>, and the constitutional transformation of the Arab world, which began with the so-called Arab Spring, was considered by many researchers as a result of constitutional development in its historical context<sup>33</sup>.

Today, the issues of identity and the problems of the civil state and the related questions regarding the separation of religion from the state and the issues of freedoms have become the biggest address in the debates of the Arab political scene in the time that followed the explosions of 2011<sup>34</sup>.

It is known that in the wake of every deep social crisis, a new constitution is born, which aims at correcting the imbalances and restoring balance to its nature, it also aims at creating the conditions for the integrity of political life and ensuring the regularity of its elements<sup>35</sup>, in many cases, the writing of constitutions has been associated with major revolutions, or the result of radical political and social transformations through which the prevailing social order has shifted from a moral peace to another, old laws can no longer absorb their contents, thus, the

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<sup>31</sup> - Bahaauddin Makkawi, op. Cit, P 187.

<sup>32</sup> - Muhammad Al-Baraka, Power and Dominance: The Attitudes of Authoritarianism in Governance (Awareness Before the Quest), Journal of Point of View, No 50, 2011, P. 38.

<sup>33</sup> - Abdel Salam Mohamed Alghanami, Constitutional Law: General Theory and Principles, Gulf Press Tetouan, 3rd Edition 2013, P. 3.

<sup>34</sup> - Kamal Abdel Latif, Constitutional Controversy in the Arabic Current, Moroccan Journal of Public Policy, Special Issue 18, Fall 2015, P. 9.

<sup>35</sup> - Amhamed Maleki, The Great Constitutional Systems, the National Printing Press Marrakech, First Edition, 2004, P. 140.

Constitution has always been viewed as a legal codification of new cases of awareness involving politics, culture and economics, these cases have evolved on the margins of the prevailing laws and against them, or is an attempt to identify areas that accommodate the human act within the reconciling between freedom in the absolute humanity and the possibilities of social and political transformation, from this point of view, the Constitution not only legislates laws, but also proclaims the birth of a new civilized state, if it does not break with the past, it will change the nature of the view to it<sup>36</sup>.

Morocco shares with the rest of the Arab world the basic characteristics and objective and subjective factors that led to the explosion of revolutionary processes<sup>37</sup>, Morocco has lived through various stages of its history, influenced by various global developments, its decision makers could not ignore the international transformations, as well as the internal developments that affected the various components of Moroccan society, one aspect of this development, the adoption by political actors of certain meaningful words such as, dialogue, compromise, constitutional consensus, constitutional transition, and other concepts, which have become a sign of a desire to achieve real political change and stabilize the foundations of a new political equilibrium, as well as awareness of the need to overcome the differences of the past, which had negative results at all levels, including the constitutional document, where Moroccans who launched the beginning of the twentieth century with the demand for reform and the constitution, have ended the same

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<sup>36</sup> - Said Benkrad, The Constitution of 2011: The Phenomenon of Text and Downloads, Al Nahda Magazine, No. 3 and 4, Fall 2012 - Spring 2013, P. 183.

<sup>37</sup> - Abdullah Al Hareef, Revolutionary Processes in the Arab World and the Situation in Morocco, Journal of Liberation, No 1, Winter 2014, P. 11.

slogan<sup>38</sup>, knowing that the difference between the two dates is supposed to be measured, logically the development of ideas, society, change of values, and the transformation of the world<sup>39</sup>, throughout the 60 years that followed independence, the demand for constitutional reform remained at the forefront of the demands of the various political forces, the constitutional issue became the basis of divergence and deference, convergence and consensus, especially in the 1990s, when the constitutional reform discourse became common among the various components of the Moroccan political field, with varying degrees of absorption and expression<sup>40</sup>.

Since the time of Moulay Abdul Aziz<sup>41</sup> and Moulay Abdul Hafeez<sup>42</sup> a reform movement was formed, led by a number of intellectuals, who demanded a number of political, economic, social and educational reforms, the idea evolved to the point of demanding a constitution for the country, some of them presented projects in this regard, including the draft constitution submitted by Haj Ali Zneibar Al Salawi<sup>43</sup>, and another project submitted by Sheikh Abdul Karim Murad<sup>44</sup>, and another of the

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<sup>38</sup> - Shafiq Boukerin, Political Reform and Democratic Transition in Morocco in Light of the 2011 Constitution, Moroccan Journal of Local Administration and Development, New knowledge Press, No. 116, May-June 2014, P. 169.

<sup>39</sup> - Amhamed Maleki, Brief in constitutional law and political institutions, National Printing Marrakech, First Edition 2001, P. 333.

<sup>40</sup> - Shafiq Boukerin, op. Cit, P. 169.

<sup>41</sup> - Moulay Abdelaziz, born in 1878 in Fez and died in 1943, is the 18th Sultan of Morocco from the Alawites ruled between 1894-1908.

<sup>42</sup> - Moulay Abdel Hafeez was born on 24 February 1876 in Fez and died on April 4, 1937 in Agel in Libya, the Sultan of Morocco from 1908 until 1912, after the abdication of the sovereignty of Morocco in the Treaty of Fez, he abdicated in favor of his brother Yusuf bin Hassan.

<sup>43</sup> - Haj Ali bin Ahmed Zneibar Salawi, Born in the city of Salé in 1260/1843, and died in 1332 / 1914, he was a jurist, reformer and poet, he dealt with trade in Salé and then Fez and from there he went to Alexandria in 1296 and remained a resident of the Egyptian country for twenty-four years, when he returned to Morocco in 1321/1904 settled in Tangier, and took care of printing and publishing newspapers and books, and then took a political activity against foreign attempts to seize Morocco, he presented a draft constitution entitled "Preservation of independence and elimination of occupation".

<sup>44</sup> - Abdul Karim Murad Alatari, died on the second of the first spring 1428, a Senior Islamic scholar and a Professor at the Islamic University.

preparation Moroccan Association of the city of Fez referred to by both Alal Fassi<sup>45</sup> and Mohamed El Fassi<sup>46</sup>.

If the Pledge of allegiance of Moulay Abdel Haffeez stipulated the elimination of foreign interference and the maintenance of independence, and to carry out a political reform of the nation towards a constitutional system, the draft Constitution of 1908, which was published in the newspaper of the tongue of Morocco in four issues matter the internal law of the forum Shura, Reforms that seek equality among citizens, the prevention of illiteracy in public service, the prevention of torture and forced labor, these constitutional ideas came in the context of the Western constitutional tide influenced by the objectives of the French Revolution and the constitutional movement that spread in the Islamic Caliphate country<sup>47</sup>, which was aimed at codifying the constitutions of encircling absolute power and reducing its arbitrariness, with the aim of building a state of law based on the rules and rules of the exercise of governance and guarantee freedoms<sup>48</sup>.

Morocco, which did not know any significant political development before the protection, In which the Authority is based on regular and elected popular institutions, did not know also in the era of protection such a provision<sup>49</sup>, during the period of protection, the resistance for

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<sup>45</sup> - Alal bin Abdul Wahid bin Abdul Salam bin Alal Fassi Fihri, born on 8 Muharram 1328 / January 20, 1910 in Fez and died in 1394 / 1974 in Bucharest, politician and Moroccan writer, founder of the Istiqlal Party and leader of the Moroccan national movement, took over the Ministry of State and Islamic Affairs in 1961, and then resigned in 1963.

<sup>46</sup> - Mohamed El Fassi, born in 1908 in Fez and died 1991, a Moroccan politician, writer and researcher, Mohamed El Fassi is among the signatories of the January 11 document to demand the independence of Morocco.

<sup>47</sup> - Ahmad Hadrani, Comparative constitutional systems: An approach to International and Morocco experiences, Press and paperwork Sijilmasa Meknes, First Edition 2015, P. 116-117.

<sup>48</sup> - Ahmad Hadrani, Constitutional Law and Political Institutions, Press and paperwork Sijilmasa Meknes, Edition 2005, P. 103.

<sup>49</sup> - Abdel Karim Ghalab, Constitutional and Parliamentary Development in Morocco, 1908-1992, New Success Press, Casablanca, Third Edition 1993, P. 5.

independence, which brought together both the palace and the national movement, made the dispute between the two sides about the nature of the Government and the political system that Morocco would follow after independence, delayed to a while.

But after the independence of Morocco, the conflict soon broke out between the components of the national movement, about the nature of the political system, the state of independence, on the one hand, and between these components and Monarchy, on the other, between the demands of an elected council, entrusted with the task of drafting the constitution, and a defender of the constitution by the king, as the owner of national sovereignty.

Indeed, this struggle over constituent authority, which postponed the establishment of the first constitution after the independence of Morocco to more than 5 years, it was hiding behind him a real struggle, about two visions of the Monarchy in Morocco, the Royal conception of Monarchy that it prevails and governs, and visions the national movement (Istiqlal Party, Shura and Independence Party, Communist Party and then the National Union of Popular Forces), which aspired to establish Parliamentary Monarchy where the king prevails and do not governs, but this perception quickly evaporated after the success of the Monarchy in the establishment of a constitutional system that enshrines its religious and historical legitimacy, through its constitution is of unrestricted Monarchy in which the king prevails and governs<sup>50</sup>.

If Morocco was one of the Arab countries that, after gaining political independence, was able to establish a political system based on a

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<sup>50</sup> - Said Khomri, *The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco*, Political Booklets, New Success Press, First Edition 2012, P. 52-53.

constitution and constitutional institutions, since the establishment of this system, these institutions have developed an important development from their interaction with the evolution of political life, and during the period of time between the beginning of the country's independence and the present time, rich in constitutional and political mix, the evolution of Moroccan constitutional life has two elements, one of which is permanent and concerns traditional institutions inspired by Islamic heritage and 12 centuries of the Sultan's rule, and the other variable, and is meant by modern institutions derived from the Moroccan liberal democracy, and if the beginning of the era of independence (1956-1962) was a decisive moment during which the distribution of roles among the political actors, the Royal institution was unique role of a special character finds its reference in the Principality of the Faithful, in the era of the Caliph and the Sultan<sup>51</sup>.

After the exit from colonialism, the Monarchy sought to retain its position and authority, so it entered into a struggle to monitor the political system immediately after independence<sup>52</sup>, Prior to the establishment of the constitutional rules himself, Hassan II<sup>53</sup> will pave the way, on a symbolic initiative during which he acted as the holder of constituent authority, where he issued the basic Law of the Kingdom in June 1961, which, although not formally up to the level of a constitution, it is a constitution, if it is viewed in a material sense, since the rules it guarantees are not

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<sup>51</sup> - Mokhtar Motai, Constitutional Law and Contemporary Political Systems, Imstiten Press Rabat, First Edition 2016, P. 251-252.

<sup>52</sup> - Rkia El Mossadeq, Les forces politiques face au probleme de la democratisation du regime au Maroc, these pour le doctorate d'Etat en science politique, Université Val de Marne-Paris XII, Juin 1981, P. 63.

<sup>53</sup> - Hassan II bin Mohammed bin Yusuf bin Hassan bin Mohammed bin Abdul Rahman bin Hisham bin Mohammed bin Abdullah El Khatib bin Ismail bin Sharif bin Ali Alawi, born on Tuesday 1 Safar 1348 / July 9, 1929 and died Friday, 9 Rabie II in 1420 / 23 July 1999, King of Morocco, whose origins are the Alawi family, he governed Morocco between 1961 and 1999, along with his father King Mohammed V contributed to the liberation of Morocco from the French occupation.

rules of passing events, but implicitly aimed at the legal framework of the Moroccan State, as the main source of all subsequent legal production<sup>54</sup>.

Thus, the Moroccan constitutional system has developed significantly since the independence of the Moroccan state from French colonization in 1956, Morocco witnessed its first constitutional experiment in 1962, the 1962 constitution was accompanied by a transition period of about 6 years, what distinguishes this stage is the struggle over political power between two political forces that were a symbol of national and qualified to run public affairs, and more capable and efficient to crystallize a general conception of the new constitutional institutions.

The Royal institution with its strong political status and its religious and traditional legitimacy, which will be added to it after the return of the Sultan from exile legitimacy of the struggle for the exercise of national sovereignty and its embodiment, and the Istiqlal Party with its struggle legacy and its continued investment of "national ideology" or its enormous political power as it brings together all the Moroccan patriots.

These two political forces had a different conception of the nature of the political system on which the national state should be based, the Royal institution was betting on a constitutional Monarchy in which it prevails the king who which governing , while the ambition of the Istiqlal Party was to establish a constitutional Monarchy, an ambition that explained the Party's desire to hold political power And thus limit the powers of the King, in the framework of awareness that access to power is entrusted to the Royal Institution and that the development of its place and location of the people must pass through the social and historical center of this

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<sup>54</sup> - Said Khomri, *The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco*, op. Cit, P 54.

institution<sup>55</sup>, the Istiqlal Party believed in the importance of its role in the national movement and felt that it represented the overwhelming majority of the Moroccan people, it called for the establishment of a harmonious Government headed by an person from Istiqlal Party, the majority of whom were from Istiqlal Party, the party later justified its participation in a Government headed by an independent figure to meet the king's appeal.<sup>56</sup>

Under the 1962 constitutional document, Morocco moved from a political system based on Monarchy regulated by the customs of the Makhzen<sup>57</sup> and the provisions of Islamic law to Monarchy regulated by a constitutional law through a written constitutional document presented by the king to the popular referendum, Morocco has also known successive constitutional experiences, the 1970 constitution, the 1972 constitution, the 1992 Constitution, the 1996 Constitution, and the 2011 Constitution, however, the continuation of these constitutional experiments had no effect on the structure of the Moroccan constitutional system, where the status of the Royal institution remained at the heart of constitutional engineering in Morocco<sup>58</sup>.

From 1962 to today, Morocco has witnessed six constitutional experiences, one of which is related to one basic law with the same constants and with the same determinants of constitutional engineering, these are the determinants of the Sultan's institution based on principles derived from the history of Islamic political thought, then the geopolitical

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<sup>55</sup> - Abd Al Malik Al Wazzani/ Husain Aabushi, Comparative Constitutional Systems, the National Printing Press Marrakech, First Edition 2015, P 155-156.

<sup>56</sup> - Malika Sroukh, Constitutional Law, New Success Press, Casablanca, 1998, P 34-35.

<sup>57</sup> - Makhzen, is the governing institution in Morocco and in pre-1957 Tunisia, centered on the king and consisting of royal notables, top-ranking military personnel, landowners, security service bosses, civil servants and other well-connected members of the establishment. The term "Makhzen" is also popularly used in Morocco as a word meaning "State" or "Government".

<sup>58</sup> - Abd Al Malik Al Wazzani/ Husain Aabushi, op. Cit, P. 156.



location of Morocco, which is dominated by history and geography by being a link between Europe and Africa and overlooking the Mediterranean region, as well as the European influences which is subject to it, the political behavior in Morocco contains in large part the components derived from the Arab-Islamic heritage Amazigh<sup>59</sup>.

In the constitutional life of the Kingdom of Morocco over half a century, its various basic laws reflected the balance of power of the struggle of the Royal institution and the parties of the national movement and his desire to prevail over the Royal perception of the rule based on the Monarchy of semi-presidential where the king reigns and governs, on the grounds that the Moroccan throne is not an empty couch, but a Monarchy that is present throughout in all of the Moroccan political body<sup>60</sup>, despite the advent of the Moroccan political system of the constitutional era, there has been no decisive break with the historical and religious political heritage that characterized the system of Government in pre-1962 Morocco, the borrowing of modern rules and institutions does not necessarily mean cutting off with the functions of the Royal System, nor does it presage the birth of a modern political system, but until 2011 it continue working traditional rules within modern spaces empty of the idea established for its<sup>61</sup>.

And on this basis adopted the traditional thesis for decades, to emphasize the priority of religious legitimacy and the king as Leader of the Faithful derives his functions, not his authority or powers from the Quran and Sunnah, and not to consider the Constitution as a state or

<sup>59</sup>- Mokhtar Motai, Constitutional Law and Contemporary Political Systems, op. Cit, P. 253-254.

<sup>60</sup> - Mohamed Darif, Contemporary Moroccan Political Discourse, Socio-Political Approach, East Africa, 1991, P. 31.

<sup>61</sup> - Mohammed Atrakin, The Authority and Legitimacy in House of the Islam: A Study of the Mechanisms and Rules of Islamic Public Law, New Success Press, Casablanca, First Edition 2006, P. 87.

cut with the legal and political system of the country, and the Royal definition of the constitution as a renewal of allegiance and the sacred covenant between the throne and the people and that it is only a framework for the political system and the path of authority, and a means to serve the Royal policy can be modified whenever necessary so as not to become a barrier to Royal policy<sup>62</sup>.

On this basis, Chapter 19 of the Moroccan Constitutions (1962-1996) was a theory of governance, the King was a key actor in the equation of power in Morocco<sup>63</sup>, the Principality of the Faithful makes the king enjoy an additional support that guarantees him religious legitimacy as he is based on the matters of the believing community which are, in terms of legitimacy, a political group that the state consist from its<sup>64</sup>, based on his lofty religious function, Leader of the Faithful is himself a patron of consensus among individuals and groups, forming a Muslim community that links its components with a firm belief in monotheism, therefore, Leader of the Faithful enjoys unlimited powers, because they are practiced according to the Qur'an and Sunnah<sup>65</sup>, which are often the subject of loose interpretations, which makes the function of the Principality of the Faithful, create a field of political work that is no less than the constitutional field, whose boundaries are determined by interpretation<sup>66</sup>.

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<sup>62</sup> - Mohamed Mutassim, *The Moroccan Constitutional Political System*, Isis Publishing House Casablanca, First Edition March 1992, P. 80.

<sup>63</sup> - Mohammed Al Ghali, the dialectical constant and transformed in the 2011 Constitution in the light of reading the context and the pillars and objectives, *Journal of Law, New knowledge Press Rabat, Special Numbers Series*, No. 5, May 2012, P. 56.

<sup>64</sup> - Mohammed Al Tauzi, *Royal and Political Islam in Morocco*, New Success Press, Casablanca, March 2001, P. 85.

<sup>65</sup> - Idris Jandari, *The Challenge of Political Modernization in Morocco and the Challenges of the Royal Legacy*, *Journal of Point of View*, No. 52, Spring 2012, P. 17.

<sup>66</sup> - Mohammed Al Tauzi, *op. Cit*, P. 86.

The constitutional document has passed as a frame of reference for the authorities and the system of Government several stations after independence, most notably the stage of 1962 and the stage of 1970, where the components of the National Movement opposed him with a speech that was characterized by confrontations, reservations, boycotts, or rejection, the debate revolves around different theses represented in the Constituent Assembly, and bilateral the constitution granted and the representative constitution, and on the separation between the authorities and the relationship of the King to the Government and the judiciary, and recorded several differences in the positions of national parties, but the common among them that it did not follow the strategy of actors in the state apparatus.

The requirement to amend the 1972 constitution also constituted a necessity and a political slogan that distinguished the stage, But what distinguished the constitutions during its course according to some components of the opposition is the central rigor that dominated the account of the legislative institution, which had left the representatives of the nation only a marginal role, which brought with it the need to reconsider the distribution the authorities.

In fact, the political struggle over the drafting of the constitution and its content has produced violence at the level of the discourse, making some opposition figures consider that the state does not want the referendum only a hint of artificial democracy or popularity on the constitution granted from him, which does not want to organize or govern the country without it.

The controversy continued and intensified around the 1992 Constitution, where the parties of the democratic bloc (except for progress and socialism) will issue a charter in Rabat in May, setting out their position on political participation and its rejection of the constitution, and by demanding the establishment of a democratic Parliamentary constitutional and the strengthening of the credibility of the State of law and institutions<sup>67</sup>.

The constitutional requirements of the pre-1992 Constitution were granted to the King the absolute right to appoint the Prime Minister and the other Ministers, without being restricted in this regard by consulting with any party or that the proposal to choose the members of the Government can be issued from any party, and also did not require in this regard that the Prime Minister in particular belong to the Parliamentary majority, and was not required to be a member of the Parliament, and this appointment was performed by a "Royal Dahir"<sup>68</sup> without signature from the Prime Minister.

The King had absolute authority in the selection of members of the Government, where the latter are considered composed and legally established, and can then exercise its functions once appointed and performing the oath front the King, without any correlation between the appointment and the need to obtain the confidence of Parliament, although such confidence is necessary for the survival of the Government in performing its functions.

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<sup>67</sup> - Mustafa Ghari/Fouad Idrissi Ait Wali/ Abdel Aziz Rady, The New Constitution 2011: A Critical Document for the Democratic Transition in Morocco?, Proceedings of the National Seminar organized on 29 November 2012 by the Research Group on Governance and Public Policies, Faculty of Legal, Economic and Social Sciences, Series of Conferences and Symposia, National Printing Press and Marrakech, No. 40, First Edition 2013, P. 30-31.

<sup>68</sup> - Dahir, Royal Dahir is a decree issued by the King of Morocco as supreme authority and supreme representative of the nation.

The procedure for appointing the Government in the 1992 and 1992 Constitution has changed,

If the question of the choice of the Prime Minister according to Chapter 24 is due to the King, this appointment shall remain suspended until the completion of the constitutional procedures in full, as stipulated in Chapter 60 which in turn refers to the requirements of Chapter 75 of the constitution of 1996<sup>69</sup>.

The dismissal of the Government in the previous constitutions did not produce the same jurisprudential controversy that resulted from the procedure related to appointment, if the existence of the Government in constitutional and practical terms is linked to the Royal will as provided for in Chapter 24 of the 1996 Constitution, the King has always had the right to put an end to the constitutional functioning of the Government, the second and third paragraphs of Chapter 24 were respectively: "The King may exempt members of the Government from their duties" and "exempt the Government on his own initiative or on the basis of her resignation", without the King being obliged to state the reason for his decision if he proceeded to dismiss the entire Government or one of the Ministers.

Thus, the only restriction from the constitutional point of view, which limits the discretion of the king in this direction, is the case of the Parliament's vote on a motion of censure to bring down the Government, even if they enjoy the trust of the king, because the Government is also accountable to the Parliament, which has given it confidence and he has

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<sup>69</sup> - Youssef Ashhashah, The King's Relationship to the Government through the Appointment and Exemption Procedure in light of the 2011 Constitution, Al Manara Journal for Legal and Administrative Studies, No. 14, July 2016, P. 257-258.

the right to remove the confidence he has given the Government if he considers that the presence of the latter is no longer desirable<sup>70</sup>.

The 2011 Moroccan constitution came at the height of the popular protests of Arab and North African countries that focused their demands on fighting corruption and bribery, demanding transparency and accountability, and linking the exercise of authority and public responsibility with accountability<sup>71</sup>, the February 20 Movement Despite the social turmoil caused by the economic situation in Morocco, its bomber is what the Arab world knows of transformations<sup>72</sup>.

Morocco witnessed an unprecedented movement, and thousands of citizens came out to express their demands in which the political, social, economic and cultural mix was mixed. The public start of this was on February 20, 2011<sup>73</sup>, and in the same context for the desired change, the movement's banners demanded that it begin establishing and establishing a modern Parliamentary Monarchy system<sup>74</sup>, and the involvement of the people in the drafting of the Constitution, appears in the form of a contract between the ruler on the one hand and the people on the other<sup>75</sup>, therefore, the re-democratization of the Moroccan constitution was an urgent demand, by reshaping the relationship between the authorities on a just and democratic basis, and by establishing a legitimate, rational and civil constitutional legitimacy, a

<sup>70</sup> - Youssef Ashhashah, op. Cit, P. 262.

<sup>71</sup> - Ahmed Agaamoun, Public utility in the Moroccan Constitution of 2011, Series of Constitutional and Political Studies, Journal of Legal Sciences, Al Omnia Press, Rabat, No. 5, 2016, P. 7.

<sup>72</sup> - Mustafa Eisan, The Dynamics of Moroccan Protests: February 20 Model, Journal Point of View, No. 53, Summer 2012, P. 3.

<sup>73</sup> - Nabil Al Andalusi, February 20: Reading the path of the idea of "Facebook" has turned into an effective and influential movement (reference bases and contexts of mobility), Journal of Point of View, No. 55, Winter 2013, P. 44.

<sup>74</sup> - Farid Lamarini, "The Movement of 20 February" and the Scene of Change in Morocco: A Socio-Political Attempt, Journal of Point of View, No. 49, Summer 2011, P. 11.

<sup>75</sup> - - Abdul Karim Alwan, Political Systems and Constitutional Law, House of Culture for Publishing and Distribution, First Edition 2010, P. 259.

state of truth and law capable of ensuring democratic constitutional and political exercise can be established<sup>76</sup>.

As a response from Morocco to this evolving and accelerating climate<sup>77</sup>, it was very natural that the regime, under pressure, resorted to tribal precautionary measures to avoid falling into the scourge of this revolutionary tide<sup>78</sup>, after the protest movement of the Facebook sites, which resulted on 20 February, which covered the most important cities of the Kingdom of Morocco peacefully, after the end of the advisory Committee of the advanced region of its work entrusted to it<sup>79</sup>, the March 9, 2011 speech appeared to respond to the demands of the 20 February Youth Movement, Where the King Mohammed VI<sup>80</sup> announced his will to carry out fundamental constitutional reforms that concern the structure of power in the Moroccan political and constitutional system, With the active participation of parties, trade unions, youth associations, civil society organizations and think tanks<sup>81</sup>, and talked about a constitutional amendment that touches on some of the provisions and Texts of the 1996 Constitution, which lasted for nearly a decade and a half of time<sup>82</sup>.

<sup>76</sup> - Naguib Al Hajjawi, Interim Constitution and Constitutional Building, op. Cit, P. 9.

<sup>77</sup> - Younis Malih, The Path of Building Constitutional Institutions: Outcome and Bets, Journal of Tracts in Thought, Politics and Economics, New Success Press, Casablanca, No. 39-40, 2016, P. 11.

<sup>78</sup> - Othman Al Zayani, Party Memoirs and the Constitution of 2011: A Study of Intersections and Conflicts and Building Partisan Political Positions, Journal of Point of View, No. 50, 2011, P. 15.

<sup>79</sup> - Hakim Tuzani, The question of democratic transition in the context of the requirements of the Moroccan constitutional document for 2011, Journal of Law, New knowledge Press, Special Numbers Series, No. 5, May 2012, P. 148.

<sup>80</sup> - Mohammad ibn al-Hasan ibn Mohammad ibn Yusuf ibn al-Hasan bin Mohammed bin Abdul Rahman bin Hisham bin Mohammed bin Abdullah El khatib bin Ismail bin Moulay Ali Al Sharif al-'Alawi, born on August 21, 1963, the twenty-third king of the Alawites, the legal pledge was made to him on Friday, 23 July 1999 following the death of his father, King Hassan II.

<sup>81</sup> - Said Khomri, The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco, op. Cit, P. 198.

<sup>82</sup> - Abdel Majid Eithesein, The Constitution of 2011: Or When Change Changes the Continuity, Journal of Point of View, No. 50, 2011, P. 22.

The Royal discourse included strong signals that constitute a strong impetus for democracy<sup>83</sup>, the method of constitutional reform announced by the king pragmatism took the form of direct communication and partnership rather than the behavior of written memoirs as in the 1990s<sup>84</sup>, reactions to the monarchical discourse formed in the direction of consensus around him exceeded all expectations, including (perhaps) expectations of the Monarchy<sup>85</sup>.

The March 9 Royal speech came with a profound constitutional review of the September 13, 1996 constitution as a response to the demands of the people and expressed through youth protesting under his awareness of the importance of the stage and its historical loads, this amendment, which tried to go beyond the constitutional approach to political life, which printed 49 years of the constitution of the Kingdom, and the healing of the constitutional rift that has undermined the rigidity of the rules of political movement for 15 years.

So that the constitutional rules at the core of their data as a logical reflection of the political, social and economic conditions of the political community intended to constitution, as the conditions of this society are not governed by continuous development and change, it has become necessary for the Moroccan constitutional rules to keep up with the various developments that accompany the political community by making the necessary amendments.

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<sup>83</sup> - Mohamed Said Bennani, Constitution of 2011: Synthetic reading through some newspapers (9 March 2011 - 1 July 2011), 2012, P. 43.

<sup>84</sup> - Mohamed Kolverni, The Representations of Constitutional Reform in Morocco, Proceedings of the National Seminar organized on 29 November 2012, The New Constitution: A Fundamental Document of Democratic Transition in Morocco, Series of Conferences and Symposia, National Printing and paperwork, First Edition 2013, P. 52.

<sup>85</sup> - Rkia El Mossadeq, Sub-constitutive or original constituent authority?, The new Moroccan constitution on the test of practice, Proceedings of the Symposium of 18-19 April 2013, Research Group on Constitutional Law and Political Science, Faculty of Legal, Economic and Social Sciences, Rabat, 2014, P. 23.



These amendments are the ones that tried to translate the provisions of the Royal speech of March 9, 2011, as a step ahead of the millions of protests planned for March 30, 2011<sup>86</sup>, through the creation of a political process parallel to the process of mobility of the street protest<sup>87</sup>, as he tried to reflect the forces in favor of Monarchy with popular support for the reforms expected in contrast to the violent change that has plagued other Arab regimes, these amendments, which resulted in a constitutional document that won the credibility of the Moroccan people by more than (98%).

However, the gaps of the constitutional document bear between its lines, deep problems, necessitating the need to explore the gaps, and decipher the codes required, to analyze some of the data and the secretion of some of its outputs<sup>88</sup>, the Constitution of 2011 did not constitute an absolute break with the previous constitutions, and thus constituted a shift in the context of the continuity of the Moroccan state, but in turn constituted a qualitative leap in the history of Moroccan constitution<sup>89</sup>.

The rise in the ceiling of demands announced during the revision of the 1996 Constitution has resulted in the transformation of Parliamentary Monarchy into a political demand for broad categories of representatives of the community mobility known to Morocco in early 2011, And then through the nature of the political presentation carried by the letter of 9 March 2011, to shift the level of public debate on the constitutional issue, from lower floor connected to the relationship of the two institutions: the Parliament and the Government, to a higher floor, linked to the

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<sup>86</sup> - Hakim Tuzani, op. Cit, P. 148.

<sup>87</sup> - Fouad Belhassan, From the Arab Spring to the Scorched Earth Policy, Journal of Point of View, No. 55, Winter 2013, P. 55.

<sup>88</sup> - Hakim Tuzani, op. Cit, P. 148.

<sup>89</sup> - Mohammed Al Ghali, op. Cit, P 55.

relationship within the executive itself, during the distribution of powers between the Monarchy and the Government<sup>90</sup>.

There is no doubt that the Engineering of Constitution 2011, has brought a new distribution, and a different balance, between the authorities of the Royal Institution on the one hand, and the authorities of the institutions emanating from the general suffrage, the Government and Parliament, on the other hand<sup>91</sup>, but this distribution does not reach the level of Parliamentary systems, since the powers of the King and the powers of the Head of Government are not of the same level<sup>92</sup>, like the previous constitutions, the 2011 Constitution enshrines the culture of unanimity, it affirms the supremacy of the Royal institution and its dominance over the constitutional and political structures through the ministerial council, as compared to the Government council, which is the highest representative institution emanating from the ballot box<sup>93</sup>.

The provisions of Chapter 47 of the Constitution provided for the appointment of the King to the Head of Government by the political party which won the elections of members of the council of representatives, on the basis of its results, and appoints members of the Government on the proposal of its President, the provisions of this Chapter shall be added to add new requirements than those provided for in Chapter 24 of the 1996 Constitution, the King may relieve one or more members of the Government of their duties after consultation with the Head of Government, the latter may also ask the King to exempt one or more

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<sup>90</sup> - Hassan Tariq, Constitution and Democracy: A Reading of the Structured Tensions of the 2011 Document, Public Dialogue Series, Tob Press, First Edition 2013, P. 23.

<sup>91</sup> - Michel Rousset, La constitution de 2011 n'a pas résolu tous les problèmes, interview, Marco hebdo, N 98 du 30 Juin ou 05 Juillet 2012, P. 20-21.

<sup>92</sup> - Mustapha Sehimy, Le changement c'est maintenant et demain, in Maroc hebdo, N 98, P 19.

<sup>93</sup> - Muhammad Fouad Al Ashouri, The Concept of Parliamentary Monarchy in the Moroccan Political System through the Constitution of 2011, Journal of Law, New knowledge Press Rabat, Special Numbers Series, No 5, May 2012, P. 95.

members of the Government on his or her own initiative or on their individual or collective resignations, lead resignation of the Head of Government to exempting the entire Government, and The outgoing Government continues its tasks, and running the current affairs until the formation of the new Government, it is not enough for a Royal appointment to take office, but it must take away the confidence of Parliament<sup>94</sup>.

Thus, the Royal appointment of the Head of Government in the light of the Constitution of July 2011, was contrary to previous constitutional and political experiments, under the Constitution, the King is not allowed to choose the Head of Government from technocratic figures who do not belong to political parties, Under Chapter 47 of the 2011 Constitution, in its first paragraph, the king must choose the Head of Government from the winning political party in the elections of the Council of Representatives and on the basis of their results, ie on the basis of political tendencies of the electorate<sup>95</sup>.

In addition to the appointment of the King to Head of Government and his appointment to its members on the proposal from Head of Government, the King, on his own initiative, after consultation with the Head of Government can to exempt one or more of Government members from their duties.

The resignation of the Head of Government also entails the exemption of the entire Government from their duties, the King's presidency of the

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<sup>94</sup> - Ahmad Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. Cit, P. 134-135.

<sup>95</sup> - Mustafa al Hameer, Royal institution: The fixed and the variable between constitutional 1996 and 2011, Master Thesis in Public Law, Hassan II University, Faculty of Legal, Social and Economic Sciences, Ain Al Shoq Casablanca, University Year 2012-2013, P. 16.

council of Ministers with its important powers, one of the most important aspects of the King's relationship with the Executive Authority, the king also has the right to review the deliberations of the council of Government<sup>96</sup>.

The Royal hegemony is reflected in the Ministerial Council in two main manifestations: First, the presidential nature of this Council, where the King presides over the Ministerial Council itself, not just its meetings, and second, by the limited role of ministers in decision-making within it, since the authority of the Government while in the ministerial council remains advisory only.

If the political practice under the 1992 and 1996 constitution defined the appointment of the Government of Abderrahmane Al Yusufi<sup>97</sup> as an institutional embodiment of the constitutional transformation that Morocco knew at the beginning 1990s, The appointment of Driss Jettou<sup>98</sup> as the first non-elected minister after the 2002 elections drew attention to the limits of transformation, perhaps this is what made the demand for the constitution of democratic methodology present in the background of the public dialogue, which Morocco knew after the speech of March 9, 2011, especially after addressing this speech to devote the appointment of the Prime Minister from the party, which won the elections of the council of representatives, to come the document of July 29, 2011 by clear, through the first paragraph of Chapter 47, that "the King appoints

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<sup>96</sup> - Hassan Tariq, Constitution and Democracy: A Reading of the Structured Tensions of the 2011 Document, op Cit, P. 28.

<sup>97</sup> - Abdul Rahman al Yusufi, born March 8, 1924 in Tangier, received a Bachelor's degree in law and a postgraduate diploma in political science and diploma from the International Institute of Human Rights, Abdul Rahman al Yusufi began a lawyer and then became involved in politics, he was one of the founders of the Socialist Union of Popular Forces, has been subjected to arrest, imprisonment and exile has become a fundamental aspect of politics in Morocco.

<sup>98</sup> - Idris Jettou, born on 24 May 1945, a Moroccan businessman, he assumed the responsibility of several ministerial posts before being appointed First Minister by King Mohammed VI between 2002-2007.

the Head of Government from the political party that won the elections of members of the council of representatives, and on the basis of its results".

Linking this apparent restriction of the king's authority to the choice of the Head of Government, along with another requirement concerning the need for the Parliamentary inauguration of the Government, means that the electoral process has become a key role in the formation of the Government, which means strengthening the independence of the Government at the level of authorship and appointment, considering that the language of Chapter 47 maintains some flexibility at the level of the Royal decision, where the first paragraph of the Chapter did not go so far as to talk about the appointment of the Secretary-General or the head of the party who won the elections<sup>99</sup>.

Based on the above, it can be said that Chapter 47 of the 2011 Constitution, the king became obliged to appoint the Head of Government from the political party that won the elections of members of the Council of Representatives and on the basis of its results, this means that the 2011 constitution went to the constitution of the democratic methodology in the appointment of the Prime Minister, thus, the transformation from a constitution depends from the legitimacy of the king's absolute appointment to a constitution based the legitimacy of the election results<sup>100</sup>.

If it was the speech of some political actors has been settled in the presidential adaptation of the Prime Minister's relationship with the King,

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<sup>99</sup> - Hassan Tariq, Constitution and Democracy: A Reading of the Structured Tensions of the 2011 Document, op. Cit, P. 52-53.

<sup>100</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, Academic Research Series, Al Omnia Press, 4th edition 2014, P. 104.

rejecting any possible talk of coexistence, this is not the case to researchers who worked on the subject of the relationship within the Executive Authority between the Royal institution and the Government.

In the beginning, many press reports, both inside and outside Morocco, has easily used the concept of co-existence in its characterization of the relationship between the king and the Government of Abdelilah Benkirane<sup>101</sup>, as a starting point for its treatments for the development of political life after 2011<sup>102</sup>.

In the Parliamentary system, the head of state is not the Head of Government, but the latter is the Prime Minister only, the head of state in the Parliamentary system is politically irresponsible, the majority of the Parliamentary constitutions presume that the terms of reference in the Constitution in the name of the head of state are exercised by the responsible Government, the rule in England, the birthplace of Parliamentary system, is that the king does not act alone, the appearance of this rule is that the signature of the head of State on any conduct relating to the affairs of the State shall not be binding and legal, unless the act is also committed by the Prime Minister or the sectoral competent Minister, in the Parliamentary system the President of the State is not alone in signing except in the case of his resignation and the cases specified in the Constitution, such as the appointment or dismissal of the Prime Minister and call for the dissolution of the Parliament.

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<sup>101</sup> - Abdelilah Benkirane was born in 1954 in Rabat, the Head of Government of the 17th Kingdom of Morocco between 29 November 2011 - 5 April 2017 The Secretary-General of the Moroccan Justice and Development Party since July 20, 2008 and member of the Moroccan council of Representatives for the city of Salé since November 14, 1997, for three states 1997, 2002 and 2007.

<sup>102</sup> - Hassan Tariq, *The Constitution and Democracy: A Reading of the Structured Tensions of the 2011 Document*, op. Cit, P. 61.

As for the role of head of state in the presidential system, it combines the presidency of the state and the presidency of the Government, the Executive Authority is limited to the President, which he exercises by himself and that he alone has the right to appoint and dismiss his ministers, and that they are not a council with collective will, Ministers do not have the right to direct public policy because they are merely a tool for implementing the general policy of the President.

The presidential system is characterized by the individuality of the president as a public asset in the free choice of his ministers and his appreciation of how the affairs of the state are administered and isolate them at their own will.

In the Parliamentary system, the Government must have the confidence of Parliament, however, the tradition was that the Head of State would choose the Prime Minister, then the latter chooses the rest of the members of the Government in agreement with the President<sup>103</sup>, where the appointment of the Prime Minister and the Government in the comparative Parliamentary systems is the prerogative of the President<sup>104</sup>.

And the new constitutional framework presented by the 2011 document, outlined the strong Head of Government, exercises full authority over the administration, relying on its democratic and popular legitimacy to exercise its powers in the face of any possible intervention, this was the basis for the coexistence hypothesis between the king and the Head of Government.

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<sup>103</sup> - Youssef Ashhashah, op. Cit, P. 255-256.

<sup>104</sup> - Abeizah Abdel Ghani, the new constitutional approach to the royal appointment of the Head of Government in light of the party style in Morocco, Moroccan Journal of Local Administration and Development, Double Number 99-100, July-October 2011, P. 131.

While some have considered that the concept of coexistence is the result of the special experience of the Fifth French Republic, which present a division of the Executive Authority between two Presidents carrying electoral legitimacy, there is, on the other hand, considered coexistence not exclusive to the experience of one state without another, but a rational way to establish the relationship between the President and Prime Minister, and need to be urgent in moments of transition, and that this relationship should be characterized by the launch of new traditions between the two institutions is characterized by cooperation, understanding and coexistence, between an institution that has legitimate limited in time under control and accountability, and an institution with a historical legitimacy is not specified in time and is not subject to control and accountability.

Thus, Moroccan constitutional construction is based on a vision of the Executive Authority, based on the division of powers between the Royal Institution, which retained general supervision and guidance and between the Government, which has become self-sufficient and independent in the daily management of public policies.

And this geometry is a kind of friction and confusion and tension, which makes it not far from the concept of coexistence, however, the Royal institution's prestige and its retention of a reserved area and religious and political powers, makes the sharing of Executive Authority, does not refer to the balance of powers, and does not hide the hierarchical dimension in the relationship, this calls for the placement of the Moroccan concept of coexistence and its transformation into a concept that is closest to the coexistence of an observer, where the final word



goes back to the Royal Institution<sup>105</sup>, thus, the change in the 2011 constitution, at the level of political institutions, made many political actors confirm the beginning of Morocco's establishment of a new type of Government cut with the style that prevailed in the past<sup>106</sup>.

The reasons for choosing the subject are due to the attempt to investigate the problems caused by the first Governmental mandate in terms of overlap and coexistence between the dominant Monarchy of political practice since independence, and the Head of Government's institution, in which the 2011 constitution drew new roles.

The importance of the subject is linked to the importance of the Executive Authority within the state, as it is a subject to clarify the roles of the executive institutions in the Moroccan constitutional system, and its establishment it is based on the comparison between the new constitution and the previous constitutions, as well as the constitutions of other countries, such as the French Constitution.

The importance of the subject is determined by answering the central problem of the research of the role of the king in relation to Executive Authority:

Can the King be considered an Executive Authority under the provisions of the 2011 constitution?

Does the Government exercise Executive Authority individually or share it with the Royal institution?

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<sup>105</sup> - Hassan Tariq, Constitution and Democracy: A Reading of the Structured Tensions of the 2011 Document, op. Cit, P. 62-63.

<sup>106</sup> - Mohammed Al Radwani, The Government that Captures Everything: An Attempt to Define the Moroccan Government after the 2011 Constitution, Arab Journal of Political Science, 43-44, Summer-Autumn 2014, P. 96.

Based on the central problem, several sub-questions arise, among them:

What are the most important constitutional revisions defined by the Moroccan political system?

What has changed in the Moroccan constitution at every review, especially the executive?

Did these constitutional revisions change the structure of authorities distribution in Morocco?

How did the relationship of the Royal Institution develop with the institution of the Prime Minister under the 2011 Constitution?

To answer these questions, the following hypotheses can be examined:

The first hypothesis: The constitution of 2011 establishes new constitutional and political rules characterized by a balance between power, and the lack of dominance of the Royal institution over the Executive Authority.

The second hypothesis: The Government exercises Executive Authority effectively and fully as provided for in the section devoted to the Executive Authority in the 2011 constitution.

If the approach is how to reach a scientific fact, in the sense of the total objective steps that the researcher to follow in order to reach a reality, and the differences in the methods followed only evidence of differences in results and solutions given the issue of cross-cutting issues of knowledge, will be based mainly on:

The historical approach, as the use of the historical approach is one of the requirements of research in the relationship between political practice and the constitution in general, and the Executive Authority is the subject of study in particular, because the constitution was founded through different stages and historical eras, as there is, in particular historical events affected by it and contributed directly or indirectly to take it out the way it is today.

The comparative approach, based on the constitutional revisions that Morocco has witnessed previously, and also between the Moroccan constitution and the constitution of the French Republic because of its close relationship with the Moroccan model, is the source used by the Moroccan legislator.

An analytical inductive approach, which is necessary to study, analyze and comment on constitutional reviews, in particular regarding Executive Authority and the boundaries between the domain reserved for the king and the domain of the Head of Government, as well as the views, readings and writings of researchers in the constitutional law, and will be relied upon in the context of the details of the subject, to link the constitutional text and some of the problems caused by the actual practice during the first Government mandate after the constitution of 2011, as a constituent period.

Based on this general introduction, the research plan will be as follows:

The first section is include of the Moroccan constitutional system, through two Chapters:

## Authority executive in the 2011 Constitution Comparative Legal Study in Light of the Constitutions 1962-1996

The first deals with the first constitutional experiment of 1962 as the main reference for subsequent experiments. The second deals with constitutional experiences from the 1970 Constitution until the constitutional review of 1996.

In the second section is included to the Executive Authority in the constitution of 2011, through two Chapters:

The first will be addressed the king in the 2011 constitution as Executive Authority, the second Chapter deals with the institution of the Head of Government in the 2011 constitution, with the comparison of the Executive Authority in the new constitution with the Executive Authority in the constitution of the French Republic.

## **Section I: The Moroccan Constitutional System**

The structure of the Moroccan Government has undergone several transformations within the framework of the dynamic of political change and institutional transformation, in the context of a series of interrelated episodes of political and constitutional reforms, which were and still translate the transformations that ripple the political life in Morocco, the fundamental structure of governance has been profoundly altered.

Within the dynamic of change came various Moroccan constitutions since 1962 until the 2011 constitution, to move from a crisis political situation to a more open one, or to meet in part the aspirations of the popular will to establish democratic rule.

Thus, successive constitutions have been a path of initiatives and reforms and written by the struggles and struggle of the most important political actors, and to translate the existing facts and paths taken by the conflicting parties to achieve their goals and objectives, where positions varied, and trends diverged on the priorities of independence and reform and the nature of the political system.

The constitution remains the basic framework for the relationship between the citizen and the state in the direction of restricting the powers of the ruler to the benefit of the citizen and make the citizen the basis of any contractual political action, that is why most of the movements calling for independence came with constitutional reforms.

Despite the multiplicity of draft constitutional in pre-independence Morocco, most or all of them did not write to them the light, the absence of political awareness among Moroccan society and the continuation of

the traditional structure of power in restricting and controlling the outcome of any future reform, so that it would be necessary to wait until the independence of Morocco to translate the first Moroccan constitution on in reality, after many years of initial intransigence and the continuing demands of the politicization of Morocco's political system, in accordance with the requirements of the era and stage.

Morocco first recognized the constitutional experience in 1962, and many of the effects of this experience continue to this day, regardless of the consensus, and many of the reservations that accompanied the constitutional experience in Morocco, due to different causes.

The constitution is the essence of political conflict or political coexistence, in which the political life is shortened and by which it meets or separates, and successive Moroccan constitutions from 1962 until 1996, carries a heavy load of stampede among the political forces influential in the public scene, on the system of Government and the status of Monarchy and powers vested in both the Royal Institution and the Government, on the basis that they are head of the Executive Authority.

The development of the constitutional text in Morocco is the result of a profound development in the structure of the political system, reflecting the regenerative perspective of governance and authority issues, and how these transformations are only an expression of the balance of power between institutions active in the Moroccan political system or the result of certain political events influenced the constitutional discourse and prompted him to look for a certain way to manage the balance between the conflicting political parties.

Thus, the transformations defined by the Executive Authority in the Moroccan constitutions may be influenced by any of the actors mainly in the Moroccan political life, and that these parties were strengthened by the emergence of a new actor and influential, represented in the movement of February 20, which exerted pressure one of its direct consequences was the adoption of the 2011 constitution.

Thus, the phase outputs can not be understood after the Arab Spring and the constitutional reform of 2011, without standing on the previous constitutional experiences and the nature of the conflict in that periods sensitive from the history of Morocco, which are still affecting the political and constitutional life.

## **Chapter I: The First Constitutional Experience 1962**

The 1962 constitution reflected the balance of power prevailing in Morocco after independence, the requirements of the constitution to highlight this reality and show the dominance of the Royal institution on political practice, a victory for the perception of the system of Government, and resolve the discussion of the Constituent Authority in its favor, against the desire of the parties that are descended from the national movement and its aspirations in an elected Constituent Assembly .

### **I: Pre-Constitution 1962**

There was a consensus between the Royal Institution and the parties affiliated with the National Movement to postpone the decision in the system of Government after independence, thus, the struggle against colonialism united the political forces towards one goal, but the

differences were deep between the two parties, especially in the constitutional question, and this Controversy clearly showed that the collision would be inevitable.

## **1: The historical controversy of the constitutional question**

The historical conditions that Morocco experienced at the beginning of the twentieth century contributed to the emergence of reformist ideas, in order to overcome the weakness of power and the spread of corruption, and so on reform advocates in Morocco presented several constitutional projects, however, these projects remained without activation, in the absence of political will, as well as to the protectorate that Morocco was subjected to in a later period.

### **1.1: The beginnings of the constitutional idea in Morocco**

The idea of establishing the first constitution of the State of Morocco dates back to 1817, the idea was associated with the Spanish spy "Domingo Padia e Liplice", nicknamed "Ali Bay Al abbasi" So that the Constitution of the "peoples of Morocco", which consists from 31 Chapters, which it claimed that it presented it to Sultan Moulay Sulaiman<sup>107</sup> and rejected it, but scholars say that this project, which proposes itself as the king of Morocco, wrote after he leaving the country.

Although Domingo de Padilla claimed another name, Ali Bay Abbasi, until people believe that he is the son of a wealthy Muslim oriental prince, has been banished in Italy, however, his exploratory trip to Morocco and

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<sup>107</sup> - Moulay Sulaiman, Abul Rabee 'Sulaiman bin Mohammed bin Abdullah bin Ismail bin Al Sharif. born 20 Muharram 1180 / 1760 - died 13 Rabie I 1238 / 28 November 1822, he was a Moroccan Sultan of the Alawite dynasty, the son of Sultan Mohammed III, Ruling between 1797 - 1822.



his plan failed, where he was expelled from Larache two years after his conversion in October 1805, because of his involvement in subversive acts, then he went to the east.

If the date specified in the project document is 1805, however, a number of historians go on to say that it was written a long time later, especially since the impact of the French constitution of 1814 is evident in the draft.

The draft constitution contains a number of important liberal principles, such as freedom and property, and the rules of power, where, for example, the division of power between the Senate and the council of Representatives, so that the members of the First council appoint the dignitaries, owners, merchants and scientists, while the members of the second council shall be appointed on the basis of the area to which the members belong, consisting of 30 members, their origins are Fez, Meknès, Tetouan, Tangier, the Grand Palace, Taza, Salé and Rabat Azmur and Taroudant, and "three tribes gathered in the mountains", and "the three main tribes in the desert of Ancad", and "the main tribes of Deraa"<sup>108</sup>.

A number of proponents of reform have understood that it is time for Morocco to raise the problem of political power and to choose the democratic form of the regime. In this context, a number of initiatives have been introduced in the form of a reformist constitutional movement. A series of draft constitutions emerged between 1901 and 1908, all stipulated the need to reform the Moroccan system through the

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<sup>108</sup> - Mohammed Al Radwani, Introduction to Constitutional Law, New knowledge Press Rabat, Second Edition 2014, P. 72.

establishment of new institutions and the organization of management, economy and the rights of Moroccans<sup>109</sup>.

Historians mentioned many other constitutional projects, but we will suffice only to mention the most important, then we will study and analyze, the most important constitutional project, which is the constitutional project of 1908.

The project of Abdullah Bin Said for the year 1900: which includes nineteen Chapters, which focuses on the procedures to be followed in order to assess the situation of the country at different levels, municipal and regional organizations, financial field, organization of agriculture and foreign trade, military reform, Judicial reform, regional and national, but the project Bin Said did not adjust to the formal and material conditions of the constitutional text, for example, the mechanisms of organizing the state apparatus, defining the nature of the political system, and the relations of the authorities<sup>110</sup>.

The project gave wide attention to the military sphere through the adoption of mandatory recruitment and development of weapons, the organization of military finances, the memorandum also addressed the judiciary and focus on the establishment of central jurisdiction subject to central authority<sup>111</sup>.

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<sup>109</sup> - Najia Benyouf, Reform Letter, Research Journal, No. 59, 2010, P. 10.

<sup>110</sup> - Abdel Rahman Allal, Constitutional Reform in Morocco: Between the Constitutional Draft of 1908 and the 1996 Constitution: Trying to understand, identify and compare, Journal of Point of View, New Success Press, No 47, 2010, P. 45.

<sup>111</sup> - Marwan Abu Abdullah, 2011 Constitution and the path of democratic transition: a study in the light of rational selection theory, Master Thesis in Public Law and Political Science, Mohammed V University, Faculty of Legal, Economic and Social Sciences Agdal-Rabat, University Year 2013-2014, P. 16.

Leader Bin Said insisted in his project on justice and integrity and peace with all foreigners, and the Secretariat of the staff, and Stressing the need to spread knowledge and science in parallel with the publication of justice among the parish<sup>112</sup>.

Draft Constitution 1906: Dr. Mohammed Sabila attributed to the Syrian Abdul Karim Murad, While Professor Abdul Karim Ghalab<sup>113</sup> attributed to the "Moroccan Community", Mr. Allal El Fassi, has found a copy of the Syrian memorandum, but his name has fallen from them<sup>114</sup>, in 1982, researcher Mohamed Al Mounouni found a second copy of the same project, in the name of its full owner, namely 'Abdul Karim Murad Trabelsi civil<sup>115</sup>, he was Syrian Scientist, came to Morocco in 1906, to present to the Sultan Moulay Abdul Aziz a document that included a demand for a range of political, social and economic reforms.

And by extrapolating to the content of this document it is focused on three main areas: Legislative, financial and military spheres<sup>116</sup>.

One of the most important elements of the project is the call for the establishment of a bicameral Parliament, Shura Council and supreme council, in addition to the inclusion of three main points: The National Assembly, the composition of the army, and internal finance<sup>117</sup>.

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<sup>112</sup> - Latifa El Kunduz, The circumstances of the emergence of the constitutional movement in the Islamic world: Morocco model, Moroccan Journal of Economics and Sociology, University Institute for Scientific Research, New knowledge Press Rabat, 2010, P. 46.

<sup>113</sup> - Abdul Karim Ghalab, Moroccan writer, historian, and journalist, Born in Fez in 1919 and died in Al-Jadida on Monday August 14, 2017, he was a prominent member of the Istiqlal party, he has worked there since the establishment of "National Action Bloc" in June 1933.

<sup>114</sup> - Abdel Rahman Allal, op. Cit, P. 45.

<sup>115</sup> - Mohamed Mounouni, Awakening manifestations of Modern Morocco, Part I, Al Omnia Press, 1973, P. 399.

<sup>116</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, New Success Press Casablanca, First Edition April 2015, P. 42.

<sup>117</sup> - Abdel Rahman Allal, op. Cit, P. 45.

The project of the Syrian trader Abdul Karim Murad focused on, reform the system of Government, administration, justice and military and financial matters with interest in social affairs and focusing in his project on the need to return to the people to determine their own destiny, through the formation of a council of the nation, is required in its members good behavior and science<sup>118</sup>.

It also identified the tasks of the National Assembly in maintaining treaties with foreigners, providing service to ministers and workers, the budget study and the education law, Military movements and accountability of trustees, and the evaluation of every action by the Government, the memorandum also specified the composition of the army in each city, village and tribe<sup>119</sup>, it also emphasized the independence and control of the judiciary<sup>120</sup>.

The most prominent observation can be recorded on this project it lacked an organization between its three doors: There is a significant overlap between the legislative and financial areas<sup>121</sup>.

Al Haj Ali Zneibar's Note 1906: He is the one who has traveled a great deal in the Levant, when he found Morocco at the height of his turbulence in internal problems, especially in Eastern Morocco, submitted a memorandum containing some constitutional points and other points of reform, Professor Abdul Karim Ghalab noted that it (The

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<sup>118</sup> - Latifa El Kunduz, op. Cit, P. 46-47.

<sup>119</sup> - Said Ashkar Afkir, Constitutional policy in Morocco, Ph.D. Dissertation in Law, Mohammed V University, Faculty of Legal, Economic and Social Sciences, Agdal-Rabat, University Year 2003-2004, P. 31.

<sup>120</sup> - Latifa El Kunduz, op. Cit, P. 47.

<sup>121</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 42.

Note) "It does not include the name of the constitution, but it bears the name of the list of reforms<sup>122</sup>."

The project of Al Haj Ali Zneibar is a note bearing the name "The preservation of independence and reject occupation control" it is based on analysis of three main points: The meaning of independence and the concept of occupation, and then make a set of proposals to reform the situation of the country, based on the formation of the National Assembly, and the preservation of the unity of the country using national uniforms and Arabic language, with the need to introduce some foreign languages, pointing out that "national occupation" always leads to an increase in the causes of national decline, in the face of the vigilance of foreign nations, which requires correct it before the opportunity is over<sup>123</sup>.

He points out that the island conference held between January and March 1906 decided to independence Morocco and maintain its entity, the Sultan's attention is drawn to the wait in ratification on the conference list and he is proposed to form a committee elected by of the nation to check the list of repairs which emerged from the island conference, even if the Moroccan Association concludes its examinations and expressed its opinion on those decisions comes the role of Royal authentication according to which it is advisable to act accordingly<sup>124</sup>.

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<sup>122</sup> - Abdel Rahman Allal, op. Cit, P. 45.

<sup>123</sup> - Latifa El Kunduz, op. Cit, P. 46.

<sup>124</sup> - Abdul Razzaq Bayaz, The Constitutional Question in Morocco: Requirements for Democratic Transition, Ph.D. Dissertation in Public Law, Hassan II University, Faculty of Law, Ain Al Shoq Casablanca, University Year 2002-2003, P. 29.

Al Haj Ali Zneibar's memorandum did not come up with anything new to distinguish it from the demands that preceded it, as it is, it has not been mentioned far or near to the word of the Constitution<sup>125</sup>.

Mohammed Al Amin Bin Sulaiman' Note: He is a Turkish intellectual, he worked as an advisor to Sultan Al Mawla Abdul Hafeez, in 1910 he presented a guiding document entitled "The glorious masterpiece to the present Government" as a kind of response to the Sultan<sup>126</sup>.

Al Hafizi Pledge of allegiance : Or the Hafizi movement, as Dr. Abdullah al Arawi<sup>127</sup> likes to describe it, although its name does not refer directly to a constitutional project, but they are of exceptional importance in view of the conditions contained therein, these constitutional conditions are summarized in two conditions: "Elimination of foreign interference and maintenance of independence, and carry out a political reform that will move the nation towards a constitutional system", and the beautiful in the Al Hafizi Pledge of allegiance it is encouraging constitutional thought, he even mingled with all the calls which are of public interest the demand for the constitution entered into the songs that were recited on the anniversary of the Prophet's birth and began to "listeners" and the people of the dhikr and the public with them: "constitution my God, constitution my Prophet of God<sup>128</sup>".

It appears that the Pledge of allegiance document, which written by scientists crystallized they have the national and constitutional idea and

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<sup>125</sup> - Mohamed Zinedine, *The Constitution and Regime in Morocco*, op. Cit, P. 47.

<sup>126</sup> - Mohammed Al Radwani, *Introduction to Constitutional Law*, op. Cit, P. 74.

<sup>127</sup> - Abdullah Al Arawi, Historian and novelist Moroccan, born on 7 November 1933, in the Moroccan city of Azmour, in 2000 he won the Catalonia Award in Spain, he also won the Morocco Book Award in 1990 and 1997.

<sup>128</sup> - Abdel Rahman Allal, op. Cit, P. 45.

tried to express it in the document of Pledge of allegiance which is an obligation of the Sultan to fulfill its conditions.

The importance of these conditions is that it is a contract between the Sultan and the nation the regime changes from absolute Monarchy to constitutional Monarchy, the Sultan no longer has the right to conclude any commercial or peaceful treaty (civil or economic), only after to return to the people and authenticate them<sup>129</sup>.

Draft constitution of Mohammed bin Abdul Karim Al Khattabi: After the strong victory achieved by Mohammed bin Abdul Karim Al Khattabi<sup>130</sup> in the battle of Anoual against colonialism, the latter announced the establishment of a national association composed of tribal representatives in order to draft a written constitution that included 40 articles, in his draft, Mohammed bin Abdul Karim Al Khattabi focused on the principle of electing the leading members of the state, he mentioned about this: "For a long time, the Moroccan nation has not been able to live in accordance with an appropriate constitutional order, therefore, there was chaos and instability and spread of rebellion and riots, through the passage of time and the development of life, the Moroccan people have become aware of the need to create a constitution that regulates and sponsors the life of the country.

This awareness of the expression of the people's opinion in the press and through armed struggle, where the last battle fought by the

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<sup>129</sup> - Latifa El Kunduz, op. Cit, P. 47.

<sup>130</sup> - Mohammed bin Abdul Karim Al Khattabi, Born in the town of Agadir in the province of Al Hoceima in 1882, he worked for the Spanish administration, he was interrogated on charges of sympathy for Germany, he was later arrested and kept in prison for a year, after his release he began organizing the Spanish anti-colonial movement , and in 1921 was able to rout the Spanish army the greatest defeat suffered during the last centuries in the Battle of Anoual, Abdel Karim surrender to the French in 1926, he fled and remained in Egypt from 1947 to 1963 the date of his death.

Moroccan people to restore their independence is an original expression of their desire for freedom but no freedom without a constitution, and there is no constitution except the national constitution that the nation sets for itself.

The legitimate constitution of a country can only be formulated by an elected committee or body represent the various classes of people are genuinely and authentically represented".

In the light of this vision, this constitutional project came with a Government headed by Mohammed bin Abdul Karim Al Khattabi, and a national association aimed at countering colonialism as well as a judicial authority whose task is to settle disputes between rural tribes<sup>131</sup>.

Despite the multiplicity of constitutional projects during this period, but the dominant feature is the weakness of its constitutional structure and lack of organization, in addition, they were unorganized individual initiatives and did not receive adequate support from the authorities, the awareness of the importance of the Constitution was not sufficiently formed within Moroccan society, which significantly reduced the impact of these constitutional projects.

## **1.2: Draft Constitution of the newspaper "The tongue of Morocco"**

Constitutional claims crystallized in the publication of the draft constitution of 1908 in the newspaper "The tongue of Morocco"

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<sup>131</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 51-52.



issued in Tangier<sup>132</sup>, Which sought to transform the regime from absolute Monarchy to constitutional Monarchy<sup>133</sup>.

The draft constitution of 1908 was introduced by the conscious elite of the people and published in four issues of the newspaper "The tongue of Morocco", Namely, issues 56-57-58-59, which was issued in Tangier by the Maronite brothers Arthur and Faraj Allah Namur, in October and November 1908<sup>134</sup>.

The editors of the 1908 draft constitution were keen to preserve the basic principles of the noble Monarchy, Making the religion of Islam an official religion of the state, and the doctrine of the legitimacy is The Maliki Madhhab<sup>135</sup>, stressing that the Moroccan state is an independent state completely independent<sup>136</sup>.

The draft constitution was written in a manner in which the spirit of the European constitutions and features of the journalistic style was established, with knowledge of the laws and knowledge of the weaknesses the Makhzen, unlike other projects, the religious spirit is

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<sup>132</sup> - Rashid Bouterbouche, The Scholars of Morocco and the Fight against tyranny: In Pledge of allegiance and the removal of sultans, Journal of Point of View, No. 55, Winter 2013, P. 27.

<sup>133</sup> - Said Khamri, Constitutional demands within the reform project in Morocco at the end of the 19th century, Moroccan Journal of Economics and Society, University Institute of Scientific Research, New knowledge Press, Rabat, 2010, P. 30.

<sup>134</sup> - Mohammed Al Radwani, Introduction to Constitutional Law, op. Cit, P. 74.

<sup>135</sup> - The Maliki Madhhab, is one of the four major school of Islamic jurisprudence within Sunni Islam.

<sup>136</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op Cit, P. 44.

limited to general principles at the entrance then disappear in the other details of the items<sup>137</sup>.

The draft constitution of the basic Law and the Internal Elections Law of the Shoura Forum and criminal Law, includes 99 articles, eleven of which include the state and its official religion and the terms of reference of the Sultan, articles 12 to 34 deal with the rights of citizens, equality and justice, articles 35 and 36 deal with the consultative forum and its composition from the National Assembly and the Council of Honors with a description of the terms of reference and determining the functioning of the council and the organic composition and of the National Assembly, the lack of a combination of national membership and the membership of the National Assembly, the composition of the Council of Honors and the determination of permanent mandate.

Articles 57 to 66 deal with ministries that can be created, Determining the authority of the Government to appoint tribal and provincial workers, and articles 67 to 74 was allocated it to monitor the state finances by the Shura Forum, articles 75 to 82 have been reserved for the consular protection that they are bound by the Madrid Treaty and the decision to exclude protected persons, articles 83 to 90 concerned the social aspect, compulsory education, the establishment of educational institutions and the education and finance group from the treasury of the state, the endowments and the wealth of the rich, the creation of the Shura Forum for the ancients of all ministries and departments, and the last article

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<sup>137</sup> - Abdelali Hami Eddin, one Hundred Years of the 1908 Constitution: In the need for historical political awareness, Moroccan Journal of Economics and Sociology, University Institute for Scientific Research, New knowledge Press Rabat, 2010, P. 63.

approved the issue of constitutional amendment by the constitutional forum with the approval of the Sultan<sup>138</sup>.

State institutions are formed according to the 1908 constitution from the king, who does not have wide powers, in addition to the consultative forum (the National Assembly and the Council of Honors) and the council of Ministers<sup>139</sup>.

It also establishes a hereditary Monarchy and decrees that the Sultan is the "Leader of the Faithful and protector of the estate of religion" and the draft approved the responsibility of ministers by the Sultan it made the Sultan "irresponsible to the affairs of the State, internally or externally"<sup>140</sup>.

In extrapolating to article 11 of the same draft, it is clear that the Sultan has multiple tasks, in his name was printing money and speeches, and has a decisive role in defending the Kingdom's honorable estate, therefore, it was given he the task of leading the major armies, declaring war, holding peace and concluding treaties with states, he also has the right to appoint state employees, whether senior or junior, as he has the right to dismiss them or reward them by giving them "Accolade"<sup>141</sup> it also approves the reports of the Shura Council, the draft also recognized that the Sultan is completely irresponsible both in terms of domestic politics and foreign policy<sup>142</sup>.

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<sup>138</sup> - Said Ashkar Afkir, op. Cit, P. 35-36.

<sup>139</sup> - Abdelali Hami Eddin, one Hundred Years of the 1908 Constitution: In the need for historical political awareness, op. Cit, P. 68.

<sup>140</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, Part II, Toubkal Publishing House Casablanca, Second Edition 1992, P. 18.

<sup>141</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 45.

<sup>142</sup> - Mohamed Ghomari, Les Institutions politiques, New Success Press Casablanca, 1992, P. 108.

This draft included a set of principles of organizing power and governance, and its relationship with citizens, as it stipulated a set of public rights and freedoms in writing and labor, compulsory primary education and equal rights and duties among all citizens, it also provided for the organization of the Parliament Shura Forum which consists of two chambers: the National Assembly, the Council of Honors, and the rights of deputies and the terms of reference of the two chambers, the National Assembly is elected for four years at the rate of one deputy for 20 thousand men, as for the Council of Honors, 18 members of its members are elected by the National Assembly, Six members and the President of the council shall be appointed by the Sultan.

The Government, according to the draft, consists of the Great Minister appointed by the Sultan, the ministers chosen by the Great Minister, and presents their names on the Shura Council to obtain his approval, the list of ministers is then presented to the Sultan for approval<sup>143</sup>.

According to Article 60 of the constitution of 1908, the dismissal or resignation of the Great Minister lead to the dismissal of all ministers, for example, if he is dismissed from office or resigns on his own, the other ministers will be dismissed and the ministry (the Government) will fall.

On the other hand, the isolation of all ministers does not isolate the Great Minister and does not drop his ministry, and notes in this context that the draft does not talk about what is called in the modern constitutional jurisprudence of "Government solidarity" but only to say that "every minister shall consider matters relating to his ministry, and each minister shall be personally responsible for the affairs of his ministry" (article

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<sup>143</sup> - Mohammed Al Radwani, Introduction to Constitutional Law, op. Cit, P. 74.

61)<sup>144</sup>, in terms of the political responsibility of the Great Minister and the Government, article 58 of the draft constitution of 1908 stipulates that the Prime Great Minister presents the list of ministers to the Shura Council before the Sultan's seal, this is what makes the proposed political system in The draft constitution is a Parliamentary system, in which the Government adheres to relative responsibility front Parliament, it is also clear that the Government enjoys a dual "installation", as it is established by the Shura Council, and by the Sultan<sup>145</sup>, it is noteworthy that in the context of a Parliamentary system that gives the Council of Representatives the Consultative Forum the right to install or reject the Government, This is considered a "constitutional revolution" in view of the political awareness of that stage, that is, there is some kind of Government responsibility towards the Shura Forum<sup>146</sup>, A manifestation of advanced democracy, in the draft constitution of 1908, gives the Ministry the right to appoint " Governors of the Kingdom and its regions<sup>147</sup>".

The position of the Sultan comes from the draft constitution, or rather of the constitutional movement expressed by the group of the tongue of Morocco in the context of its position rejecting the restricted, this movement did not come into being for a variety of reasons relating to the general circumstances of the period in which they appeared, in addition to several questions raised, the most important of which concerns the readiness of economic, social and political structures to absorb them with

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<sup>144</sup> - Abdelali Hami Eddin, one Hundred Years of the 1908 Constitution: In the need for historical political awareness, op. Cit, P. 73-74.

<sup>145</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P. 30.

<sup>146</sup> - Abdelali Hami Eddin, one Hundred Years - of the 1908 Constitution: In the need for historical political awareness, op.Cit, P. 73.

<sup>147</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P. 30.

the contribution of Moroccans to the completion of the draft constitution, in this area there are those who believe that the biggest role in the achievement is due to the arrivals to Morocco from Syria and settled in Tangier, the draft constitution considers a summary of the Ottoman constitution of 1876, which includes 119 Chapters, in addition, a number of internal and external factors have worked to abort this movement, however, the constitutional question will be known as developments and other dimensions after the stability of protection in Morocco under the treaty of 30 March 1912<sup>148</sup>.

It can be said that the 1908 project was a constitutional revolution, where many researchers compare it to the Constitution of 2011, and perhaps what distinguished the Constitution is that it was prepared by the other than the ruling authorities, and was characterized by the organization of the arbitrator and future look, but like the other draft constitutions of those Period, it did not know his way to application.

## **2: Post-independence stage**

A political dispute broke out following independence between the Royal Institution on the one hand and parties descended from the national movement on the other hand, with this difference, Morocco will enter a period of great conflict, created a political reality that had an impact on all subsequent events, its impact on political behavior and practice continues to this day.

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<sup>148</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, op. Cit, P. 18-19.

## 2.1: The Position of the Royal Institution from Constitution

The study of the extended phase of the country's independence, or rather the return of the king from exile until the first constitution of Morocco unlike the rest of the Arab Maghreb countries, which since its independence have been elected to the Constituent Assembly (Tunisia 1955, Algeria 1962) to draft the Constitution, it is of paramount importance to understand the developments of the constitutional issue, and more precisely the Moroccan political system, this stage lasted more than six years, stimulated by the ambiguity of the declaration of independence and the absence of a clear program of political governance<sup>149</sup>.

Immediately after independence, there was a consensus among all political and social actors about the need for a "constitutional Monarchy" system, despite the differences between them in the conception and approach of defining its political and social concept.

The early years of independence were characterized by an intensive and strong presence of constitutional discourse in the Moroccan political field as one of the facets of the political and social struggle over political power, and of the economic and social influence, between the Monarchy and "the components of the national movement"<sup>150</sup>.

The debate on the constitutional issue between the Royal Institution and the National Movement dates back to the date of the issuance of the 11

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<sup>149</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, op. Cit, P. 28.

<sup>150</sup> - Mohammed A IMaski, The Problem of Constitutional Reform and the Challenge of Modernity and Democracy, Journal of Pathways in Thought, Politics and Economics, No. 3, 2005, P. 25.

January<sup>151</sup> document, Mohammed V<sup>152</sup> refused to include the concept of "constitutional Monarchy" in the text of the document and called for the unification of all national energies to achieve independence, members of the Istiqlal party have retracted their demands for constitutional Monarchy, the document merely calls for Mohammed V to establish a "system similar to the regimes of the Arab Orient" reference to the era of the Ottoman organizations, and was the reservation of Muhammad V on the concept of "constitutional Monarchy" return to mainly to the concept appeared to be a politically revolutionary demand it is difficult to easily accept by important figures in Makhzen<sup>153</sup>.

After his reservation on the inclusion of constitutional Monarchy in the declaration of independence, Sultan Mohamed V will clearly articulate the idea of the constitution in the throne speech of 1950, in which he declared that the best rule in which a sovereign and self-governing country should live was democratic governance, he also receded about his reservation to constitutional Monarchy in 1952 on two occasions, the first in a memorandum submitted to the President of the French Republic on March 20, and the second in the letter of the throne on 18 November, he expressed a set of constitutional principles in the 1955 throne speech and his intention to draft a constitution with the participation of the people before 1962.<sup>154</sup>

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<sup>151</sup> - Independence Document, on 11 January 1944 Members of the National Movement, in coordination with King Mohammed V, fought a decisive battle, was the submission of the instrument of claim for independence to the French authorities.

<sup>152</sup> - Muhammad ibn Yusuf ibn Al Hasan ibn Muhammad ibn 'Abd Al Rahman ibn Hisham ibn Muhammad ibn 'Abd Allaah ibn Isma'il ibn Isma'il ibn al-Sharif ibn Ali Al alawi he was born 1327 / 10 August 1909 in Fez and died 1381 / 26 February 1961 in Fez, he took power after his father Sultan Moulay Youssef, Sultan Mohammed V supported the struggles of the Moroccan national movement for independence.

<sup>153</sup> - Hassan Tariq/ Abdelali Hami Eddin, 2011 Constitution between authoritarianism and democracy: Cross-reading, Public Dialogue Series, Top Press, Rabat, First Edition April 2011, P. 79.

<sup>154</sup> - Mohammed Al Radwani, Introduction to Constitutional Law, op. Cit, P 78.



Upon the inauguration of the first Government headed by Bakai<sup>155</sup> on 07/12/1955, the king focused on the priority of building a system of "Constitutional Monarchy" and asked the Government "to lay the foundations of this system that enables the people to can the affairs of the country through local councils and a national council" among the terms employed in the speech of King Mohammed V and the leaders of the National Movement, at the dawn of independence: Separation of powers, free elections, the rule of the people, the Constituent Assembly , the constitution and liberties.

But the most important thing at this stage is the vision of King Mohammed V to the constitution for post-independence, it was mentioned in the throne speech on 18 November 1956 in the context of the talk of institution-building addressed the "Constituent Assembly " to develop a constitution for the Kingdom, while the National council of Resistance in August 1956 issued a statement specifying the constitutional demands that are centered on two main points: the claim of a constitutional Monarchy compatible with the principles of true Islam, and respect for human rights as defined in the International Charter<sup>156</sup>.

The first initiatives towards the development of a written constitution for post-independence Morocco emerged with the Royal Covenant on 8 May 1958, Which had initially established local councils (urban and rural) and the National Consultative council elected through the above-mentioned local councils, and then work on the establishment of a council of Representatives, elected by direct universal suffrage, these statements

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<sup>155</sup> - Al Bakai bin Mubarak bin IHabil, born in 1907 in Berkane and died April 12, 1961 in Rabat, he was a Moroccan politician and the first prime minister in Morocco after independence, where he was appointed by King Mohamed V in 1955, he remained in this position until 15 April 1958.

<sup>156</sup> - Moussaoui Ajlawi, Constitution in Independent Morocco: A Historical Reading, Moroccan Journal of Economics and Society, University Institute for Scientific Research, New knowledge Press Rabat, 2010, P. 103-104.

confirm the keenness of King Mohammed V to work on the system of constitutional Monarchy, in a speech on 26 May 1960, he confirmed his determination to give Morocco a constitutional system of democracy, pluralism and freedom: "We will not go through the year 1962 until we have fulfilled our covenant, and put with the participation of our people a constitution that defines and regulates the authority, and all individuals can participate through their representatives in the conduct of national affairs and monitor the actions of the Government", subsequently, a constitutional body or council was established, whose main task was to establish a constitution for the country in the late 1960's<sup>157</sup> and submit it to King Mohammed V for ratification, however, the experience of this council did not last long, but stopped its work after the withdrawal of a number of its members after the election of Allal El Fassi as its president, which led to the thinking of another way to set the constitution<sup>158</sup>.

In 1960, Morocco experienced a turbulent political situation, King Mohammed V exempted the Government of Abdullah Ibrahim<sup>159</sup> on May 20, 1960, due to the failure of the experience of party Governments and their inability to meet the economic and political challenges, in addition to it did not live up to the level of aspirations expected of them<sup>160</sup>, Since May 1960, the date of the formation of a Government headed by the King personally, Morocco was moving towards the development of its

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<sup>157</sup> - Mohamed Yahya, Constitutional Morocco, Spartil Press, 2013, P. 251-252.

<sup>158</sup> - Mohammed Al Radwani, Introduction to Constitutional Law, op. Cit, P. 78.

<sup>159</sup> - Abdullah Ibrahim, was born on August 24, 1918 in Al hawez and died September 11, 2005, a Moroccan politician, the third prime minister in Morocco after independence between 1958 and 1960 after Mubarak Al Bakai LHabil and Ahmed Blafrij, A political thinker and chairman of the National Union of Popular Forces party, a dissident of the Istiqlal party.

<sup>160</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op.Cit, P 36.

first constitution, in a speech on May 23, 1960, the king committed to a constitution before the end of 1962<sup>161</sup>.

In this context, the summer of 1960 will mark a turning point in the history of Morocco, which has influenced the general direction taken from this time.

After the dismissal of the Government of Abdullah Ibrahim the era of parties Governments ended and the reign of the king's Governments began, King Mohammed VI presided over the Government and entrusted his son, Moulay Hassan, whose role has begun to emerge strongly in decision-making, it also raised an information campaign with the National Union of Popular Forces, the Moroccan Labor Union, and part of the resistance and the Liberation Army From the attribution of Executive Authority to the king may "open a ministerial crisis that requires the usual way to resolve it likes "<sup>162</sup>.

After the death of King Mohamed V on February 27, 1961, the throne was taken by Moulay El Hassan Crown Prince since 9 July 1957, in the name of Hassan II, confirmed his intention to prepare the constitution within the period set by his father, a few months later, the Kingdom's Basic Law was issued on June 2, 1961<sup>163</sup>.

Set the constitution by an elected Constituent Assembly was excluded and a concept was established that constitutional Monarchy found its

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<sup>161</sup> - Mohamed Madani, Mouvement national et la question consitutionnelle au Maroc 1930-1962, Mémoire DES, Droit Public, Université Mohamed V, Rabat, 1981/ 1982, P. 99.

<sup>162</sup> - Moussaoui Ajlawi, op .Cit, P. 107.

<sup>163</sup> - Omar Bendoro, The Moroccan Political System, New Success Press Casablanca, First Edition 2002, P. 36.

basis in the contract between the King and the people<sup>164</sup>, the new king had an idea of the constitutional rule, when he was crown prince in August 1960, he told the graduating students of the Azrou High School that the constitution would be prepared by a number of people chosen by the king and it presented to the popular vote<sup>165</sup>.

Thus, King Hassan II prepared the draft constitution using a group of foreign experts and discussed its content with some members of the second Government, which was formed on June 2, 1961, including: Alal Fassi, Ahmad Reza Kedira<sup>166</sup>, Mahjoubi Ahrdan<sup>167</sup>, Abdul Karim Khatib<sup>168</sup>, and Mohammed Bahnini<sup>169</sup>, and its offered to the referendum<sup>170</sup>.

In presenting the draft 1962 constitution to the Moroccan people, King Hassan II said in his speech: "I have personally completed a draft constitution for the Kingdom which I will present to you to get your vote, This constitution, which I have accomplished with my own hands, is

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<sup>164</sup> - Rkia El Mossadeq, *Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes*, Part II, Toubkal Press Casablanca, 1988, P. 43.

<sup>165</sup> - Omar Bendoro, *The Moroccan Political System*, op .Cit, P. 36.

<sup>166</sup> - Ahmed Reda Kadira, born on 22 June 1922 in Rabat and died on 14 December 1995 in Paris, a Moroccan politician and advisor to King Hassan II, he held several ministerial posts.

<sup>167</sup> - Mahjoubi Aharedan, born in 1924, a prominent Moroccan political figure, he lived in the time of French protection against Morocco, and he also lived in the era of independence entered politics early, worked in many government jobs.

<sup>168</sup> - Abdelkarim Al Khatib, born in El Jadida on 02 March 1921 and died in Rabat on 28 September 2008, Mujahid and a man of resistance and liberation against the French colonialism of Morocco, then a politician and a Moroccan minister.

<sup>169</sup> - Ahmed Bahnini, born in Fez and died on 10 July 1971 in Skhirat, he was a Moroccan politician during the reign of King Hassan II, served as Prime Minister of Morocco between 13 November 1963 and 7 June 1965, he also served as President of the Supreme Court, on July 10, 1971 during a ceremony marking Hassan II's birthday at the Skhirat Palace, was killed during a military coup when soldiers opened fire on a crowd of invited guests.

<sup>170</sup> - Mohammed Al Radwani, *Introduction to Constitutional Law*, op. Cit, P. 78.

above all a renewal of the sacred allegiance that has always brought together the people and the king<sup>171</sup>".

Indeed, the draft constitution of 1962 was presented to the people for referendum on December 7, 1962 where it was ratified by a large majority, thus, the king has decided in the question of Constituent Authority after the failure of the experience of forming a constitutional council comprising all political bodies entrusted with the task of drafting the country's constitution, this Royal Decisive was more evident in the 1962 Constitutional document in view of the important position of the Royal Institution, whether in terms of authority or immunity<sup>172</sup>.

The adoption of this method in the preparation of the first constitution prompted King Hassan II to declare, at the press conference which was held after the completion of the study of the results of the referendum, that the constitution Moroccan is not "Constitution granted", also the voters became had the opportunity to accept or reject the project presented to them<sup>173</sup>.

The 1962 Constitution reflected the conception of the Royal institution of the system of Government, but it was not accepted by the political forces that had different perceptions, which resulted in the continuation of the conflict between the Royal institution and the national parties.

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<sup>171</sup> - Said Khomri, The Spirit of Constitutional Reforms in Morocco: The Case of 1992 and 1996, Ph.D. Dissertation in Law, Hassan II University, Ain Al Shoq Casablanca, university year 2001-2002, P. 88.

<sup>172</sup> - Said Khomri, The Spirit of Constitutional Reforms in Morocco: The Case of 1992 and 1996, op. Cit, P. 88.

<sup>173</sup> - Mohammed Al Radwani, Introduction to Constitutional Law, op. Cit, P. 79.

## 2.2: Political conflict over the exercise of constituent authority

The Constituent Assembly is one of the results of the realization of the theory of popular sovereignty, which brings the origin of all power to the sovereign people<sup>174</sup>,

where the Constitution is established by the original constituent authority, being the highest public authority in the State, regulates and defines the terms of reference of all other constitutional authorities<sup>175</sup>, this means that the Constituent Authority enjoys an independent entity from the rest of the authorities in the State, which established these authorities by establishing the Constitution<sup>176</sup>, At this level, there is a congenital structural function, and therefore this authority is authentic in the sense that it is a precedent for the Constitution and does not derive its existence from it<sup>177</sup>.

The method of the Constituent Assembly is one of the applications of the Parliamentary system where the people exercise their sovereignty through their representatives or deputies indirectly<sup>178</sup>, this method is for the people to elect a Parliamentary assembly whose task is to draft or abolish the constitution<sup>179</sup>, this elected body is called the Constituent Authority, as distinct from the legislative authority, which is one of the institutions established by the Constitution and not the one who

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<sup>174</sup> - Ahmed Mofeed, *The General Theory of Constitutional Law and Political Institutions: A Study in the State, the Constitution, Democratic Governance and the Mechanisms of Political Participation*, Info Fas Press, First Edition 2007, P. 105.

<sup>175</sup> - Bouchaib Aoubi, *Introduction to Constitutional Law*, House Al Qalam Rabat, First Edition 2015, P. 115.

<sup>176</sup> - Hanan Mohamed Al Qaisi, *General Theory in Constitutional Law*, National Center for Legal Publications Cairo, First Edition 2015, P. 87.

<sup>177</sup> - Ahmed Sarhal, *Constitutional Law and Political Systems: Framework - Sources*, University Institution for Studies, Publication and Distribution, 2002, P. 141.

<sup>178</sup> - Hani Ali Al Tahrawi, *Political Systems and Constitutional Law*, House of Culture for Publishing and Distribution, 3rd ed., 2011, P. 331.

<sup>179</sup> - Mustafa Saleh Al Amawi, *Political Organization and the Constitutional System*, House of Culture Amman, First Edition 2009, p. 25.

establishes the Constitution<sup>180</sup> the Constitution, which is established in the manner of the Constituent Assembly, shall enter into force once it has been adopted by it, there is no need to return to the nation or people that have previously elected this Assembly and authorized it to draft and approve the Constitution<sup>181</sup>, and the struggle over the exercise of Constituent Authority is one of the most important features of the political situation after independence.

The period of time in which the 1962 constitution was established is one of the most important moments in which the constitutional fate of Morocco is decided especially since the 1962 constitution was responsive to the fate of political life during the transition period (1955-1962).

Since this period was marked by the existence of a lofty authority, its authority would be employed even at the level of the constitution, thus, the constitutional document was drafted by the king, who personally prepared it with the help of experts of his choice, and presented it voluntarily and as a choice to the popular referendum, although some political parties called to established the constitution by the Constituent Assembly (the position of the National Union of Popular Forces), the first constitution of post-independence Morocco will be drawn up by Hassan II, relying on religious, historical and popular legitimacy, where the

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<sup>180</sup> - Mohamed Darif, Constitutional Law: An Introduction to the Study of General Theory and Political Systems, Publications of the Moroccan Journal of Political Sociology, New Success Press Casablanca, First Edition, November 1998, P. 88.

<sup>181</sup> - Hani Ali Al Tahrawi, op. Cit, P. 330.

Constituent Assembly 's problem was dealt with as "unnecessary and impossible"<sup>182</sup>.

The parties that descended from the national movement went emerged weak from their struggle against French colonization, there were several differences that resulted in the division from the "Mother party" Istiqlal Party, where the period (1956-1962) the emergence of several political differences between two streams: moderate trend in his ideas and political options led by Allal Fassi and Ahmed Blafrig<sup>183</sup>, and other revolutionary trend calls for radical change and adopts a "Revolutionary choice" led by Mahdi Ben Barka<sup>184</sup>, Faqih Basri<sup>185</sup> and Abdullah Ibrahim and Mahjoub bin Siddiq<sup>186</sup><sup>187</sup>.

The differences were mainly between the political parties at the time, especially between the Istiqlal Party and the National Union of Popular Forces, The Istiqlal Party was adopting the idea of drafting a constitution even though it was prepared by an un-elected body, while the National

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<sup>182</sup> - Mokhtar Mutai, Constitutional Law and Political Institutions, printed and distributed by House Al Qalam, First Edition 2002, P. 164.

<sup>183</sup> - Ahmed Blafrig, He was born in Rabat on 1 May 1908 and died on 14 April 1990, a Moroccan politician from the leaders of the Moroccan national movement, was appointed Minister of Foreign Affairs in the II government of Bakai bin Mubarak, he headed the third government in Morocco after his independence as the Foreign Ministry in the same government, the Personal Representative of Hassan II and the Minister of Foreign Affairs of the Eighth Government, which was presided over by the King.

<sup>184</sup> - Mahdi Ben Barka, born in January 1920 in Rabat, Morocco, disappeared on October 29, 1965 in Fontaine-le-Vicent, north of France, was one of the Moroccan politicians, considered one of the biggest opponents of the political system in Morocco in the post-independence period, began his political activity early in the Istiqlal party, and in 1959 he split from a party and established the National Union of Popular Forces.

<sup>185</sup> - Al Faqih Al Basri, Mohammed Al Basri was born in 1925 in the region of Damanat and died on 14 October 2003 in Sfax, Moroccan resistance and politician, the founder of the secret organization and one of the leaders of the Liberation Army, who resisted French protection, after independence, he participated in the establishment of the National Union of Popular Forces (PPU) after he split from the Independence Party in 1959, was The director of the newspaper "Liberation" the mouthpiece of the new party, radically opposed the regime of Hassan II, was arrested and tortured and sentenced to death in absentia three times, returned to Morocco in 1996 after nearly 30 years in exile.

<sup>186</sup> - Mahjoub bin Siddiq, born on 20 February 1922 in Meknes and died on 17 September 2010, a Moroccan trade unionist, the historic leader of the Moroccan Labor Union, which he led from his creation in 1956 until his death in September 2010.

<sup>187</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 63.



Union of Popular Forces considered mandatory the election of a constitutional council entrusted with drafting the constitution, in this context, the independence party announced its approval of the 1962 draft constitution, the same project was approved by the Liberal Istiqlal Party, the Popular Movement Party, The National Union of Popular Forces has abstained from voting on the project<sup>188</sup>.

When Morocco gained its independence, the Istiqlal Party, the largest representative of the time, showed its aspiration to establish a restricted Monarchy in which the king would play an honorable role, While the party exercised Executive Authority on the grounds that it was based on a broad popular base, the party said that it was always the real and only representative of those who fought for independence, the party and the palace differed fundamentally on two basic problems: the king's right to appoint and dismiss cabinet members and the ministers' responsibility.

The Istiqlal party had hoped at the very least that it would be consulted when ministers were chosen, in the best case, there should be a Prime Minister from the Istiqlal Party with the power to appoint its Government, just as the party demanded that ministers have full responsibility for the programs of their sectors, and that the Prime Minister should have the right to exercise effective control over the implementation of Government policy<sup>189</sup>.

The Istiqlal party, which was then participating in the Government, and its trade union organizations played a major role in the campaign to ratify the constitution on the referendum, however, he is aware of the fact that his position exceeded the debate on the constitution-making process,

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<sup>188</sup> - Mohamed Yahya, op. Cit, P. 252.

<sup>189</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 58.

justified by his ambition to consolidate his position as a majority party within constitutional Monarchy<sup>190</sup>.

The National Union sending of a memorandum to the King after his accession to the throne, highlighting his position on the existing institutions and the system of Government, the same issues that will be raised for three decades in the literature of the National Union and the Socialist Union and the Istiqlal Party and the Communist Party and left-wing organizations, the National Union of Popular Forces presented in the first note of King Hassan II after sitting on the throne, the party's perspective of the exercise of governance, the note identified three considerations: the first relates to linking the Monarchy with representative institutions elected by the people, and the rejection of the presidential or individual system of Government, and the second is set mechanisms for the establishment of the constitution, the third linked to the Governmental body, and concluded the note to the point: "And we affirm quite frankly that the idea of continuity that prevails in every Monarchy is incompatible with all the direct exercise of governance by the king, and its consequences are serious for the stability of the country"<sup>191</sup>.

The decision to boycott is the position of the National Union of Popular Forces against the 1962 Constitution as a grant, insisting on the popular source of political power, which requires the establishment of the constitution by an elected Constituent Assembly, the dimensions of this claim are reflected in the rejection of the Royal basis of governance and the legitimacy of the existing authority, his position is an extension of the

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<sup>190</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, op.Cit, P. 45.

<sup>191</sup> - Moussaoui Ajlawi, op .Cit, P. 108.

positions expressed within the party at the break of May 1960, which calls for the rejection of any reform within the framework and thus rejected all changes by peaceful means<sup>192</sup>, creating situations of tension and escalation in the discourse between the components of the Moroccan political scene, or between the National Union of Popular Forces and King Hassan II<sup>193</sup>.

The Moroccan Communist Party has since proclaimed (August 1946) its demand for independence and electing a Constituent Assembly and carrying out reforms in the economic and social fields, this put an end to his demand, which falls within the framework of the line calling for democratization of the country before independence, but such a position did not prevent him from playing an important role in the struggle for the return of the king from exile, he was also mingled with his ambition to participate in existing institutions, ie, coalition Governments and the National Consultative Assembly<sup>194</sup>.

Along with the positions of the National Union of Popular Forces and the Moroccan Communist Party, which include a rejection of the legitimacy of the existing Government, the Popular Movement also demanded the necessity election of a Constituent Assembly to the task of drafting the constitution<sup>195</sup>, the position expressed by the Democratic Constitution

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<sup>192</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, op. Cit, P. 47.

<sup>193</sup> - Moussaoui Ajlawi, op .Cit, P. 110.

<sup>194</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, op. Cit, P. 49.

<sup>195</sup> - Said Khomri, The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco, op .Cit, P. 56.

Party (formerly the Shura and Istiqlal Party) it includes a desire to participate in constituent authority<sup>196</sup>.

Indeed, the demands of the Popular Movement, the Shura and the Istiqlal Party to elect a Constituent Assembly were merely a tactical position, fueled by the fear of the monopoly of the Istiqlal party, their stubborn opponent, to set the constitution, this was the most basic position, as they would soon abandon this position, joining the constitutional council appointed in 1960, and then they withdrew from it, after the Istiqlal party took control of its presidency and organs<sup>197</sup>.

Resulted in the political struggle for the control of the regime, between 1955 and 1962, and the founding dispute of this transitional period on the preponderance of the vision of Monarchy that seeks to continue the exercise of Monarchy, and coincided with the conclusion of Hassan II of the rule of drafting the constitution by the establishment of the constitution of 1962 and presented to the popular referendum, this conciliation and synchronization reflected in the Moroccan constitution, which was not placed to restrict the powers of the king, but it has worked on the constitution of the legitimacy and authority of historical, religious and political Monarchy by citing the constitutional techniques of the presidential systems, it has also modernized the implementation authority (Government) and legislation and oversight (Parliament) by citing techniques of Parliamentary rationalization<sup>198</sup>.

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<sup>196</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, op. Cit, P. 50.

<sup>197</sup> - Said Khomri, The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco, op. Cit, P. 57.

<sup>198</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 64.

The Royal Institution resolved the issue of Constituent Authority in its favor by employing a number of administrative measures, on the one hand, it resorted to the enactment of many legal and political measures, on the other hand, internal conditions played a key role in the defeat of the parties that had descended from the national movement<sup>199</sup>.

The controversy over the 1962 constitution establishes the question of the body competent to exercise Constituent Authority and raises the legitimacy of authority<sup>200</sup>, the Royal Institution has enacted a number of legal and political measures to resolve the issue of Constituent Authority in its favor, it adopted the monolithic ballot instead of ballot by regulation. It also sought the enactment of the public liberties poster issued in 1958 encouraging pluralism to undermine the one-party thesis, to highlight the Popular Movement in an effort to reduce the independence party's penetration into the rural world, where the Royal Institution has reintegrated the rural elites, especially the adult leaders.

This approach will be clearly demonstrated by the 1962 Constitution, which laid the foundations for the legitimacy of multilateralism and the prevention of the only party, however, this democratic principle has been used to weaken the opposition forces by the emergence of forces alongside its rival in order to neutralize the national movement or to employ parties as a mechanism for the fragmentation of the national movement<sup>201</sup>.

The Royal Institution resolved the problematic of set the constitution, in order to achieve this goal, the Monarchy has used many mechanisms,

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<sup>199</sup> - Mohamed Zinedine, *The Constitution and Regime in Morocco*, op. Cit, P. 61-62.

<sup>200</sup> - Rkia El Mossadeq, *Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes*, op. Cit, P. 43.

<sup>201</sup> - Mohamed Zinedine, *The Constitution and Regime in Morocco*, op.Cit, P. 63.

including its historical, religious, as well as the exploitation of the division of the national movement parties and the failure to take a unified stance against the Royal Institution.

## **II: The 1962 Constitution**

The Royal Institution was unique in preparing the constitution and presenting it to the people for ratification by referendum, thus, the requirements of the constitution involve a lot of Moroccan political heritage, which gives the Sultan wide powers, although the constitution quoted many of the requirements of the constitution of the French Republic, and in turn marginalized the demands of the parties descended from the National Movement of an elected Constituent Assembly.

### **1: The status of the Royal Institution in the Constitution of 1962**

The Royal institution occupies a central position in the Moroccan political system, the 1962 constitution gave the King wide powers and responsibilities and maintained the subordination of the Government and Parliament to the Royal Institution, in addition to the employment of the Principality of the Faithful and religious legitimacy to devote the highness of the Royal Institution front the rest of the elected institutions.

#### **1.1: Universal Highness of the Royal Institution**

The Moroccans appreciate the king, as honest and compassionate, but they always knew how to distinguish between his personal holiness and the authority of his Government, and they often recognized the first

without recognition of the second, despite their repeated attempts, sultans before protection could not impose

Actions are not popular, only temporarily after suppressing violent reactions, they did not lack coercion, but they rarely monopolized it<sup>202</sup>.

Morocco recognized the first constitutional experience in 1962<sup>203</sup>, it the same as the ground that was followed by amendments (1970, 1972, 1992 and 1996)<sup>204</sup>, the constitution of 1962 is the first written constitution in Morocco, and has formed a turning point in the national political life, in which the establishment of the Government as a constitutional institution headed by the Prime Minister, this means that this institution has an organic and functional distinction from the king, which his powers are defined by the law<sup>205</sup>.

Thus, the establishment of Morocco's first constitution after independence was aimed at enabling the Royal Institution to develop modern and innovative tools and resources to replace or support the traditional ones, by adding constitutional legitimacy to its religious and historical legitimacy to enable it to extend its control and maintain the stability of its system<sup>206</sup>, thus, the 1962 constitution is the first of the written Moroccan constitutions, which the people contributed to their status through the general constitutional referendum.

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<sup>202</sup> - Mohamed Zinedine, *The Constitution and Regime in Morocco*, op.Cit, P. 77.

<sup>203</sup> - Sidi Moulay Ahmed Eilal, *Problems of Controlling the Party Actress of the Official Constitutional Institutions*, Journal of Tracts in Thought, Politics and Economics, New Success Press Casablanca, No. 39-40, 2016, P. 121.

<sup>204</sup> - Abdel Rahim Allam, *The Powers of the King in the Moroccan Constitution: Critical Study*, Journal of Legal Sciences, Al Omnia Press, No. 2, 2014, P. 23.

<sup>205</sup> - Mohammed Ashkarki, *Prime Minister Its status and function in the Moroccan system*, Ph.D. Dissertation in Public Law, Faculty of Legal, Economic and Social Sciences Casablanca, University Year 1984-1985, P. 45.

<sup>206</sup> - Youssef Thifa, *The Executive Authority in the Moroccan constitutional system*, Master Thesis in Public Law, University of Sidi Mohamed Ben Abdallah, Faculty of Legal, Economic and Social Sciences, Dar Al Mehraz Fez, University Year 2013-2014, P. 18-19.

The 1962 constitution will be presented to the popular referendum on 07-12-1962 and voted by the Moroccan people by a majority of more than (98%) of the electorate, after having been given the opportunity of the various political currents during the campaign before the referendum day to give their opinion on the constitution and the content of the its<sup>207</sup>.

The 1962 constitution, which King Hassan II considered a renewal of the sacred allegiance between the king and the people, has given the Monarchy a lofty status, both by introducing it in the second door, and before the rest of the institutions, or the sanctity of its religious legitimacy and its broad powers<sup>208</sup>, and the establishment of prestige which is characterized by the Royal Institution that the word of the King repeated in this constitution 44 times, while the conscience to which he refers to repeated 8 times<sup>209</sup>, it is also related to the pivotal position of the constitutional document in its embodiment of sovereignty, legitimacy, unity of the nation, state continuity, the protection of religion and the preservation of the rights and freedoms of individuals, groups and bodies, and in the exercise of constitutional jurisdiction in the ordinary and exceptional cases<sup>210</sup>.

The King exercises wide powers, he appoints the Prime Minister and the Ministers Chapter 24 and signs and ratifies treaties, except for treaties that entail costs that require State funds and require the approval of Parliament Chapter 31 The King appoints ambassadors to foreign countries and international organizations Chapter 32 it also appoints civil and military personnel Chapter 30 Royal decrees were countersignature

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<sup>207</sup> - Mokhtar Mutai, Constitutional Law and Political Institutions, op. Cit, P. 164.

<sup>208</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 70.

<sup>209</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 77.

<sup>210</sup> - Amhamed Maleki, Brief in constitutional law and political institutions, op. Cit, P. 293.



by the Prime Minister, with the exception of the Royal decrees provided for in Chapters 24, 35, 72, 77, 84, 91, 101<sup>211</sup>, while the King under the 1962 constitution was not only consulted by the Parliament, but must ask permission and obtain his consent to declare war, whether this war is defensive or offensive (Chapter 51) not to mention that the decision to declare war should be presented to the Ministerial council in accordance with article 66 of the Constitution<sup>212</sup>.

At the legislative level, the king issues the order to implement the law without any condition specifying the time limits, he can present the law directly to the referendum, or introduce it to a new reading by Parliament, he also has the word of decisiveness, in case the two councils of Parliament do not agree to pass a law.

In accordance with the 1962 Constitution, Parliament is composed of a Council of Representatives, elected for a four-year term by direct vote, a Council of Advisers elected by indirect suffrage, 3/2 of its members by local bodies, and the 3/1, it consists of members elected by professional rooms.

The legislative powers of Parliament remain limited, since the King's decision to implement the law is not limited in time, the king can also present any draft law or proposal for a popular referendum (Chapter 72), in this case, the tribal debate of the Parliament is only in the case of a draft law (Chapter 73).

During the inter-sessional period, the Government, in agreement with the relevant committees, may issue decrees of laws which must be

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<sup>211</sup> - Youssef Thifa, op. Cit, P. 19-20.

<sup>212</sup> - Mustafa al Hameer, op. Cit, P. 33.

submitted for approval during an ordinary session of the Parliament (Chapter 58).

As for the scope of law, narrowly defined in the 1962 constitution in Chapter 48, the Parliament intervenes only in the areas of "individual and collective rights, the basic principles of civil and criminal law, the organization of the judiciary, the basic guarantees granted to civil and military civil servants" Moreover, other articles that are not within the purview of the law are within the scope of regulatory texts (Chapter 49)<sup>213</sup>.

All proposals of the Parliament and its amendments in the financial field are subject to an important limitation specified in Chapter 54, Where the Government has the right to reject them if their acceptance leads either to a reduction in public resources, or to generate general costs or increase in existing costs<sup>214</sup>.

If the 1962 constitution had stressed the importance of the Royal institution and reduced the powers of the Parliament, it had given the Government priority over the latter in the area of legislation, but it had made it an absolute subordination to Monarchy, both in terms of composition and competence, in view of the relative expansion of the powers of the Government (the exercise of the regulatory authority, the right to submit draft laws to the Parliament, the right to submit a draft amendment to the constitution to Parliament, the right to request a special session of Parliament, declaring the state of siege, withdrawal of confidence, to ensure the implementation of laws, the right to request the

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<sup>213</sup> - Said Khomri, *The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco*, op. Cit, P. 58-59.

<sup>214</sup> - Mokhtar Mutai, *Constitutional Law and Political Institutions*, op. Cit, P. 184.

delegation of legislation from Parliament, the right of ministers to attend the work of Parliament), the Government and its Prime Minister shall, in the exercise of these terms of reference, depend on the approval of the King who heads the Ministerial Councils<sup>215</sup>.

The Constitution of 1962 gave wide powers to the Royal institution and devoted its historical position, it did not limit its powers, but it worked to codify them.

The Constitution was in the service of the Royal Institution and an additional instrument of governance rather than a limitation of its numerous and extensive powers.

## **1.2: Chapter 19 Legal and Political Significance**

Article 19 of the 1962 constitution states: "that he is the Leader of the Faithful and the symbol of the unity of the nation and guarantor of the state's permanence and continuation and he is the protector of the religion and the guardian of respect for the Constitution, he has the right to safeguard the rights and freedoms of citizens, and he is the guarantor of the independence of the country and the Kingdom's possession in the circle of its true borders, from this very beginning it can be said that this Chapter occupies a prominent position within the rest of the Chapters of the basic Law of the Kingdom of Morocco, in this Chapter , the King is the Leader of the Faithful ,this is derived from the phenomenon of the Caliphate, he is also The noble sultan and one of the branches of a tree that exercises its authority by virtue of the mandate of the nation, starting from the institution of allegiance, and the role played historically by the

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<sup>215</sup> - Said Khomri, *The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco*, op.Cit, P. 59-60.

chiefs of tribes and the honorable and scientists and senior dignitaries, as well as the application of Islamic law and the welfare of the nation, and the title of the Leader of the Faithful is an essential element within the traditional framework of governance because it is the source of legitimacy, governance and sovereignty.

On the other hand, the traditional aspect of this Chapter is not limited to the title of the Leader of the Faithful, Rather, it is added to the words "Permanence" and "Protector" and "Guarantor", words that carry a political, religious and symbolic meaning, in terms of the status of this Chapter in constitutional engineering, it links the first section "Basic principles", namely "Public freedoms and economic and social rights of citizens", on the one hand, and the second section "Monarchy" on other hand, this means that each Chapter of the first Chapter finds a response and resonance within Chapter 19<sup>216</sup>.

The following is an account of the semantics and the deep contents of Chapter 19, showing the effective role of the Royal in Morocco:

The King the Leader of the Faithful: This title highlights the religious character of the Supreme Islamic ruler, as long as the religion of the state of Islam and that the people of Morocco, the believer in this religion, and they consider its members believers and that their ruler, the Leader of the Faithful and the system of imamate is contained in the Holy Quran, came in the in Surat the Prophets<sup>217</sup>: "And We made them leaders, guiding by Our command, and We inspired them to do good works", and his saying in Surat Al Qasas<sup>218</sup>: "And We wanted to confer

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<sup>216</sup> - Mokhtar Mutai, Constitutional Law and Political Institutions, op. Cit, P. 166-167.

<sup>217</sup> - Surah the Prophets, Chapter 73.

<sup>218</sup> - Surah Al Qasas, Chapter 5.

favor upon those who were oppressed in the land and make them leaders and make them inheritors”, This phrase is associated with the occasion of prayer, the Leader is the one who leads the Monarchy, Al Mawardi<sup>219</sup> said about that: "the Leadership is exist for succession the Prophet in the custody of religion and the policy of the world<sup>220</sup>".

Thus, the title of the "Leader of the Faithful", which opens it is not an honor, but raises the theory of succession, as the Leader of the Faithful is the successor of the Prophet and the highest authority in the Islamic countries is entrusted with the leadership of Muslims, and the Leader of praying them, protect the lives and interests of the oppressed, after Abu Bakr<sup>221</sup> was named “Successor of the Prophet”, Omar bin Al Khattab<sup>222</sup> was called the Leader of the Faithful in place of the title of successor of successor of the Prophet<sup>223</sup>.

The King is the supreme representative of the nation: the representative character of the people derives from the system of allegiance, which is one of the ancient Islamic traditions that Morocco has adopted for centuries, and supported from the political bases of King Hassan II, which is like the election in the modern sense, the renewal of allegiance to the king is only a confirmation and continuity of political and religious

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<sup>219</sup> - Al Mawardi, Abu Al Hasan Ali Ibn Muhammad Ibn Habib Al Mawardi, known in Latin as Alboacen (972-1058 CE), was an Islamic jurist of the Shafi'i school most remembered for his works on religion, government, the caliphate, and public and constitutional law during a time of political turmoil. Appointed as the chief judge over several districts near Nishapur in Iran, and Baghdad itself, Al Mawardi also served as a diplomat for the Abbasid caliphs Al Qa'im and Al Qadir in negotiations with the Buyid emirs. He is best known for his treatise on "The Ordinances of Government."

<sup>220</sup> - Malika Sroukh, op. Cit, P. 194.

<sup>221</sup> - Abu Bakr, born in Mecca in 573 CE. He is commonly regarded as the fourth person to have accepted Islam, after Khadija bint Khuwaylid, Ali ibn Abi Talib, and Zayd ibn Harith. Abu Bakr was present at a number of battles of Islam, such as the Battle of Badr and the Battle of Uhud. was a companion and—through his daughter Aishaa father-in-law of the Islamic prophet Muhammad.

<sup>222</sup> - Omar bin Al Khattab, as one of the most powerful and influential Muslim caliphs in history. He was a senior companion of the Prophet Muhammad. He succeeded Abu Bakr (632–634) on 23 August 634. He was an expert Muslim jurist known for his pious and just nature.

<sup>223</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 74.

knowledge in this area, it does not pertain to the idea of legitimacy of representativeness, because the legitimacy of this attribute has been approved by the constitution explicitly referendum positive from the people, thus, the King became the legitimate representative of the nation, acting on behalf of it in the conduct of its public affairs, whether it related to the internal or external policy of the country, since there are other constitutional institutions specialized in specific affairs, the King was granted the status of "supreme representative of the nation" and, in that capacity, has the right to amend the constitution if necessary, provided the positive approval of the people by referendum, thus, he is a shepherd for the benefit of the country and for the affairs his nation.

The King is the symbol of the unity of the nation: a matter of great importance, because any nation in which tribes exist varies according to their local dialects, customs and customs, which needs to be unified in the unity of the ruler of the country to ensure its stability, otherwise, the situation would lead to civil war, and the country's interests would be in conflict with the ruling in favor of private interests.

The King is the guarantor of the state's tenure and continuity: with its constitutional powers and competences, which have the authority to ensure the state's permanence and continuity, both in the ordinary circumstances of the country and in exceptional circumstances, regardless of the succession of Governments and Parliament.

The King is the protector of the religion and the guardians of respect for the Constitution: These are other guarantees of great importance, especially since the Moroccan people are very religious and believe in the sacred Islamic religion, the protection of the sanctity of the Islamic

religion was made by the Constitution by the Leader of the Faithful, who was also entrusted with ensuring respect for the constitution, it should be noted that the Moroccan constitution has taken care to use terms with profound significance, as the use of protection of religion because the religion of Islam embraced by Moroccans rules and rituals (especially with regard to the side of Monarchy), the king entrusted to protect, the constitution, with its rules and principles governing the affairs of the country, has been entrusted to the King to work to respect it, to ensure the application of its provisions to ensure the purpose of its issuance.

The King shall maintain the rights and freedoms of citizens, groups and bodies: The King is keen on safeguarding the rights and freedoms of citizens, as well as the rights of groups and bodies, these groups and bodies have generally come under the rubric to include both public and private legal persons<sup>224</sup>.

As a supreme representative of the nation and keen to respect the constitution and to safeguard the rights and freedoms of citizens, groups and bodies, the king may ask the deputies to re-read a proposal or draft law does not meet their aspirations or limits the freedoms, Chapter 26 gives him the authority to order the implementation of the law without being restricted in any time<sup>225</sup>.

The king is guarantor of the independence of the country and the borders of the Kingdom in the circle of its true borders: Ensuring the

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<sup>224</sup> - Malika Sroukh, op .Cit, P. 194-195-196.

<sup>225</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 77-78.

independence of the country, ensuring its sovereignty and independence in the conduct of its affairs<sup>226</sup>.

It is constitutionally translated with the concentration of Chapter 35 for all powers in the hands of the King in the case of announcing the exception, and the replacement of Chapter 71 the King replaced the Parliament during the period between the dissolution of an old council and the election of a new council, these solutions, which is added during the transitional period and he take the necessary legislative measures to establish constitutional institutions, the conduct of public authorities, and the management of state affairs<sup>227</sup>.

The multiplicity of these legitimates reflected on the functions of the king, abolishes all mediators between him and the nation on the grounds that there is a link legitimacy represented in the pledge of allegiance, while at the level of the constitutional monarch, he needs to employ modern constitutional and political mechanisms and channels that he employs within the Moroccan political field<sup>228</sup>.

In light of this plurality in the legislations contained in the provisions of Chapter 19, constitutional jurisprudence will be interpreted differently to the requirements of this Chapter, there are those who considered the terms merely "Honorary" or more legitimate source of what is the basis for governance, while others went on to consider it as a stand-alone

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<sup>226</sup> - Malika Sroukh, op. Cit, P. 196.

<sup>227</sup> - Mohamed Mutassim, The Moroccan Constitutional Political System, op. Cit, P. 78.

<sup>228</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 79.



constitution within the Moroccan constitution, and that resorting to it is a re-reading of the Constitution<sup>229</sup>.

It is known that the wording of Chapter 19 has not changed either in the 1970 constitution or in the three constitutional revisions that followed in 1972, 1992 and 1996, with the exception of the addition of the title of the supreme representative of the nation with the constitutional amendment of 1970<sup>230</sup>.

Since the establishment of the Moroccan Constitution of 1962, Chapter 19 is at the beginning of the second section traditionally assigned to the Royal Institution, and the amendment of the 1970 constitution increase it, by adding to the king the title of "supreme representative of the nation" a constitutional deepening and a political intensification.

On one hand, the contemplator of this particular Chapter within the general constitutional architecture will note that it is a link between the basic principles contained in the preamble to the constitution and the first paragraph, and makes Monarchy the instrument of its implementation, the Chapters of the basic Law appear as bases for accomplishing the tasks entrusted to the Leader of the Faithful.

On the other hand, the subsequent constitutional Chapters on Chapter 19, appear as a constitutional translation or measures to achieve, thus, the text of Chapter 23 that the king is sacred does not violate his sanctity, is only a reflection of the honor and infallibility of the Leader, as for the constitutionally-based Government, its ministers are only

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<sup>229</sup> - Mustafa Kheidri, *Essai Sur la Légalité Au Maroc, Thèse de 3ème cycle, Droit public, Faculté des sciences juridiques, économiques et sociales, Rabat, 1983, P. 38.*

<sup>230</sup> - Abdel Rahman Allal, *op. Cit, P. 47.*

assistants to the Leader of the Faithful<sup>231</sup>, in the name of the Leader, the correspondence is inscribed and written in various public administrations, on behalf of His Majesty the King, judicial and other rulings are issued<sup>232</sup>.

Chapter 19 raises a number of debates, and a variety of opinions and divergent views, which made it the most important chapter in the Constitution, can not study the Moroccan constitution and its historical stages without standing at this chapter, it gives the king powers above constitutional, to serve as a reference to any potential crisis or position is expected.

## **2: The Government and the Parliament in the 1962 Constitution**

If the former Governments were historically subordinate to the regime, under the 1962 constitution, the Government did not depart from this approach, as an auxiliary institution for the king in the exercise of power, thus, the 1962 constitution granted the King the power of appointment and exemption for members of the Government, without any restriction either in the selection of the Prime Minister or the rest of the Ministers.

### **2.1: Government subordination to the King**

The Government is formed of the Prime Minister and the ministers, and the king appoints them, according to the 1962 constitution, the appointment of ministers does not require the Prime Minister's proposal or consultation before making such an appointment, the king has the right to exempt all members of the Government from their duties and dismissal if they resign, it is hereby noted that the king has all the powers

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<sup>231</sup> - Mohamed Mutasim, *The Moroccan Constitutional Political System*, op. Cit, P. 76-77.

<sup>232</sup> - Mohammed Shuqair, *Throne Ceremony: Between the Renewal of Loyalty and Dedication of the Rise Rites*, Journal of Point of View, No. 55, Winter 2013, P. 17.

to choose members of the Government from among the members of Parliament or outside it and from the majority or outside<sup>233</sup>, and that the constitution of 14 December 1962 has it worked on the constitution of the historical dependency of the Government and its president to the Moroccan monarch both in terms of its composition and its level of competence<sup>234</sup>.

In Chapter 24 of the 1962 constitution, it is clear that the King can exercise many powers, the first of these was the formation of the Government, so that the composition authority remained essentially linked to absolute Royal will, as a reflection of its responsibility for its actions front the King<sup>235</sup>.

As part of the absolute Royal choice to form a Government, the King does not have the constitutional obligation to choose the Prime Minister and the Ministers from among the members of the Council of Representatives or from the political parties, thus, it is noted that the power to form the entire Government remains confined to the Royal institution without the participation of the Prime Minister<sup>236</sup>.

The king is considered the actual Head of Government, while the ministers are his assistants and the executors of his policy, he is the one who constitutes them once they obtain their appointment, and from him alone they derive the legitimacy of this appointment, this makes the Government responsible front him, after the King appoints the Government, the Prime Minister will present front the two councils and

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<sup>233</sup> - Mokhtar Mutai, Constitutional Law and Political Institutions, op. Cit, P. 189.

<sup>234</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 104.

<sup>235</sup> - Mohamed Azwag, Head of State in the Moroccan Constitutional System, Master Thesis in Public Law, Faculty of Legal, Economic and Social Sciences, Agdal-Rabat, University Year 1983-1984, P. 189.

<sup>236</sup> - Youssef Thifa, op. Cit, P. 73.

present the program he intends to implement Chapter 65, the Constitution does not set a deadline for this, after the appointment of the Government, it shall continue to exercise its powers and shall not cease its work except by exempting the King or accepting his resignation or by not granting it confidence by the Council of Representatives if requested by the Government, or in the event that the censorship obtains the conditions required constitutionally, the withdrawal of the confidence of the Council of Representatives from the Government entails the resignation of all its members pursuant to the principle of ministerial solidarity, the Government's responsibility to the king is individual and collective, the issue of ministerial solidarity is not taken into consideration, the king can exempt the Prime Minister alone and compensate him while retaining all the ministers because the Prime Minister is not the Head of Government, the position of the Prime Minister in the Moroccan political system differs from that of his counterpart in the French system, in Morocco the Prime Minister can be non-Parliamentary, it does not necessarily belong to the majority if it is elected from Parliament, and the king presides over the cabinet which is the basic tool for the work of the executive and which is led by the king.

The 1962 Constitution gave the Government several executive and Legislative authorities, most of which are under Royal supervision, there are tasks for the Prime Minister alone and there are tasks for the Government as a whole<sup>237</sup>.

With regard to the powers vested in the Prime Minister, the Constitutional Document has assigned a set of functions and competencies to the Prime Minister, it is noted, through Chapters 29, 49 and 68 of the 1962

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<sup>237</sup> - Mokhtar Mutai, Constitutional Law and Political Institutions, op. Cit, P. 190.

constitution, that the latter recognizes some kind of distribution of the regulatory authority between the King in fields expressly reserved for the constitution and between the Prime Minister, it is also noted that the regulatory area is very broad, which requires a distinction between the Royal Regulatory authority and the regulatory authority of the Prime Minister<sup>238</sup>, at the same time, the Prime Minister has the right to delegate some authority to ministers who have the authority to Countersignature on organizational decisions.

The Prime Minister shall exercise the regulatory authority, except for the articles assigned by the Constitution to the King's regulatory authority, the Prime Minister shall Countersignature of Royal decrees, except for decrees constitutionally excluded from the signature of the Countersignature, while the Government is keen to implement the laws, where the administration is under its direction, the Government has the right to declare a state of siege for thirty days, as well as it has the right to resort to the constitutional chamber with a view to requesting a decision on the dispute jurisdiction with the Parliament.

In the area of legislation, the Government has an absolute priority over Parliament to be able to implement Royal policy, it has the right to submit draft laws to Parliament, the right to request a secret session and an extraordinary session, and has the power to request the authorization of legislation from Parliament, where the constitution authorizes it to issue decrees of laws, and ministers have the right to attend the work of Parliament, the Government also has absolute priority over Parliament in the legislative process in terms of its control of the agenda and

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<sup>238</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P. 40.

discussions, in terms of the priority of its projects or amendments to the proposals of the Parliament and its amendments, as well as in replacing the Parliament in the exercise of legislation.

The Government, which carries out these important tasks, is subject to Royal supervision through the king's chairmanship of the ministerial councils in which decisions of all its initiatives are decided, even the administration under its control is originally under the supervision of the Monarch, if the Parliament does not vote on the Government program, then the latter is derived from Royal directives which are not subject to surveillance<sup>239</sup>, thus, despite the text of the 1962 constitution, the Government is composed of the Prime Minister and Ministers, appointed by the King, who relieves them of their duties (Chapter 24), they are accountable to the King and the Parliament (Chapter 65), there was no Parliamentary vote on the Government program<sup>240</sup>, in practice the king was brought together between the functions of the head of state and Prime Minister, and thus did not exceed the first Government under the 1962 constitution of two years, to register the king's strong return to the presidency of the Government, which lasted until July 6, 1967, when the king appointed a new Prime Minister<sup>241</sup>.

The Government's relationship with the Parliament also appears to be subordinate to the Monarchy, thus, the Government's responsibility front the Parliament, and the possibility of its removal through the censorship and not parallel, as in the Parliamentary system, the exercise by the

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<sup>239</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 191.

<sup>240</sup> - Youssef Thifa, op. Cit, P. 73-74.

<sup>241</sup> - Abdul Nabi Kias, Government Foundation under the new constitution from the auxiliary apparatus to the executive authority, Moroccan Journal of Management and Development, No. 104, May-June 2013, P. 113.

Government of the authority to dissolve the Parliament, but is the king who has the discretion to dissolve Parliament.

In addition to its dependence on Monarchy in deterring Parliament's right to a dissolve, the Government can not bypass the Parliament by introducing a bill on the referendum, but who is available in this capacity is the king only, whenever the constitution gives it to the Government necessity of provide the Countersignature of the Prime Minister with the Royal speech, which shall request a new reading of the propose of law requiring Royal ratification.

If the Government does not have the authority to dissolve the Parliament and resort to the referendum, and does not have the highness in its relationship with the Parliament, it has absolute priority over Parliament in the legislative process to implement the Royal policy, the Government derives its priority over Parliament in the legislative process from being an executive tool to the Royal policy, this absolute priority is derived from the techniques of Parliamentary rationalization and its multiple manifestations, whether legislative, financial or regulatory<sup>242</sup>.

Under the 1962 Constitution, the Government does not have any independence, the King appoints all its members and has the right to dismiss them at any time, it is responsible front him, it works to implement the directives and instructions issued by the King, it also has no Governmental program, it work to activate the Royal Program.

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<sup>242</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 106.

## 2.2: Rationalization of the functions of Parliament

The Moroccan legislator was influenced by the Parliamentary rationality defined by the constitution of the Fifth Republic of 1958<sup>243</sup>, the Moroccan Parliamentary system builds on the flexible separation of powers which is controlled by the mechanisms of balance and cooperation between the authorities<sup>244</sup>, Parliament is the second constitutional institution after the Monarchy, the confirmation of the Constitution of 1962 to create an elected Parliament with legislative, financial, institutional and regulatory powers is one of the most important innovations in the Moroccan Monarchy<sup>245</sup>, according to the 1962 Constitution, the Government has a dual responsibility, that is, they are accountable to the king and the Parliament, and the Government's responsibility front Parliament is essentially front the Council of Representatives<sup>246</sup>.

Unlike the Western Parliament, whose its rise and grow was linked to confronting the Monarchy and extracting its powers from it, before the limitations of parliamentary rationalization, and the granting of priority by the Government, the historical course of the Moroccan Parliament is, on the contrary, marked by its birth into the hands of the Monarchy and through a constitution has put from its for the renewal of the Pledge of allegiance, in contrast to the legitimacy of historical and religious Monarchy and constitutional democracy, parliament has only the legitimacy of an electoral democracy, and in addition to its lack of a historical legacy that makes it a place of power and representation, without knowing a golden age in which he controls the

<sup>243</sup> - Pierre Pactet, *Institutions politiques et droit constitutionnel*, Paris, 4<sup>ème</sup> édition, 1985, P. 424.

<sup>244</sup> - Ahmed Naqoub, Balance of authorities between the provisions of the Constitution and the jurisprudence of the constitutional judiciary, *Journal of Pathways in thought, politics and economics*, New Success Press, Casablanca, No. 45-46, 2013, P. 70.

<sup>245</sup> - Mohamed Mutasim, *The Moroccan Constitutional Political System*, op. Cit, P. 92.

<sup>246</sup> - Mokhtar Mutai, *Constitutional Law and Political Institutions*, op. Cit, P. 186.



Governments before he is tied to the techniques of Parliamentary rationality, the Moroccan Parliament was born bound by Parliamentary rationalization techniques.

Although Morocco is a simple state and not a federal state that requires a dual council, the 1962 constitution has weakened the popular representation directly by its text on the formation of a bicameral Parliament, a Council of Representatives elected by direct universal suffrage, and a Council of Advisors elected by indirect suffrage.

The institution of Parliament under the 1962 Constitution was composed of the Council of Representatives and the Council of Advisors, where the Council of Representatives is elected by direct universal suffrage for four years.

As for the chamber of advisers, Two-thirds of its members, elected members in each of the province and territory of an electorate, consisting of members of the boards of governors, provincial councils and urban and rural councils, and the One-third of its members, of individuals elected by the agricultural chambers and chambers of commerce and industry and traditional industrial chambers and representatives of trade union organizations.

While members of the Council of Representatives are elected for four years by direct universal suffrage<sup>247</sup>, the members of the Council of Advisors shall be elected for six years, the council shall be renewed every three years and appointed by lottery for members who are covered

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<sup>247</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 92-93.

by the first renewal, the name of the Kingdom's advisors is called on the Members of the Council of Advisors<sup>248</sup>.

The number of deputies and advisers and the manner of their election and the conditions of election ability and its limitations, the constitution did not specify, but a Regulatory Law issued by the King on April 17, 1963, and stressed that the composition of the Council of Representatives from 144 deputies and the Council of advisers from 120 advisers, and also approved the monolithic ballot in one round as a method of election, rather than ballot by regulation which was suitable for parties<sup>249</sup>.

Perhaps the most important jurisdiction exercised by the Parliament in Morocco is legislation, including the promulgation of the financial law, the exercise of diplomatic and institutional powers, and then control of Government work, with regard to these terms of reference, Parliamentary action remains limited and the role of the representatives of the nation appears to be scant and does not rise to the level of the executive, the laws were issued by the two Council of Parliament and both deputies and advisers have the right to initiate the presentation of bills and the ratification of them, as the councils were deliberating and concur on the draft laws submitted to them by the Government, include the financial law, which relates to the budget and the financial measures necessary for its implementation<sup>250</sup>, and under restricted conditions, the Parliament

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<sup>248</sup> - Amin Al Saeed, Parliament under the Moroccan Constitutions: From the Constitution of 14 December 1962 to the Constitution of 29 July 2011, Moroccan Journal of Public Policy, New knowledge Press Rabat, No. 13, Fall 2013, P. 36.

<sup>249</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 93.

<sup>250</sup> - Mokhtar Mutai, Constitutional Law and Political Institutions, op. Cit, P. 182.

approves the Finance Law and gives its consent to treaties that charge state finances<sup>251</sup>.

The constitution of 1962 restricted the Parliament's legislative power and expanded the legislative and regulatory authority of the Executive Authority, especially as it allowed the delegation of legislative power of the Parliament to the Government, and made the king the main legislator, although the constitution gave the Parliament the power to vote on the law and to give its members the right to propose laws on an equal footing with the Prime Minister, he made it subordinate to the executive and subject to the Government in terms of the legislative procedure<sup>252</sup>, thus, the Parliament intervenes only in the areas of individual and collective rights, the basic principles of civil and criminal law, the organization of the judiciary, the basic guarantees granted to civil servants and military personnel, moreover, other articles that are not within the purview of the law are within the scope of regulatory texts (Chapter 49)<sup>253</sup>.

Unlike the Parliaments of many Western capitalist states (USA, France, Spain) The Moroccan Parliament has only limited diplomatic and institutional Tasks.

Diplomatic competence appears first in terms of ratification of treaties that charge state finances, ratification of other treaties is within the jurisdiction of the King, if the constitution provides that ratification of treaties that may be incompatible with the provisions of the constitution may be effected by following the procedure provided for its amendment,

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<sup>251</sup> - Said Khamri, *The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco*, op. Cit, P. 59.

<sup>252</sup> - Mokhtar Motai, *Constitutional Law and Political Institutions*, op. Cit, P. 183.

<sup>253</sup> - Marwan Abu Abdullah, op. Cit, P. 33-34.

this text authorizes Parliament to trade on treaties, as long as the constitutional review procedure provides for the Parliament's ability to exercise the change.

In the other hand, Article 51 of the Constitution authorizes the Parliament to declare war, and the Article 52 also authorizes the Government to extend the state of siege 30 days after its application and the end of the declared decree.

What is noted in the 1962 Constitution is that the Parliament, in addition to the Prime Minister, has the right to proceed with the constitutional Review Initiative (Chapter 104), with regard to the draft review by the Ministerial Council, it should be deliberated by the Council of Parliament (Chapter 105), the motion for review by Parliament should be taken by a majority vote absolute (Chapter 106), the limited role of the Parliament in this regard appears to be that the Prime Minister has the same right, the issue of absolute majority can also be an obstacle to the acceptance of the review proposal, especially if it come from the opposition parties as long as the Parliamentary majority is loyal to the Government and the Prime Minister, in general, the review becomes final only after approval by referendum (Chapter 107)<sup>254</sup>.

The constitutional legislator, through Chapter 19 of the 1962 Constitution, recognized the priority of the projects submitted by the Government in determining the agenda of the Parliament, where it is clear that the constitutional legislator narrowed the tasks of the council, which has made some researchers consider that the Office of the

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<sup>254</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 185-186.

Council Representatives is "Writing the Government" which write down what the latter dictates only<sup>255</sup>.

In this way, the constitutional legislator did not leave the Parliament, the master of its system, rather, he quoted the specific Parliamentary rationalization techniques of the system of its members and its system of work in detail, and in some respects, the internal law of the Parliament which, although the latter enjoys the competence to set its status, its application is subject to the approval of the constitutional chamber, which monitors the extent of conformity with the text of the constitution, and that the Parliament itself is not authorized by internal law to have powers beyond the text and spirit of the Constitution<sup>256</sup>.

The constitution of 1962 greatly restricts the powers of the legislative institution, and gives priority to the Government in proposing drafts.

The powers of parliament in the field of external relations are very limited, and do not exceed the ratification of some conventions that require special procedures.

## **Chapter II: Subsequent Constitutional Experiences**

All the subsequent Moroccan constitutions followed the structure of the political system set by the 1962 constitution and were influenced by political circumstances, some of them tried to respond to the demands of the opposition, but this response was limited, and did not reach the

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<sup>255</sup> - Mohammed Adwairi, Terms of reference of the Moroccan Parliament under the Constitution of 1962 and 1996, comparative study, Ph.D. Dissertation in Public Law, Faculty of Legal, Economic and Social Sciences, Agdal-Rabat, University Year 2003-2004, P. 35.

<sup>256</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 93-94.

degree of Parliamentary Monarchy as it was demanding parties that descended from the national movement.

## **I: Constitutions 1970 and 1972**

The 1962 Constitution did not satisfy the parties of the national movement, which was completely absent during its preparation, which put Morocco in a political crisis, which led to the freezing of the work of the Parliamentary institution and the imposition of the Case of exception status, thus the amendments of the 1970 and 1972 constitutions came as an attempt by the Royal Institution to overcome the state of obstruction prevailing.

### **1: The 1970 constitution**

Just as the 1962 constitution reflected the balance of power between the Royal establishment and the parties that descended from the national movement, the 1970 constitution was the overriding exception, it has emerged in the context of a political crisis, which has imposed an exception since 1965 thus, the 1970 constitution enshrines the prevailing situation by granting additional and extraordinary powers to the Royal Institution.

#### **1.1: The Case of exception**

The Parliamentary experiment, under the 1962 constitution, did not yield a significant result, so that Parliament was only 19 months old, the late King Hassan II quickly announced the Case of exception (a set of special powers decided by several regimes to review internal or external political crises for the benefit of the Executive Authority, which breaks down the

validity of the ordinary legal rules for the restoration of state stability, the so-called legitimate dictatorship)<sup>257</sup> On June 7, 1965, in accordance with Chapter 35 of the Constitution, thus placing all power in his hands.

The reasons for the failure of this experiment, in particular, are the political structure of the 1963 Parliament, characterized by the absence of a strong and harmonious majority, especially the Council of Representatives (the Bloc for the Defense of Institutions, which included the Liberals and the Popular Movement: 71 seats), there is strong opposition with its historic leaders such as Allal Al Fassi and Mahdi Ben Barka in this council (the Istiqlal party had 40 seats and the National Union of Popular Forces had 27 seats (With a total of 67 seats) Despite the presence of six independent deputies loyal to the Bloc<sup>258</sup>.

One of the reasons for the failure of this experiment was also the censorship motion submitted by the opposition, which received the attention of the national public opinion in June 1964, which was aimed at pressuring the Government to release those sentenced to death Mohammed Al Basri, Omar Benjelloun<sup>259</sup>, Moumen Diouri<sup>260</sup> for attempting to topple the regime in July 1961.

In addition to these two reasons, for the failure of the first Parliamentary experiment, the failure of official endeavors, in the formation of a national

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<sup>257</sup> - Omar Bendoro, *Le Pouvoir exécutif au Maroc depuis l'indépendance*, Publisud, Paris, Décembre 1986, P. 110.

<sup>258</sup> - Marwan Abu Abdullah, *op. Cit*, P. 38.

<sup>259</sup> - Omar Benjelloun, born on 26 November 1936 and died on December 18, 1975, lawyer, unionist and leftist politician of Morocco, was president of the Association of Muslim Students of North Africa between 1959-1960, in January 1975 he was elected a member of the Political Bureau of the Socialist Union of Popular Forces, before being assassinated in the same year.

<sup>260</sup> - Moumen Diouri, born February 20, 1938 in Kenitra and died May 16, 2012 in Rabat, is one of the few opponents exiled from Morocco to have advocated a republic in Morocco.

coalition Government, as well as the unrest experienced by the city of Casablanca in May 1965<sup>261</sup>.

Thus, the 1970 Constitution emerged in very critical circumstances in Morocco's independent history, the birth of this constitution coincided with the official announcement of the Case of exception, which had a significant impact on Moroccan constitutional and political life<sup>262</sup>, and the five years in which it underwent Morocco to the Case of exception, the King exercised absolute powers in which no one participated, so that all powers were brought into his hands, whether in the legislative, executive or even judicial fields<sup>263</sup>.

The deteriorating situation in Morocco in the 1960s and 1970s has contributed to the stalemate of constitutional and political life, Morocco has witnessed a freeze on investment, a freeze on Government spending and an increase in prices, the education sector has been subjected to many strong protest movements, thus, the increases in the prices of some basic materials, the Government's resort to the policy of stopping investments and freezing state and public institutions have negative repercussions on social reality, many workers have been separated from their jobs, to enter the country in a series of strikes, but this was only the point that led to social and political upheavals.

While the fuse of unrest was boiling in another area, the field of education, following the issuance of the ministerial decision issued on 9 February 1965 by the Ministry of National Education, and the judge that

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<sup>261</sup> - Said Khomri, *The Spirit of the Constitution: Reform of Power and Legitimacy in Morocco*, op. Cit, P. 60-61.

<sup>262</sup> - Mohamed Chouair, *Political Decision in Morocco*, New Success Press, Casablanca, 1992, P. 17.

<sup>263</sup> - Abdel Moneim Riad Qadi, *Moroccan constitutional review of 4 September 1992 and the problem of stability and change in the Moroccan political system*, Master Thesis in Public Law, Mohammad I University, Faculty of Legal, Economic and Social Sciences Oujda, University Year 1996-1997, P.



the fourth year of secondary should go only to students who are able to pursue study in one of the specialized subjects of the second corps, and that it can go to the fourth year just the secondary pupils who are under the age of 18 years, so that this obstacle formed the cause of the emergence of several strong protest movements in most cities of Morocco<sup>264</sup>.

The economic and social tension, culminating in the events of March 1965 in Casablanca and the failure of official endeavors to form a coalition Government, will result in the Royal declaration of June 7, 1965, and concentration the authorities in his hands which accordance of Chapter 35, pending the amendment of the constitution and a new experiment in which the gaps of past experience would be corrected<sup>265</sup>.

The absence of a dialogue between the Royal Institution and the opposition contributed to fueling the political rift in Morocco in the 1960s and 1970s, in this context, some political actors will crystallize radical positions towards political power.

The Istiqlal Party turned its support from the regime to its opposition:  
This party came to the opposition from 1964, when it began to adopt positions opposing the regime, especially after the seventh conference held on 12 February 1965, so that this opposition turned against the regime and not against the Government, The leader, Alal al-Fassi, said at the conference that feudalism and the ruling class must be eliminated, noting that the wealth of Morocco is controlled by 500 families.

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<sup>264</sup> - Mohamed Zinedine, The Constitution and the System of Government in Morocco, op. Cit, P. 95-96.

<sup>265</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 108.

The National Union of Popular Forces and the Revolutionary Option:

This party has come to the opposition since the end of the experience of the Government of Abdullah Ibrahim, so he continued to exercise strong opposition within the Parliament, its positions as radical positions of the Istqlal Party, it considered that the crisis in Morocco was the result of a disastrous policy hostile to the people, denying the basic interests of the country, whether in the economic, social or political fields.

National Union of Moroccan Students: The reaction of this student organization was not less than that of the Istqlal Party and the National Union of Popular Forces, it translated its positions at its eighth conference of 1963, which came with meaning: "Revolutionary doctrine against the rule" "The Eighth Congress of the National Union of Moroccan Students officially declares that the abolition of the regime is the best solution to get the country out of this open crisis<sup>266</sup>."

The outcome of this failed context was the declaration of the Case of exception, the stalemate of the political system, the marginalization of political parties, which opened the way for the intervention of the army as a new element in the political equation in Morocco, and his attempt to impose a new style of legitimacy.

Consequently, the system is became rigid and isolated and the its capacity to mobilize became weak, and thus diminished its legitimacy, in this context, the king will suddenly announce the organization of a constituent referendum, and linked the termination of the state of exception with accepting the rules of the new Constitution, however, the ratification of the 1970 constitution did not prevent the aggravation of the

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<sup>266</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 96-97.

crisis of the political system, due to the lack of institutional balance and devoted a break between the opposition and the Royal Institution, the 1970 constitution supported the authority of the king's , and reduced powers of the Prime Minister, where the regulatory authority became the king's jurisdiction, as well as the weakening of the authority of Parliament in terms of structure, status and competence in the political system<sup>267</sup>, the constitution of July 24, 1970, preserves the ancient character of the Kingdom of Morocco, in order for the Case exception to be legal and constitutional<sup>268</sup>, through the fact that the Royal institution exercised a subsidiary Constituent Authority not owned its according the constitution of 1962<sup>269</sup>, it concentrated the most powerful authority in the king's hands in order to make the executive more effective in dealing with everything that impedes the stability and unity of the nation, but this constituted a significant retreat from the 1962 constitution<sup>270</sup>.

But the failed coup attempt that took place in Skhirat<sup>271</sup> on July 10, 1971 Did not allow the 1970 constitution to live long when it was frozen and terminated<sup>272</sup>.

The 1970 constitution came in the midst of successive crises in Morocco, and led to the quarrel among the components of the Moroccan political field, led to the declaration of the state of exception by the King, which was intended to control the situation.

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<sup>267</sup> - Abd Al Malik Al Wazzani/ Husain Aabushi, op. Cit, P. 158.

<sup>268</sup> - Youssef Thifa, op. Cit, P. 20.

<sup>269</sup> - Rkia El Mossadeq, The Labyrinth of Constituent Authority: Does Constitutional Monarchy coexist with the Constitution of My Assessment?, New Success Press, Casablanca, 2016 edition, P. 26.

<sup>270</sup> - Youssef Thifa, op. Cit, P. 20.

<sup>271</sup> - Skhirat, is a seaside town in Morocco situated between the administrative capital Rabat and the economic centre of Casablanca, also located in Skhirat is the summer palace of the Moroccan King Mohammed VI, venue of a failed military coup against King Hassan II in July 1971.

<sup>272</sup> - Nabila Abdel Halim Kamel, The brief in the political systems and constitutional law of Morocco, Print Moroccan publishing house Fares Morocco, 1980, P. 280.

## 1.2: Constitution the 1970 and dedicating the Case of exception

The constitution of 1970 came dedicated largely to the practice followed in the Case of exception, away from the principles of the constitution of 1962<sup>273</sup>, and by reading the Chapters of the 1970 constitution It is clear that there have been substantial changes that have negatively affected both the executive and legislative organs in exchange for strengthening the position of the Royal Institution, the 1970 constitution sought to preserve the fundamental structure of the Moroccan political system, the Royal Institution has maintained its privileged position, and its powers have been strengthened by giving the King a number of tasks, Where the King's powers were strengthened through a series of actions, all of which were rooted in the tradition of the Moroccan Sultan<sup>274</sup>.

This constitution enshrines the king's strong return to monopolize the most important powers, becoming the source of the regulatory authority under Chapter 29 of the 1970 Constitution<sup>275</sup>, the constitution of 1970 gave the king broad powers as a practitioner of the regulatory authority alone, having shared with the Prime Minister as stipulated in the 1962 constitution<sup>276</sup>, this means that the scope of the exercise of regulatory authority by the Prime Minister has become linked in terms of determining the king's discretion<sup>277</sup>, but it did not stop at this limit, has moved the issue of exercise of the Constituent Authority of the King<sup>278</sup>, the initiative to amend the constitution was distributed only to the Prime Minister and the Parliament, while the presentation of either referendum

<sup>273</sup> - Mohammed Ashkarki, op. Cit, P. 51.

<sup>274</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 99.

<sup>275</sup> - Abdul Nabi Kias, op. Cit, P. 113-114.

<sup>276</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 100.

<sup>277</sup> - Moulay Hicham Idrissi, The regulatory authority of the Moroccan system, a fundamentalist attempt at text and practice, Ph.D. Dissertation in Public Law, Faculty of Legal, Economic and Social Sciences, Agdal-Rabat, University Year 2001-2002, P. 31.

<sup>278</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 100.

returning to the power of the king<sup>279</sup>, then the 1970 constitution doubled the King's jurisdiction in all fields<sup>280</sup>.

In fact, this constitution has devoted the return to the traditions of the sultan by adopting the term of the “Dahir” instead of the term of the Royal decree that prevailed during the sixties, at the level of inheritance of the throne, the king has the right to appoint one of his sons as a successor to him a, not only the eldest son, so that the hereditary inheritance of the throne was not kept to the eldest son of the dynasty of King Hassan II, under this constitution, the Guardian Council was prevented from amending the constitution, and its composition was changed by granting the King the power to appoint seven of its members by virtue of the Constitution (Chapter 21), in addition, the Royal speeches are not subject to any Journalist or partisan debate, and every deputy who conducts an argument in the Monarchy or Islamic religion or violates the due respect of the king does not benefit from Parliamentary immunity<sup>281</sup>.

One of the most important innovations introduced in the 1970 constitution is the amendment of Chapter 19, which added to the characters of the King, Leader of the Faithful, the character of the Supreme Representative of the nation, which made the deputies who derive their mandate from the nation, secondary representatives before the Supreme Representative, which derives his legitimacy from religion and allegiance and his noble<sup>282</sup>, a reference to the Royal Representation of all other representative institutions approved by the constitution, and sufficient for them in the absence it, in order to fill any

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<sup>279</sup> - Rkia El Mossadeq, *The Labyrinth of Constituent Authority: Does Constitutional Monarchy coexist with Evaluative Constitution ?*, op. Cit, P. 38.

<sup>280</sup> - Omar Bendoro, *The Moroccan Political System*, op. Cit, P. 94.

<sup>281</sup> - Mokhtar Mutai, *Constitutional Law and Political Institutions*, op. Cit, P. 192-193.

<sup>282</sup> - Mohamed Mutasim, *Moroccan Constitutional Political System*, op. Cit, P. 110.

political vacuum that may result from any possible solution to the Parliament<sup>283</sup>.

The 1970 constitution strengthened the powers of the King, at the legislative level, where he was entitled to exercise legislation pending the election of a new Parliament (Chapter 70), there was also no definition of the period between the issuance of the order to implement the constitution and the election of Parliament, during which the King alone exercised Legislative authorities.

In addition to these fundamental amendments, the right to take the initiative, in order to review the constitution, has become practically exclusive to the king, although Article 98 of the 1970 constitution provides that two thirds of the members of the Council of Representatives can propose to the King to review the constitution, the King may reject or accept this proposal, accordingly, taking the initiative to review the constitution has become a monopoly of the King, both in the ordinary and the exceptional situation<sup>284</sup>.

The 1970 constitution did not give the Government the status it had been given by the 1962 constitution, but made its subordination to the king absolute, the Prime Minister lost his regulatory authority, so that he is limited to what the King authorizes in this regard, in addition, he did not keep the issue of delegating some of his powers to ministers, he also lost the initiative to amend the constitution, he left no right to sign the Royal speech containing a new reading of the propose of law requiring Royal ratification, the most important new thing added to the powers retained

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<sup>283</sup> - Youssef Thifa, *op. Cit*, P. 20.

<sup>284</sup> - Said Khomri, *The Spirit of the Constitution: Reforming Power and Legitimacy in Morocco*, *op. Cit*, P. 63.

by the Prime Minister was the coordination of ministerial activities (Chapter 63)<sup>285</sup>.

If Chapter 29 grants the King the regulatory authority, Chapter 60 provides that the Government shall ensure that the laws are enforced and that the administration is at its disposal, this means that if the Government is charged with overseeing the implementation of the laws and running the administration, it will not be able to do so without providing them with the means necessary to do it<sup>286</sup>, although the Government continued to ensure the implementation of the laws and the administration was at its disposal, it was difficult for it to exercise its powers without the regulatory authority<sup>287</sup>.

If the 1962 constitution had weakened the powers of the Parliament, the 1970 constitution would reduce these powers further and further limit the role of the representatives of the nation, tighten the rationality of the legislature, at the level of forming the Parliament, the most important initiative of the constitutional legislator was the merger of the two councils of Parliament, which were enshrined in the 1962 constitution, in one council is the council of Representatives, in addition to weakening the popular representation of Parliament by making 3/2 members of the Council of Representatives are elected by indirect vote with the identification this mandate in six years, The Council of Representatives, which now has 240 members, has been elected by the following members: 90 members elected by the monolithic ballot in one round, 150 members elected by indirect ballot, representing "Local authorities",

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<sup>285</sup> - Mokhtar Mutai, Constitutional Law and Political Institutions, op. Cit, P. 194.

<sup>286</sup> - Moulay Hicham Idrissi, op. Cit, P. 103.

<sup>287</sup> - Omar Bendoro, The Moroccan Political System, op. Cit, P. 120.

professional chambers, in this way, priority will be given to the electorate by indirect suffrage to representatives of direct popular will<sup>288</sup>.

However, the 1970 constitution did not find its institutional status, opposition parties that were within the national bloc decided to boycott the referendum of this constitution, after the events of July 10 negotiations were held between the palace and the opposition to develop a new formula, it was clear at the beginning of February 1972 that the trend was towards a new amendment to the constitution and the involvement of political parties in Government<sup>289</sup>.

Under the 1970 constitution, the monarch monopolized all authorities, thus, the constitution reflected the facts of the exceptional situation that prevailed in Morocco before its adoption, strengthening the king's powers and weakening all other powers.

## **2: The 1972 Constitution**

The 1972 constitution attempted to achieve a kind of political openness and to exploit the rapprochement between the Royal institution and the parties that descended from the national movement, as a result of the developments of the Sahara issue, resulting in a national consensus, and the convulsion about the Royal Institution, which tried invest in this positive atmosphere to achieve national reconciliation and adopt a new constitution that reflects this openness.

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<sup>288</sup> - Mokhtar Mutai, Constitutional Law and Political Institutions, op. Cit, P. 194-195.

<sup>289</sup> - Mustafa Al Suhaimi, Institutions Towards Constitutional Monarchy, A Collection of Memoir Books in the Moroccan Heritage, Part VII, In the Passengers of Nations, 1983, P. 134.



## 2.1: The political situation during the period the 1972 Constitution

On July 10, 1971, King Hassan II held a party at Skhirat Palace on the occasion of his birthday, after the presence of ministers and a number of political, social, diplomatic, media and military figures from inside and outside Morocco, during the ceremony, King Hassan II was surprised by a coup attempt<sup>290</sup>.

After the military coup of 1971, the King initiated a series of measures aimed at opening up to the opposition and other political bodies that have been marginalized over the years of exception, but what happened was that at the height of this consensus atmosphere, the king would announce unilaterally and abruptly to a draft new constitution, although his negotiations with the opposition parties were still in their beginning<sup>291</sup>.

Because the 1962 constitution had needed to meet the requirements of political openness to the opposition, it had made equal between the consecration of the king's highness in the constitutional order and the improvement of the authority of the Government and the Parliament to ensure the participation of the opposition in its institutions<sup>292</sup>, on February 17, 1972, the king announced his intention to draft a new constitution and put it to the people for ratification by a popular referendum, the constitution of July 31, 1970 gave the Constituent Authority to the King, stating that "The king has the right to take the initiative to review the Constitution" the Council of Representatives may propose to the King to review the constitution if Two-thirds of its members agreed to submit this

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<sup>290</sup> - Mahmoud Saleh Al Karwi, Morocco: Motives and Dimensions of the 1971 Military Coup and its Implications in 1972, Journal of Point of View, No. 53, Summer 2012, P. 45.

<sup>291</sup> - Abdel Moneim Riad Qadi, op. Cit, P. 26.

<sup>292</sup> - Mohamed Mutasim, Moroccan Constitutional Political System, op. Cit, P. 115.

proposal", in both cases, the review becomes final only after "Approval in the referendum", but its amendment was linked to a set of circumstances that were likely to lead to the involvement of representatives of the political parties of the national bloc in the task of amending the constitution, nevertheless, negotiations with representatives of the national bloc, as a result of the political openness that followed The coup attempt in July 1971 and lasted from November 1971 to March 1972 did not result in the involvement of the representatives of the bloc's parties in this amendment by forming a national Government, which working on with the task of the necessary reforms, both in the political, economic and social spheres, but the economic measures taken in this circumstance were limited in the short term in some measures such as the announcement of the return of 300,000 hectares of agricultural land and distribution to the Moroccan farmers and raise the wages of the civil service, the political measures taken against the opposition did not result in acceptance of the participation of the parties in the exercise of the constituent authority, in this context, the king's authority in drafting the constitution and submitting it to the referendum was defended, and was criticized the idea of forming a specialized committee composed of members of the bloc and the Government to carry out the task of constitutional amendment, this criticism was based on the idea that "Constituent Authority", like the rest of the authorities, emanates from the people and can only be delegated by the people who own them, therefore, when the king put the constitution, he exercised only authority from the authorities which was delegated to him by the nation unanimously".

Although the bloc recognized the positive nature of the constitutional amendments, it criticized the amendment procedure as stated in the

letter of February 17, 1972, considering that it is could not to incarceration the aspects of the crisis in the problem of amending the constitution on 18 February, statement states that the bloc "Presented a comprehensive and indivisible program", so that "a new constitution regardless of the positive elements it might contain would not meet the current essential needs, or be a viable solution to the crisis of the country, it is noteworthy that the bloc has already called in its founding document to establish a Government of representatives of the parties composed of the bloc, committed to achieve the program that identified, its broad lines are summarized in the establishment of political and social democracy, the liberation of the national economy from the control of capitalism, nationalization of the basic sectors of the national economy and the implementation of agricultural reform in which the land for those who plow<sup>293</sup>, although the 1972 Constitution meets some of the demands of the "National bloc", particularly improving the status and authority of the Government and Parliament, the Royal initiative by the unilateral declaration of the holding of a constitutional referendum on 1 March 1972, and the desire of the "National bloc" in reaching a comprehensive agreement that includes, along with constitutional reform, political, economic and social reforms by a national coalition Government, these factors made the "National bloc" decide not to participate in a referendum in the beginning of March 1972<sup>294</sup>.

Furthermore, the Liberal and socialist party decided to boycott the referendum, saying it was "An anti-democratic way" and the boycotting "A contribution to the battle for a sovereign Constituent Assembly" the "Essence of the 1972 constitution is no less retroactive than the 1970

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<sup>293</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, op. Cit, P. 56-57.

<sup>294</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 115.

constitution"<sup>295</sup>, the constitutional democratic Party rejected the new constitution, so that the support of the constitution was confined to the Government, the Popular movement and official trade union organizations<sup>296</sup>.

The Bloc parties believed that the king would consult them during the preparation of the constitution of 1972,

however, this was not achieved, as the king was unique in setting this constitution to appear to the opposition and the left that he is still the maker of the political institutions of the country.

And in the face of the exclusion of these parties from participating in the development of this constitution, they will take the initiative to boycott, although it will restore some consideration to the Government and Parliament, however, the political parties entered in a new state of anxiety and tension, especially after the failed coup attempt on the second of August 16, 1972<sup>297</sup>, led by General Oufqir<sup>298</sup>, the operation was carried out by a small group of 22 officers from the aircraft squadron from Kenitra base<sup>299</sup>.

After this incident the king will strengthen more than his position, as the army will be reorganized, and the Ministry of Defense deleted, there was

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<sup>295</sup> - Rkia El Mossadeq, Constitutional Law and Political Institutions: The Moroccan political system and other contemporary regimes, op. Cit, P. 57.

<sup>296</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 115.

<sup>297</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 196.

<sup>298</sup> - he was born on 14 May 1920 and died on 16 August 1972, Minister of Defense and Minister of the Interior of the Kingdom of Morocco and the right hand of King Mohamed V and Hassan II between 1940-1972, on 16 August 1972 he made a failed coup against King Hassan II.

<sup>299</sup> - Mahmoud Saleh Al Karwi op. Cit, P. 47.

no openness in the political arena until after the issue of the Moroccan Sahara was raised and the national consensus was formed around it<sup>300</sup>.

By voting 98.75% of the participants in the referendum on the first of March 1972 on the draft constitution of 1972 issued by the King on 10 March 1972, however, the inauguration of the resulting Parliament it will not be until October 1977<sup>301</sup>, despite the positive elements contained in the constitution of 1972, it did not find its way to implementation immediately after the adoption by referendum<sup>302</sup>, the constitutional experiment came into force five and a half years later<sup>303</sup>, the reason for this transition period is that in 1973, Morocco will witness the failure to agree on the formation of a national Government to oversee the elections and the tension the regime's relations with the left wing of the National Union of Popular Forces, the issue of the Moroccan Sahara will be raised after the judgment of the International court of Justice in October 1975 and the organization of the Green March in November of the same year, and then the entry of this issue at a new turning point after Algeria joined itself as a party concerned through its full support for the Polisario Front, which required Morocco to prepare for the defense of its historical rights, and its land and soil, and it must have required a national consensus and the convulsion of people around the throne in order to face any attempt to touch the territorial integrity of Morocco, and then there was a delay in the legislative elections and the entry into force of the institutions provided for in the 1972 constitution<sup>304</sup>.

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<sup>300</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 196.

<sup>301</sup> - Mohamed Mutasim, The Moroccan Constitutional Political System, op. Cit, P. 115.

<sup>302</sup> - Abdel Moneim Riad Qadi, op. Cit, P. 27.

<sup>303</sup> - Said Ashkar Afkir, op. Cit, P. 106.

<sup>304</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 196-197.

The 1972 constitution came after the Coup attempts, which tried to topple King Hassan II and the subsequent attempt by the King to open up to the opposition and create an atmosphere of mutual trust, with the aim of removing Morocco from the crises that beset it.

## 2.2: The return to constitutional life

The constitution of 1972, like the rest of the Moroccan constitutions, a written constitution that has been put on the method of a popular referendum and it is a rigid constitution<sup>305</sup>, in which the king's strong powers were kept under the normal and exceptional circumstances, the authority that was changed is the regulatory authority, where the Prime Minister retrieved it Mohamed Mutasim again, but despite this the king was remained a major role in this regard, especially after the continued responsibility of the Government in front of him, as he exercised the regulatory authority in the religious field, as well as the supreme commander of the Royal Army since the deletion of the Ministry of defense in 1972, where at military field he exercised an organizational authority<sup>306</sup>, the constitution of the Morocco of 1972 assigned the powers of the Ministry of defense to the King as the supreme commander of the Armed Forces<sup>307</sup>.

Thus, under the 1972 constitution, as in the case of its predecessors, the King remains the core of the existing political system, in view of the

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<sup>305</sup> - Nabila Abdel Halim Kamel, op. Cit., P. 281.

<sup>306</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 197.

<sup>307</sup> - Saadana Ould Maysara, Executive Authority under the 2011 Constitution, Comparative Study, Letter to the Master Thesis in Public Law, Mohammed VI University of suisi, Faculty of Legal Sciences Sala, University Year 2011-2012, P. 41.

means of influence it possesses, which allows it to direct and control legislative, executive and judicial authorities<sup>308</sup>.

Where Chapter 29 of the constitution stipulates that:

"The King shall exercise by virtue of his powers expressly vested in him by the text of the constitution, "Royal Dahir" shall be countersigned by the Prime Minister except as provided in Chapters 21 (second section) 24-35-68-70-85-95-100".

It is clear from this provision that the King has the right to issue decrees in the fields of his competence under the constitution, this provision needs to be clarified with regard to defining the terms of reference of the King on the one hand, the Prime Minister on the other, and the Parliament on the third.

The Moroccan constitutions of 1962, 1970 and 1972 did not take the traditional rule that makes the area of legislation the origin, instead, it has taken the opposite view that the areas of legislation have been defined exclusively in the constitution, so that the domain of regulatory authority is the origin, the legislative sphere is the exception, in other words, the scope of the regulation in the Moroccan system is the original, and the field of law is the exception.

However, the three constitutions of 1962, 1970 and 1972, although agreed in the previous rule, differed among themselves as to who exercised regulatory authority.

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<sup>308</sup> - Abdel Moneim Riad Qadi, op. Cit, P. 26.

By reading the provisions of these constitutions, it is clear that the regulatory authority was the responsibility of the king and the Prime Minister in the 1962 constitution, and it is the king's jurisdiction in the 1970 constitution with the possibility of delegation to the Prime Minister, and then this authority became the competence of the Prime Minister as of the constitution of 1972<sup>309</sup>.

Thus, the 1972 constitution re-examined and expanded the powers of the Government by assigning the regulatory authority to the Prime Minister, and without involving the king in its exercise as was the case in the constitution of 1962, where the Prime Minister exercised the regulatory authority, and thus became the Prime Minister had the right to delegate some of his powers to ministers, the decrees of the Prime Minister are signed with countersignature by the Ministers responsible for their implementation<sup>310</sup>.

And thus, the reconsideration of the institution of the Prime Minister to the exercise of regulatory authority, after what was in the experience of the 1970 constitution of the King's jurisdiction, the revitalization of the Prime Minister's institution, with its constitutional role, led to the activation of the role of the Government through the delegation of the Prime Minister to the ministers of the regulatory authority<sup>311</sup>.

The powers of the Prime Minister also witnessed some changes in the constitution of 1972, contrary to what was in the Constitution of 1970, as the Prime Minister became responsible for the coordination of ministerial

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<sup>309</sup> - Nabila Abdel Halim Kamel, op. Cit, P. 289-290.

<sup>310</sup> - Youssef Thifa, op. Cit, P. 76.

<sup>311</sup> - Marwan Abu Abdullah, op. Cit, P. 50.



activities, which was not exposed at the Moroccan constitution of 1962, which remained silent on this point.

As a common point with the constitution of 1962 and the 1970 Constitution, this constitution also did not address the issue of assigning the Prime Minister the task of defining and conducting the policy of the State, what the Prime Minister presents to Parliament as a Government program is merely an expression of a policy drawn up by the king, because the latter is responsible for the executive rather than the Prime Minister.

And there is a retreat witnessed by the constitution 1970 and 1972 compared to the constitution of 1962 in relation to the power to amend the constitution, the Prime Minister no longer exercises the subsidiary Constituent Authority that he was authorized to do next to Parliament in the 1962 constitution of the kingdom<sup>312</sup>.

On one hand, the most important thing note about the position of the Government within the 1972 constitution, on one hand, it is that this institution has restored its role which it exercised according to the 1970 constitution, accordingly, the Ministers, in turn, restored the authority to Countersignature on the decisions of the Prime Minister, and the Prime Minister also had the right to delegate some of his powers to ministers.

On the other hand, the Ministerial council became which decided on the most important decisions concerning the policy of the State, thus, according to article 65 of the 1972 Constitution, the following matters are referred to the Ministerial council before deciding: "Issues of public

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<sup>312</sup> - Youssef Thifa, op. Cit, P. 76.

interest, declaration of the state of siege, declaration of war, request of confidence from the Council of Representatives in order to continue the Government to assume its responsibility, draft laws before their submission to the council of Representatives, the decrees referred to in Chapters 38-39-44-54 of the constitution , draft outline, draft amendment of the constitution", this text was, of course, intended to reassure the opposition not to repeat the experience of (1965-1971) as the most important decisions are taken in the Royal Court without the participation of ministers<sup>313</sup>, to the extent that the Government no longer appears only as a team of "Senior officials<sup>314</sup>".

As the program became, which submitted by the Prime Minister to the consideration of the Council of Representatives, also contains the main lines of action that the Government intends to undertake in various areas of national activity, particularly in the fields of economic, social, cultural and external policy (Chapter 59), after the elements of this program were not defined by Chapter 59 of the 1970 constitution, and if the Government's program, according to the 1972 constitution, outlines Government policy, the Constitution has made it a public program where the Government is limited to making public statements before the Council of Representatives without giving details and precise data about the policy it intends to apply, the debate on this program does not end with voting, and therefore does not lead to the overthrow of the Government<sup>315</sup>.

These changes included in the structure of the new constitution are aimed primarily at reassuring the opposition political forces, in order to

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<sup>313</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 199.

<sup>314</sup> - Omar Bendoro, The Moroccan Political System, op. Cit, P. 96.

<sup>315</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 200.

involve them in taking political responsibility in the crucial decisions, the Ministerial Council was also activated and it replaced the central control had exercised by the Royal Court<sup>316</sup>, which set its terms of reference in deciding decisions concerning the general policy of the State, however, the field of regulation of the relationship between the Governmental and legislative institutions and the Royal Institution had remained Stable<sup>317</sup>.

Under the 1972 Constitution, the King retained the powers and powers to direct public policies, giving the Prime Minister certain powers to exercise Regulatory Authority.

Thus, despite the previous openness, the Constitution did not seek to change the structure of the system.

## **II: The constitutions of 1992 and 1996**

With regard to the international and national changes of the late 1980s and early 1990s, Morocco launched a process of historic reconciliation between the Royal Institution on the one hand and parties descended from the national movement on the other hand, this series eventually led to constitutional revisions for 1992 and 1996, and later to the rotation Government.

### **1: The 1992 Constitution**

The constitutional review of 1992 constituted a qualitative leap in the nature of the Moroccan political system and was considered an

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<sup>316</sup> - Royal Court, Or Noble Court is a place where an important ruler such as a king, prince or duke live. The building is often called a palace, but the "Royal Court" means not just the buildings but all the royal household (all the people who live and work there). It is called a court because in early times the palace would have a court (an enclosed space) at the front.

<sup>317</sup> - Said Ashkar Afkir, op. Cit, P. 100-101.

advanced step in the path of reform and building the state of law, for the first time, ministers were appointed on the proposal of the Prime Minister, but without the Royal institution giving up its lofty status in the Moroccan political system.

### **1.1: Consensus on the adoption of the reform strategy**

Moroccan political life after the March 1972 constitution, after the second attempt of the coup d'état and the events of 1973, remained in a political stalemate, the implementation of the 1972 constitution did not begin in practice until five years after its ratification, the king launched a transitional period in which he exercised all the legislative and executive powers pending the establishment of the constitutional institutions in application of article 102 of the constitution, during this transitional period, the king has worked to achieve a political balance that guarantees the Royal Institution keep the position of the leadership and brings the political system go out from the impasse<sup>318</sup>.

The constitution of 1972 did not achieve political compromise, and therefore it was necessary to wait for the national consensus on the Sahara in (1974-1975), in order to launch the series of electoral consultations with the municipal elections in 1976, and then direct legislative election in June, Perhaps the most important feature of the 1972 constitution is that it produced consensus on territorial integrity, constitutional Monarchy and Islam as undisputed sanctities, in addition, this constitution enabled the formation of a new political scene through the integration of the opposition into the political system, this has not been achieved in previous constitutions, this is because the opposition

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<sup>318</sup> - Abd Al Malik Al Wazzani/ Husain Aabushi, op. Cit, P. 158-159.

used the parliament to defame the regime in the 1962 constitution, or because it boycotted the 1970 Parliament and Constitution, and the 1970 constitution, Moreover, 15 years after the enactment of the 1972 Constitution (1977-1992) or 20 years after its promulgation, it has shown that its Chapters of 102 Chapters cover only a small part of the Moroccan political life in which the players' game remains limited by unwritten rules.

In facing for the expropriation of Monarchy in the Constituent Authority and the establishment of constitutional Monarchy, opposition parties have emerged with a new strategy aimed at establishing a constitutional Monarchy with a Parliamentary nature rather than a constitutional Monarchy of a presidential nature<sup>319</sup>,

thus, the decade of the 1990s in Morocco considered the decade of reform, during it, reform was the focus of the Moroccan political elite, and it had a special place in the thinking and speeches of the Royal Institution, and characterized the nineties and printed of its consultations was obtain a concur in the relationship between the Monarchy and the parties of the National Movement embodied in the parties of independence and the Socialist Union first, and the democratic bloc later, this concur , which had played the conditions of Morocco internal and international a role in its scope, and coincided with the international climate marked by development, and to move towards deepening the idea of democracy and expanding its practice<sup>320</sup>.

After Morocco had known an unbalanced presidential Monarchy, the 1992 Constitution came to take steps towards balance, gradual transition

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<sup>319</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 201-202.

<sup>320</sup> - Amhamed Maleki, Brief in constitutional law and political institutions, op. Cit, P. 334.

to Parliamentary Monarchy<sup>321</sup>, attempts to build trust between political actors, ie between the Monarchy and the opposition, have been linked to trying to overcome the institutional imbalance resulting from the representative crisis and the weak distribution capacity of the state through political consensus and rhetorical strategies on various concepts such as political reform, a situation that Morocco had known during the 1990s and extended between 1990 until the inauguration of the rotation Government in 1998.

Thus, during the 1990s, Moroccan political life underwent a profound transformation in the perception of political parties emanating from the national movement of the concept of power, where the latter accepted the practice of opposition within the institutional building, and accepted the constants of the political system and the rules of legality, as defined by the Royal Institution<sup>322</sup>, thus, the historic parties have abruptly abandoned the national movement's proposals<sup>323</sup>, and the "Democratic Bloc" with its practical consecration to propose amending the Constitution in the form of memoranda handed over to the King, and even without resorting to the deposit of the proposal to amend the constitution in accordance with the constitutional rule, it had implicitly recognized not only that the Monarchy have the original Constituent Authority enshrined in the political and constitutional reality in this country, but also recognized that the Monarchy exercise the Subsidiary Constituent Authority, moving from a political culture calling for the

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<sup>321</sup> - - Abderrahmane El Kadiri, Le projet de constitution revisee: des dispositions nouvelles qui renforcent l'Etat de droit, in Revision de la Constitution macocaine 1992: analyses et commentaires, Ouvrage collectif sous la direction de Driss Basri, Michel Rousset et Georges Vedel, Imprimerie Royal, 1992, P. 81.

<sup>322</sup> - Abd Al Malik Al Wazzani/ Husain Aabushi, op. Cit, P. 159-160.

<sup>323</sup> - Othman Al Zayani, Read in Sociolia Political Deviance: The Remnants of the National Movement ?, Journal of Point of View, No. 52, Spring 2012, P. 36.

composition a Constituent Assembly to a political culture limited only to the requirement to participate in the drafting of the constitution<sup>324</sup>.

Faced with this shift in the behavior of the opposition parties, the bet of the Royal institution is to preserve and ensure continuity of legitimacy, and to achieve this bet requires the search for new political and institutional mechanisms, which enabled the political system to operate in a manner that ensures the increasing legitimacy of the political power of the Monarchy and this will reflect on the relationship between the components of the political system, where the political actors crystallized conflicting contents of these political and institutional mechanisms, which led to the return of the debate on the constitutional issue, but in a framework and another context and a new speech such as political reform and political rotation<sup>325</sup>.

However, in the context of emphasizing the element of continuity in the reform of the 1990s, Chapter 19 is not only consistent with constitutional architecture, but also relates to the interpretative value acquired by the same Chapter throughout the intervening period between the constitution of 1962 and the 1992 Constitution, which played the facts of Moroccan political life and the balance of power governing it central role in their adoption and consecration, in addition to the interpretation that settled the debate on the subject of "Constituent Authority and the Owner of Sovereignty" at the time of the preparation of the 1962 constitution<sup>326</sup>, in contrast to the rejection of the rules of constitutional legality, as reflected in the calling for an elected Constituent Assembly

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<sup>324</sup> - Said Khomri, *The Spirit of the Constitution: Reform, Power and Legitimacy in Morocco*, op Cit, P. 93.

<sup>325</sup> - Abd Al Malik Al Wazzani/ Husain Aabushi, op. Cit, P. 160.

<sup>326</sup> - Amhamed Maleki, *Brief in constitutional law and political institutions*, op. Cit, P. 350.

<sup>327</sup>, the responses that permeated the discussions on the, Constituent Authority defended, particularly by opponents of the elected Constituent Assembly, on the devolution of sovereignty to the King, as its original owner, the Constitution 1962, left the subject open, and was resolved only with the constitution of 1970, when a substantial addition was added to the chapter 19, the king became "The Supreme Representative of the nation", meaning that the constitution drew a hierarchy at the level of representation, led by the king before members of Parliament <sup>328</sup>, therefore, he is superior to the Parliament and all institutions in its representation of the nation <sup>329</sup>, and there are other subsequent interpretations of central value in defining the concept of power and distribution mechanisms, the most important of which are related to the following key issues: Separation of powers, nature of the censorship and its limits, the representation <sup>330</sup>.

Politically, the 1992 amendments sought to restore confidence between the Monarchy and parties of the National Movement <sup>331</sup>, These amendments were seen as a result of public consultation, more thorough and in some respects more profound, which are consultations if they do not produce a consensus on the structural issues of institutional reform, it has nevertheless produced a common trend between the opposition parties and official bodies centered on the need to reflect possible political and constitutional reforms in the terms of political

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<sup>327</sup> - Rkia El Mossadeq, The Labyrinth of Constituent Authority: Does Constitutional Monarchy coexist with Evaluative Constitution ? op. Cit, P. 31.

<sup>328</sup> - Amhamed Maleki, Brief in constitutional law and political institutions, op. Cit, P. 354.

<sup>329</sup> - Youssef Thifa, op. Cit, P. 26.

<sup>330</sup> - Amhamed Maleki, Brief in constitutional law and political institutions, op. Cit, P. 350.

<sup>331</sup> - Abdel Samad Hieker, features of the Moroccan political system according to the 2011 Constitution: reading through the relationship between the Executive Authority and the Legislature, Master Thesis in Public Law and Political Science, Mohammed V University, Faculty of Legal, Economic and Social Sciences, Agdal-Rabat, University Year 2014-2015, P. 10.



compromise<sup>332</sup>, and demonstrate that the regime in an site, even ostensibly, is ready to make concessions in the constitutional amendments for the years 1992, 1996<sup>333</sup>.

The 1990s were characterized by a relative breakthrough in political life, especially between the opposition and the regime, especially after the opposition gave up the Constituent Assembly's demand and focused on the demand to participate in the Government through constitutional amendments.

## **1.2: The gradual trend towards balance of the authorities**

The 1992 constitution preserved the provisions of Chapter 19 and its place in the constitutional document, the king derives his legitimacy from more than one source: he is the "Leader of the Faithful" (religious legitimacy), "The guarantor of the state's continuity and continuity" ("historical legitimacy") and "The preservation of the rights and freedoms of citizens, groups and bodies", under the Pledge of allegiance, the link that makes communication between him and the Moroccans continuous, regular and renewed (contractual legitimacy).

In addition to the status guaranteed by Chapter 19, and reinforced by political practice over the course of Thirty years (1962-1992), especially from the perspective of systematic interpretations based on the Principality of the Faithful, the Royal Institution maintained the same purviews which was enshrined in the document of December 14, 1962, and confirmed by the subsequent constitutions, both at the level of the King's relationship with the Government, the appointment of the Prime

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<sup>332</sup> - Hassan Tariq/ Abdelali Hami Eddin , op. Cit, P. 68-69.

<sup>333</sup> - Mohamed Monachih, in the Methodology of Constitutional Reform: From Parties to the Movement of 20 February, Journal of the Point of View, No. 50, 2011, P. 12.

Minister and members of the Government (Chapter 24), the Presidency of the Ministerial Council (Chapter 25), appointment in senior civilian, military and diplomatic positions (Chapter 31), or in relation to the legislative institution (Opening the two sessions of the Parliament and speech it, requesting a new reading of the law ratified by the Parliament, put forward a draft or proposed law on the referendum, dissolve the Parliament or one of its two, issue the order to implement the law, replacing the Parliament during the transitional period) or in relation to the judiciary (The appointment of judges and the President of the Supreme court, the Presidency of the Supreme Judicial council, the issuance of judgments in his name, the exercise of the right of amnesty) in addition to the powers conferred upon him by Chapter 35, when the state of exception is declared, although amendments to the same Chapter were introduced in the 1992 revision and continued during the 1996 constitution, where the Parliament has always become obligatory, even if recourse is made to the implementation of the Chapter 35<sup>334</sup>.

An amendment resulting from the text of the constitutional review in 1992, confirmed by the 1996 constitutional review, in Chapter 24, which states that the King appoints the Prime Minister and appoints the other members of the Government at the suggestion of the Prime Minister and may relieve them of their duties, he also has the right to relieve the Government on his own initiative or upon her resignation.

This amendment means consolidating the Prime Minister's position and strengthening him as Prime Minister not only like the Prime Minister among from the equal ministers, it is he who chooses the ministers to form his Government and choose under his responsibility members of

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<sup>334</sup> - Amhamed Maleki, Brief in constitutional law and political institutions, op. Cit, P. 356.

the Government that he proposes to appoint them by the king, thus forming a homogeneous Government that he knows and manages its members<sup>335</sup>.

The King also has the right to proceed with the initiative to form the Parliamentary commissions of inquiry, like to the majority of the members of the Council of Representatives (Chapter 40, paragraph 2), he also has the right to refer the ordinary laws to the Constitutional Council to decide on their constitution before issuing the order to implement them (Chapter) 79<sup>336</sup>.

The King, under the Constitutional review of 1992, appoints half of the members of the Constitutional Council (4 members for six years), the President of the Council of Representatives appoints the other half (four members for the same period, after consultation with the Parliamentary groups) each half of each of the members referred to above shall be renewed every three years and the President of the constitutional council shall be appointed by the King (other than the members referred to) for the same term<sup>337</sup>.

There are restrictions on the powers of the King in the 1992 constitution, where the King no longer has the right to dissolve Parliament during the proclamation of the Case of exception, and another formal requirement for the declaration of the Case of exception is the advice of the President

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<sup>335</sup> - Mostafa Khatabi, Constitutional Law and Political Institutions, New Success Press Casablanca, 4th edition 2000, P. 160.

<sup>336</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 207.

<sup>337</sup> - Said Khomri, The Spirit of the Constitution: Reform, Authority and Legitimacy in Morocco, op. Cit, P. 95.

of the constitutional Council, these two additions in Chapter 35 are similar to those found in Chapter 16 of the 1958 French Constitution<sup>338</sup>.

Despite the importance of these restrictions in the powers of the Royal Institution, they remain partial, on the one hand did not bring any fundamental change in the structure of authority, the Constitution of 1992 affirmed the centrality of the Royal institution in the political system, and on the other hand, the Constitution, in return for those restrictions, gave new privileges to the king<sup>339</sup>.

One of the most important developments in the constitution of 1992, with regard to the institution of the Prime Minister, the strengthening of the powers of the Prime Minister, the transition from the constitutional body, the King practices absolute authority since the first constitutional experiment, with regard to the appointment of the Government, to the 1992 constitution, which the appointment of Ministers was no longer the exclusive domain of the King, the Prime Minister become had the right to propose the appointment of Ministers to be appointed by the king.<sup>340</sup>

The inauguration of the Government is also carried out by the Council of Representatives (Chapter 59), this reform is a fundamental reform in the transformation from unbalanced presidential Monarchy to progressive Parliamentary Monarchy, Since the double responsibility of the Government before the King and before the Council of Representatives provided for in most previous constitutions did not have concrete content except under the Constitution of 1992, this step

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<sup>338</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 207.

<sup>339</sup> - Youssef Thifa, op. Cit, P. 23.

<sup>340</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P. 47.

supports the Parliamentary character of the political system of the Kingdom of Morocco<sup>341</sup>.

The dual responsibility of the Government can be addressed through two levels, first, through the Government's responsibility to the king, so that the Government was ultimately the Government of the king, not the Government of the Prime Minister, the king is who appoints and exempts the Prime Minister and the other ministers besides he heads the Ministerial council, which makes him an effective observer of Government work, secondly, through the Government's responsibility before Parliament, this is reflected in the fact that the Government's program is subject to a vote of confidence by the council of Representatives<sup>342</sup>, thus, the impact of the rejection of the Government program, which is to be applied by Parliament, leads to the withdrawal of the Government from political life, and acceptance of the program means the reference to its application<sup>343</sup>, and some researchers considered the vote of the Parliament on the Government program vote of confidence is established for the first time<sup>344</sup>.

One of the effects of the vote on the Government program is the strengthening of Parliamentary oversight of Government action which is represented in the Government program<sup>345</sup>, what is noted in this context is that the constitutional document of 1992 is moving towards the

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<sup>341</sup> - Amina Massoudi, Balance of Power in the Six Moroccan Constitutions (1962-2011), Moroccan Association of Constitutional Law, Fifty years of Moroccan constitutional life: what toll?, New Knowledge, 2013, P. 17.

<sup>342</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. Cit, P. 138.

<sup>343</sup> - Radwan Shbaki, Legislative Power in Morocco Composition and Jurisdiction: Comparative Study, Ph.D. Dissertation in Public Law, Faculty of Legal, Economic and Social Sciences, Agdal-Rabat, University Year 2005-2006, P. 473.

<sup>344</sup> - Najib Ba Mohamed, constitutionnalisation du système et tradition démocratique au Maroc, Revue marocaine d'administration locale et de développement, N25, Octobre-décembre 1988, P. 42.

<sup>345</sup> - Mohamed Mutasim, Elements of Continuity and Development in Practice for the 1984 Parliament, University Author, Fourth Parliamentary Experience (1984-1992), Faculty of Legal, Economic and Social Sciences Marrakech, N. 4, 1993, P. 91.

consecration and institutionalization of modern constitutional theory, which is based on the establishment of a responsible Government, as an executive institution, which enabled the strengthening of the Parliamentary character of the Moroccan political system<sup>346</sup>.

As required by the 1992 Constitution that the Prime Minister should Management of the Executive, he become more than just a senior official, the implementation of the laws accordance with article 60 of the constitution is under his responsibility, and the coordination of ministerial activities is also under his responsibility<sup>347</sup>, which would strengthen its administration of Government action and promote its exercise of regulatory authority<sup>348</sup>.

As for the ministers, the Prime Minister was no longer according to the 1992 constitution, only their honorary president, but it is back to him the task of proposing their list to the king to appointment them (Chapter 24)<sup>349</sup>.

The 1992 constitution gave part of the responsibility to the Government when it stated in Chapter 61 that: "The Government is working to implement the laws under the responsibility of the Prime Minister and the administration is placed at his disposal" however, this amendment did not reach to the level of the mandate of the Government to determine the general policy of the country and its administration, the constitution of 1992 gave the authority to appoint senior civil and military posts for only the king, in this regard, it may be noted that the 1992 constitution denied

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<sup>346</sup> - Mohamed Ben Yahya, on the sidelines of a referendum on September 15, 1995, Moroccan Journal of Local Administration and Development, N 13, 1995, P. 106.

<sup>347</sup> - Amina Massoudi, Balance of Power in the Six Moroccan Constitutions (1962-2011), op. Cit, P. 17.

<sup>348</sup> - Youssef Thifa, op. Cit, P. 78.

<sup>349</sup> - Amina Massoudi, Balance of Power in the Six Moroccan Constitutions (1962-2011), op. Cit, P. 18.

the Government even the right to propose in senior civil posts and to recommend qualified persons.

Despite the progress made in the position of the Prime Minister, he has the right to propose ministers (Chapter 24) and the Government has become works under his responsibility to implement the laws (Chapter 61) but he still lacks the legal basis to give it a real status that would allow it to claim second place in Executive Authority<sup>350</sup>, in light of the foregoing, the contents of the Constitution of 1992 provide a number of useful information in the context of the dissection of the position of the Prime Minister at the Moroccan constitutional system<sup>351</sup>.

If the amendments to the 1992 constitution linked the Royal appointment of Ministers with the "Power" of the proposal of the Prime Minister, Political practice confirms that many ministerial appointments and partial Government amendments are far from respecting this constitutional requirement<sup>352</sup>.

The Constitution of 1992 brought some several developments. The most important of these was the granting of the right of the Prime Minister to propose ministers, and Parliament was given the power to vote on the Government program, in return the king retained wide powers to supervise the Executive Authority.

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<sup>350</sup> - Hassan Tariq/ Abdelali Hami Eddin, op. Cit, P. 117.

<sup>351</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P.

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<sup>352</sup> - Hassan Tariq/ Abdelali Hami Eddin, op. Cit, P. 115-116.

## **2: The 1996 Constitution**

The constitution of 1996 was a supplement to the previous constitution, and thus did not carry any new mandate for the Royal Institution or the institution of the Prime Minister, but only economic and administrative reforms, especially the promotion of the supreme council the accounts to the ranks of constitutional institutions, and return to the system of Parliamentary duplication, to launch a process of rotation Government.

### **2.1: Adoption of the system of Parliamentary Duplications In**

Three years before his death, King Hassan II succeeded in passing a constitution that was a Crucial event in the history of the constitutional issue in Morocco by virtue of the active involvement of the majority of the democratic forces in voting for him in the referendum of 13 September 1996<sup>353</sup>, the most important characteristic of the constitutional reforms of 1992 and 1996 was that they were in response to the demands of the parties of the democratic bloc, which included the parties of the Socialist Union of Popular Forces, the Istiqlal Party, the Progress and socialism Party, and the Popular Democratic Action Organization<sup>354</sup>.

Thus, the constitutional text is regarded as not only a moment of consensus capable of setting the rules of the political game for the future political project of the parties to the transition, but also a challenge for the parties who move the discussion from the level of the political idea of the

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<sup>353</sup> - Hassan Tariq, The reign of King Mohammed VI and the question of institutional and constitutional reforms: from the continuing postponement to the response of 20 February, Moroccan Journal of Public Policy, No. 15, Spring 2015, P. 7-8.

<sup>354</sup> - Amina Massoudi, Institutional and Constitutional Reforms, Journal of Research, No. 59, 2010, P. 25.



new organization to an area delineated by clear and specific rules of law<sup>355</sup>.

The amended constitution of 1996 was a supplement to the constitutional reform of 1992 and a prelude to the inauguration of the process of rotation Government, especially after Morocco reached the stage of "Heart attack", however, what distinguishes it from its predecessor that it linked the political factors with economic factors, the positions of political actors varied from the amended constitution of 1996, ranging from near-total acceptance to relative satisfaction and absolute rejection.

This review is closely linked to the process of constitutional reforms announced since the summer of 1992, since then, after the legislative elections and the attitudes which following the announcement of the results of the indirect elections related to the election of one third of the members of the Council of Representatives in September 1993<sup>356</sup>, the question of constitutional reform was raised sharply, however, the focus was more on the aspect related to the Council of Representatives and the manner of its composition, to the point that it can be said that it has become prevalent among many that the criterion of failure to try the constitutional reform is the way to elect this Parliamentary institution, of course, in addition to linking it to the practices that accompanied all stages of the elections, starting with the collective elections to the legislative partial elections.

Thus, the Constitutional review of 13 September 1996 came to resolve this problem, in the sense of making the Council of Representatives with

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<sup>355</sup> - Muhammad Atrakin, *Constitution and Constitution: From Constitutions to Separation of Powers to the Constitutions of the Rights legislation*, New Success Press Casablanca, First Edition 2007, P. 159.

<sup>356</sup> - Mohamed Zinedine, *The Constitution and Regime in Morocco*, op. Cit, P. 145-146.

all its members elected by direct universal suffrage, but with the addition of a second chamber, it the Chamber of Advisers whose members are elected by indirect universal suffrage.

The real and actual beneficiary of this amendment may be the "Region " as "Local authorities" created under the September 1992 amendment, But it remained rigid, and under the revision of September 1996, it can play its key role in the development of the democratic experience at the economic, political and administrative levels, especially as it will become a basic and direct address to the state through a Parliamentary institution.

It should be noted that this review took place in political circumstances characterized by the Government's lifting the symbols of cleansing and reform, that is to purge the country from smugglers and drug traffickers and to provoke administrative and educational reforms.

As for the constitution of October 7, 1996, it was not more responsive to the demands of the opposition, it has consecrated the previous constitutional requirements, and confined to returning to the system of Parliamentary duplication with new mechanisms and measures, where the Council of Representatives remained unique to vote on the Government program, consequently, the amendments to the 1996 constitution were related mainly to the structure and powers of Parliament and to the status of the constitutional council, and the establishment of the Supreme Council of Accounts and the Regional Councils of Accounts and the status of workers, while noting that the

powers of the King and the powers of the Prime Minister has not changed<sup>357</sup>.

Since the announcement of this review, the political forces have taken specific positions, thus, for the "Wifaq parties", which have a Parliamentary majority and participation in the Government, have taken a positive attitude from the Royal Initiative expressed this through its statements and gatherings, as for the parties of the Democratic Bloc, if they exclude the wing of "Mohammed Ben Said Ait Eder<sup>358</sup>" within the Popular Democratic Action Organization, the other parties of the Bloc, ie the Socialist Union, the Istiqlal Party, the Progressive Party and Socialism, called on its activists to vote in favor of the revised constitution, despite the fact that most of the proposals of these parties relating to this review, which were included in their memorandum submitted to the King on 23 April 1996, were not taken into consideration, the two major parties within the bloc have justified their positive position by wanting to see the political breakthrough and look forward to the future and support the policy of national consensus on the constitutional and political entitlements, they also seek to solve the problems that plague the country, through the method of rotation of the power and through the ballot boxes<sup>359</sup>, which was considered at the time as a strong signal towards the convergence of the components of the Moroccan political field<sup>360</sup>.

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<sup>357</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution. Cit, P. 53.

<sup>358</sup> - Mohammed Ben Said Ait Eder, born July 1, 1925, in Tinmanson, a left wing Moroccan politician who is a symbol of the Moroccan left, he began his political career as a opposer to French colonialism, on several occasions, he expressed his opposition to King Hassan II's regime, which cost him a death sentence in absentia with a group of Moroccan left wing activists.

<sup>359</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 213.

<sup>360</sup> - Abdel Samad Hieker, op. Cit, P. 10.

In addition to some small parties that have taken a negative attitude towards the constitution, such as the Vanguard Party and other leftist parties, The trade unions committed themselves to the silence about the draft, while the Islamists committed themselves to the results of the elections, the Employers' authority decided to vote yes but bet on the Regulatory Law governing the second chamber, Amazigh cultural associations submitted proposals to the Royal Court, they which wanted to incorporate them into the constitutional text<sup>361</sup>.

It can be said that the 1996 constitution devoted minor reforms but was no more responsive to the demands of the opposition, it enshrined the same constitutional requirements as laid down in a constitution 1992, and was limited to returning to the system of Parliamentary duplication with new mechanisms and measures, and the council of Representatives remained the only one who to vote on the Government program<sup>362</sup>, while the separation of powers has been nominal referred to in the Constitution, its tendencies emphasize the full concentration of these powers in the hands of the King alone<sup>363</sup>.

The 1996 Constitution did not bring any significant changes at the level of the Executive Authority.

The most important developments were the establishment of a parliamentary system with two chambers. This system was intended to overcome the problems of the previous constitutional experiment,

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<sup>361</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 213-214.

<sup>362</sup> - Mahdi Al Fahssi, The extent of the impact of constitutional and political reforms on the balance between the powers in Morocco, Ph.D. Dissertation in Public Law, Faculty of Legal, Economic and Social Sciences, Agdal-Rabat, University Year 2001-2002, P. 76.

<sup>363</sup> - Abu Bakr Al Jamii, Muhammad VI: Ten Years of the power, Journal of Point of View, No. 42, Autumn 2009, P. 14.

especially with the method of indirect voting, which was fiercely opposed by the parties of the bloc.

## 2.2: Improving Government Action Mechanisms

The Royal Institution has been distinguished in this constitution, which it remains an institution that controls and works to maintain balance between the other institutions, this means that the king was in turn retained as Leader of the Faithful and as a leader and a referee with constitutional powers and functions under normal and exceptional circumstances<sup>364</sup>.

In terms of the appointment of the Prime Minister has the absolute power to choose him, whether inside or outside the parties according to the provisions of the constitution.

As he has the power to appoint the remaining members of the Government at the suggestion of the Prime Minister (and the proposal does not imply mandatory selection), he may relieve them of their duties and have the right to exempt the entire Government on his own initiative or upon her resignation (Chapter 24 of the constitution)<sup>365</sup>.

Thus, the constitutional review of 4 September 1992 and 13 September 1996, and if it retained the appointment of the Prime Minister by the King, it authorized to the Prime Minister to propose the Ministers to the King, this means that in the field of appointment of ministers, must be the agreement between the king and the Prime Minister, the provisions of this Chapter also require that a “Dahir” be issued first with the

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<sup>364</sup> - Mokhtar Motai, Constitutional Law and Political Institutions, op. Cit, P. 215.

<sup>365</sup> - Hakim Tuzani, op. Cit, P. 166.

appointment of the Prime Minister and a second “Dahir” whereby the entire Government will be appointed, with regard to the dismissal of the Government or the resignation of the Government, the king retained his absolute right to exempt the Government, the king has the right to exempt the ministers all or some of them, since Chapter 60 of the 1996 constitution determines that the Government, in addition to being accountable to Parliament, is also accountable to the King<sup>366</sup>.

After it was the Executive Authority was subordinate to the Royal Institution under Chapter 24 of the 1996 constitution, the Prime Minister was appointed from the political party that led the elections of the House of Representatives, while strengthening the position of the Prime Minister, as head of an effective Executive Authority, with full responsibility for Government and public administration, leadership and implementation of the Government program, this process, which will strengthen the constitution of the Institution of the Council of Government, and clarify its terms of reference, leaving an Executive Authority with two heads, the first is actual and the second is referee.<sup>367</sup>.

If the regulatory authority has been entrusted by the constitution to the Prime Minister (Chapter 63 of the 1996 Constitution), this does not mean the loss of any Royal oversight on the regulatory authority.

As the King presides over the Ministerial Council (Chapter 25 of the 1996 Constitution), whose Regulatory Laws is presented front its, that mean it

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<sup>366</sup> - Haj Qassim Mohammed, P. 166.

<sup>367</sup> - Hakim Tuzani, op. Cit, P. 166.

establishes the political limits of the independence of the regulatory authority<sup>368</sup>.

This presidency enables the King to knowledge various activities of the Government in various fields, direct its work, issue instructions to its members and take note of all the decisions the Government wishes to take.

The matters discuss in the Ministerial council prior to decision regarding them are those contained in the text of Chapter 66 of the 1996 constitution, such as issues of public interest to the State, to announcement the state of siege, the declaration of war, the request of confidence from the Council of Representatives in order to continue the Government to shoulder its responsibility, regulatory decrees, the draft amendment of the constitution<sup>369</sup>.

Although the Moroccan legislator stated that the King presided over the Ministerial council through Chapter 25 of the 1996 constitution, and the matters referred to it for determination Chapter 66 there is no legal provision for the council of Ministers in Morocco, which stipulates how the agenda is to be determined, pending or the nature of the debate within it, and who has the power to decide, and who is authorized to attend, the constitutions of 1962, 1970 and 1992, as well as the 1996 Constitution, did not deal with the participation of one of the parties in the right to chair the Ministerial Council, even by delegation<sup>370</sup>.

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<sup>368</sup> - Mustafa Qasimi, Modern Constitutional Law, New Success Press, Casablanca, First Edition 2004, P. 127.

<sup>369</sup> - Haj Qassim Mohammed, op. Cit, P. 166.

<sup>370</sup> - Mustafa al Hameer, op. Cit, P. 18-19-20.

Since the King is the Supreme commander of the Royal Armed Forces Chapter 30 of the 1996 Constitution, with implications the concept of High Command from presidential powers to subordinates and their work, he has the right to appoint in civil and military posts and may delegate to others the exercise of this right<sup>371</sup>, thus, the King has powers in the military and internal security, to preserve the independence of the country and its territorial integrity Chapter II, Chapter 19 On this basis, the King is concerned with the organization and command of the armed forces and taking measures that distance the danger to the homeland<sup>372</sup>.

The constitution has been entrusted to him the Presidency of the Supreme Education Council and the Supreme Council for National Revitalization and Planning (Chapter 32 of the 1996 Constitution).

With regard to foreign policy, the King accredit the ambassadors in a foreign countries and international organizations, and he accepts the accreditation of ambassadors and representatives of international organizations<sup>373</sup>, this is what makes matters related the external representation is enclosed in the reserved areas of the king<sup>374</sup>, this confirms that the head of state is the first diplomat of his State, and that he is his first representative to other States, this status is equal to the heads of State regardless of their different forms, and whatever the terms of reference of the head of State<sup>375</sup>.

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<sup>371</sup> - Mustafa Qasimi, op. Cit, P. 128.

<sup>372</sup> - Mustafa Kallouche, The Moroccan Constitutional System: The Royal Institution, Babel Printing Press, Publishing and Distribution Rabat, 1996-1997, P. 51.

<sup>373</sup> - Mustafa Qasimi, op. Cit, P. 128.

<sup>374</sup> - Haj Qassim Mohammed, op. Cit, P. 167.

<sup>375</sup> - Abdul Wahid Al Nasser, International Relations Diplomatic Rules and Practices, Babel Printing Press, Publishing and Distribution Rabat, First Edition 1993, P. 72.



The King signs and ratifies the treaties, and treaties that entail costs that bind the state, he does not sign them only after approval it by law<sup>376</sup>, this calls for the submission by the Government of the treaty document in the form of a Draft law to be passed by Parliament on either for the acceptance or rejection of the draft treaty in its entirety, in other words, the Parliament can not amend the draft treaty by addition or by deletion, and when the Parliament approves the draft, it is referred to the king for ratification<sup>377</sup>.

Those that require amendments to the constitution are not subject to ratification unless they follow the procedure provided for amendment.

This means that the possibility of amending the provisions of the constitution for the ratification of the treaty is possible if that treaty would achieve the general interest of Morocco and Moroccans, with the knowledge that the amendment does not work only by popular referendum Positive for the Moroccan people<sup>378</sup>.

The King shall also exercise by virtue of “Dahir” the powers expressly vested in him by the constitution, and the “Royal Dahir” is countersignature by the Prime Minister Except for some of the “Dahir” specified in Chapter 29 of the 1996 Constitution, so that only the king may sign this “Dahir”<sup>379</sup>.

The Government is keen to implement the laws, and to achieve this goal was drawn up in the 1996 constitution the Management under its behavior, it should be noted that, contrary to the previous constitution,

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<sup>376</sup> - Malika Sroukh, op. Cit, P. 199.

<sup>377</sup> - Haj Qassim Mohammed, op. Cit, P. 168-167.

<sup>378</sup> - Malika Sroukh, op. Cit, P. 199.

<sup>379</sup> - Mostafa Khatabi, op. Cit, P. 161.

the 1996 constitution gave the Prime Minister power over the other ministers, since they were acting under his responsibility as the one who proposed to the King.

Article 62 of the 1996 constitution states that the Prime Minister has the right to submit bills, however, this progress in the bills remains conditional on their submission to the Ministerial council for deliberation before being deposited in the office of one of the two councils of Parliament with the reference that the King presides over the Ministerial council.

Article 47 of the 1996 constitution states that other articles not covered by the jurisdiction of the law are concerned with the regulatory sphere, article 63 of the 1996 constitution provides that the exercise of regulatory authority shall be vested in the Prime Minister, with reference to the fact that decisions issued must be signed with the approval of the Ministers responsible for their implementation.

In addition, Chapter 45 of the 1996 constitution provides that the Parliament may authorize the Government to take measures normally related to the law in a limited period of time and for certain purposes and under decrees in which the Ministerial council is deliberated, Such decrees shall be introduced as soon as they are published, however, it must be submitted to the Parliament for ratification at the end of the period prescribed by the law authorizing its issuance the Permission act is repealed if the Council of Representatives is dissolved.

After the appointment of the members of the Government, the Prime Minister is required to present to both councils of Parliament to present

the program to be implemented, the program should include the main lines of action that the Government intends to undertake in various areas of national activity, Particularly in the fields of economic, social, cultural and external policy.

The Government program is discussed in both Councils of Parliament as well as voting on it according to its rules of procedure<sup>380</sup>, the council of Advisers is not involved in the inauguration of the Prime Minister and the Government, which remains the sole preserve of the council of Representatives, The second chamber can not vote on the Government program headed by the Prime Minister (the last paragraph of Chapter 60), Where it stated that the program referred to be the subject of discussion before both houses and followed by a vote in the council of Representatives, despite the assertion in the same Chapter that the Government is accountable to the king and the Parliament, and that the Government's responsibility after the start of its work becomes double front the two chambers of Parliament, through the constitutional censorship in its Chapters, 76 for the Council of Representatives, and 77 for the Council of Advisors, with an attempt to compensate the Council of Advisors for not enabling him to inauguration the Government by directing an a petition to the Government<sup>381</sup>.

The amendments to the 1996 Constitution formed a ground of consensus between the regime and the opposition, paving the way for an experiment of Government rotation and the process of democratic transition.

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<sup>380</sup> - Mustafa Qasimi, op. Cit, P. 173.

<sup>381</sup> - Abdul Nabi Kias, op. Cit, P. 117-118.

## **Section II: Duplication of Executive Authority**

The parliamentary system is based on the separation of the post of the Head of state and the post of the Head of Government, so that the head of state is irresponsible, with the full political responsibility of the Government in a form of solidarity among its ministers, in other words, the parliamentary system is based on the bilateral mechanism of the Executive Authority.

The general rule is that the head of state does not have effective executive powers and is not a center of gravity in running the country's governance, and therefore he does not assume any responsibility, as a result, the Head of Government must be signed next to the signature of the Head of State because the orders issued by him do not absolve the Government of its responsibility, Pursuant to the rule that where there is responsibility where there the authority, the Head of State does not have effective authority but this authority is determined for the Government alone as a result of its accountability.

In the parliamentary system, the Government is the de facto and dominant authority over the administration of the State, responsible for all its actions front of Parliament, that is why it are considered axis which the parliamentary system revolves around it, which means that the Head of Government must be chosen from the majority party in parliament or from the majority party in the council of Representatives, and the Head of Government choose the rest of the ministers after that, and then submit his Government program to parliament to gain confidence, under the principle of Government solidarity, the Government working together to implement its Government program.

The 2011 Constitution stipulates that the Kingdom of Morocco is a constitutional Monarchy, this raises the question of the extent to which the Moroccan constitution adheres to the rules of the parliamentary system.

## **Chapter I: Executive Authority in The Constitution**

Is considered a requirement to reduce the concentration of powers in the hands of the Royal Institution and the distribution of Executive Authority between the king and the Government of the constitutional claims was held in the 1990s, the 2011 Constitution gave the Government important powers, and became the Executive Authority under the constitutional provisions.

### **I: The Executive Authority of the Royal Institution**

The Monarchy came in Part III of the 2011 Constitution after section I on general provisions and section II on fundamental rights and freedoms, in which the executive description from the Royal Institution was removed, although the Executive Authority of the King in the constitution were more important than those of the Head of Government's powers, who was assigned the executive status.

#### **1: The king's powers in normal circumstances**

The Moroccan constitutional order gives the Head of State effective powers, enabling him to have wide and distinguished powers, the actual practice in Moroccan political life has shown that the king is considered the owner of the Executive Authority, with his supervision and guidance the work of the Government at ordinary cases.

### 1.1: The Royal Institution and Continuity of Hegemony

Monarchy occupies a lofty position in the Moroccan political system due to several factors, and its concentration in the pyramid of the Moroccan system, was not the birth of a certain event or a specific constitution, but due to roots in the history of Morocco<sup>382</sup>, and it inherits power and does not reach it through the concept of political representation, and that elected political institutions continued to play secondary roles<sup>383</sup>.

The role of the Royal Institution in the new Moroccan Constitution of 2011 is reflected in the establishment of a system of Government in the Kingdom of Morocco on the basis of constitutional Monarchy, parliamentary and social democracy on the one hand, and then through the powers exercised to his Majesty the King under the third section of the new Moroccan constitution on the other hand<sup>384</sup>, which make the king the central axis of the political system at the internal and external levels<sup>385</sup>, it is the only institution that transcends constitutional institutions<sup>386</sup>.

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<sup>382</sup> - Abdel Wahab Bakali, The contents of Arab constitutions in the twentieth century, Moroccan Journal of Public Policy, No. 22, winter 2017, P. 87.

<sup>383</sup> - Mohammed Al Mosawi, The Moroccan Constitution of 2011 and the Problematic of Political Representation, Proceedings of the National Seminar on November 29, 2012, The New Constitution: A Fundamental Document to the Democratic Transition in Morocco, Series of Conferences and Symposia, National Printing and paperwork, First Edition 2013, P. 121.

<sup>384</sup> - Karim Lahrash, the new constitution of the Kingdom of Morocco: Explanation and Analysis, Series of Legislative Work and Jurisdiction, New Success Press, Casablanca, Second Edition 2016, P. 133.

<sup>385</sup> - Ahmad Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. Cit, P. 119.

<sup>386</sup> - Mustafa Wlqadi, Morocco's executive body and its role in foreign policy, Al Manara Journal for Legal and Administrative Studies, No. 20, September 2017, P. 141.

As the Leader of the Faithful, the chapter 41 of the 2011 constitution opens section III with Monarchy<sup>387</sup>, where the latter deals with the powers of the Royal Institution from chapter 41 to Chapter 59<sup>388</sup>.

Chapters 41 and 42 of the Constitution provide for the duties of his Majesty the King as the Leader of the Faithful and as the Head of State, they are based on the protection of religion and the proper functioning of constitutional institutions<sup>389</sup>, chapter 42 enabled him to assume sovereign, security and arbitration powers, chapter 41 provides for the exclusive powers of the King in the religious sphere, which are within the domain allocated to the king such as military specialties<sup>390</sup>, where the status of the king is the common element between his religious powers in Chapter 41 and institutional powers in Chapter 42<sup>391</sup>.

The King remained under Chapter 53, the Supreme Commander of the Royal Armed Forces, who appoints officers in military posts<sup>392</sup>, on this basis, the King is responsible for organizing and leading the armed forces and taking measures that distance the danger to the homeland.

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<sup>387</sup> - Abdul Rahman Al-Shairi: Perspective, The Principality of the Faithful in the 2011 Constitution: Reading in the structure and employment, Journal of Point of View, No 50, 2011, P. 9.

<sup>388</sup> - Nouredine jalal, Constitutional Reform in Morocco: Between Political Monism and "Social Demand" and the Controls of Parliamentary Monarchy Model, Moroccan Journal of Legal, Political and Economic Studies, University of Mohammed bin Abdullah Fes, Multidisciplinary faculty of Taza, Euro-Mediterranean Journal of Morocco, 2014, P. 18.

<sup>389</sup> - Abdul Latif Wahbi, Chapter 47 Between the Actual and Formal Authority of the King, Chapter 47, Public Dialogue Series, February 2017, P. 53.

<sup>390</sup> - Hassan Tariq, the Moroccan Constitution in the test of practice, Research Group on Constitutional Law and Political Science, Faculty of Legal, Economic and Social Sciences, Swissy-Rabat, 2014, P. 150.

<sup>391</sup> - Abdul Latif Wahbi, the crisis of forming the government and The Constitutional Options of the King, Chapter 47, Public Dialogue Series, February 2017, P.15.

<sup>392</sup> - Omar Bendoro, The Relations between the Authorities Is a Separation or a Mix in the Authorities? Books Point of view, No. 24, New Success Press, First Edition 2011, P. 116.

The King also presides over the Supreme Security Council<sup>393</sup>, which was approved by the 2011 constitution in Chapter 54, paragraph 2, he authorizes the Head of Government to preside over a meeting of this council and on the basis of a specific agenda, where the Council plays a body for consultations on internal and external security<sup>394</sup>, which had been created to be among his functions "ensure the institutionalization of the controls of good security governance", it remains a mere "consultative body" belonging to the King, as long as he has the authority to preside over his meetings, while the role of the Head of Government is limited to "the authority to preside over a (alone) meeting of this Council" even such authority is exercised only by authorization of the King and "on the basis of a specific agenda".

Thus, the power to appoint in the various security posts remains a Royal specialty, as the powers of appointment granted by the new constitution to the Head of Government are limited to "civil functions in public administrations<sup>395</sup>".

When speaking of Royal authority, must not forget that the king's authority is exercised constitutionally as "the highest authority in the state" and as Leader of the Faithful<sup>396</sup> Perhaps this second title reflects more deeply the role of the head of the Moroccan state, as Leader of the

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<sup>393</sup> - The Supreme Council of Security, of the new constitutional institutions that came in the Constitution of 2011, a council of a consultative nature emerged from the talk of the emergence of the problem of security in its comprehensive sense, where increased internal and external risks, which requires the existence of a coordinating security body to develop strategies for the internal and external security of the country, and to manage crisis situations as well as to ensure the institutionalization of security controls.

<sup>394</sup> - Mustafa A Haymer, op. Cit, P. 22.

<sup>395</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, Moroccan Journal of Political and Social Sciences, Center for Research and Studies in Social Sciences, No. 3, June 2012, P. 112-113.

<sup>396</sup> - Malak kaid, Terms of reference of the King in the field of international treaties Under the 2011 Constitution, Al Manara Journal for Legal and Administrative Studies, No. 16, December 2016, P. 195.



Faithful is working to manage all affairs of the country Religious and mundane<sup>397</sup>.

Where it can be said that Chapter 41 of the new constitution as it was drafted, came to confirm the religious basis of Monarchy in Morocco<sup>398</sup>, thus, the political system assigns its legitimacy to a religious basis by declaring the descent of the Royal dynasty from the The Prophetic House<sup>399</sup>, and that the Royal blood of the Moroccan Monarchy, blood extended dynasty for four centuries<sup>400</sup>, which is what it distinguishes it from many Arab Islamic regimes because it is related to the noble and prophetic affiliation.

The process of appointment and legislation in religious matters is also one of the king's reserved areas<sup>401</sup>, chapter 41 enables the king to manage the religious field, and the king presides over the Higher Scientific Council<sup>402</sup>, which holds the pyramid of religious authority, which oversees the management of religious affairs in society<sup>403</sup>, before discussing this chapter the powers of the king, he referred to the tasks of the Leader of the Faithful: The King is first and foremost the Leader of the Faithful before he is the Head of State<sup>404</sup>, the Royal Institution affirms on all occasions that the origin of its authority is due to divine authority, since the Sultan is the shadow of God in the earth, it has always been

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<sup>397</sup> - Abdel Wahab Bakali, The contents of the Arab constitutions in the twentieth century, Moroccan Journal of Public Policy, No. 22, Winter 2017, P. 87.

<sup>398</sup> - Abdul Samad Hiker, op. Cit, P. 37.

<sup>399</sup> - Mustafa Solih, Legal legitimacy: The extent of respect for the will of the people and the achievement of justice as a model, Journal of Point of View, No 48, Spring 2011, P. 17.

<sup>400</sup> - Hind Arob, the holy Monarchy and the illusion of change, Magazine Point of View, NO.42, Autumn 2009, P. 7.

<sup>401</sup> - Abdul Rahman Al Shu'airi Mandour, op. Citp, P. 10.

<sup>402</sup> - Nouredine jalal, Constitutional Reform in Morocco: Between Political Monism and "Social Demand" and the Controls of Parliamentary Monarchy Model, op. Cit, P. 19.

<sup>403</sup> - Rashid Shrit, The nature of the relationship and the strategy of control in the religious field: The Royal Institution and the religious issue in Morocco, Journal of Point of View, No. 50, 2011, P. 52.

<sup>404</sup> - Mohamed Zinedine, The Constitution and the System of Government in Morocco, op. Cit, P. 190.

careful to emphasize also that the King exercises tasks, not powers, as the authorities are linked to the powers entrusted to the Head of State, but the tasks belong to the Leader of the Faithful<sup>405</sup>.

The concept of the Leader of the Faithful derives its source from the Islamic political heritage, and exactly to the era of the Caliph Omar ibn al-Khattab, this character also gives the king powers wide in the field of religion and mundane<sup>406</sup>, these are religious powers that do not exist in comparative political systems<sup>407</sup>.

Thus, it can be said that the concepts of allegiance and the Principality of the Faithful were able to find a place within the constitutional text<sup>408</sup>, and allegiance belongs in the Moroccan political system to the field of unwritten constitutional rules<sup>409</sup>.

It is central to the legitimization of the Royal Institution<sup>410</sup>, where it remained a prominent part of Morocco's traditional political field, and a major source of the legitimacy of successive rulers and sultans of Morocco<sup>411</sup>.

By monopolizing symbols of holiness, political power in Morocco derives "the ability to impose itself in the minds" it also works to strengthen the presence of the symbolic system in the political and social relationship

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<sup>405</sup> - Mounim Aqtaïd, The Privilege of Property in the Moroccan Political System: An Attempt in Understanding and definition, *Journal of Point of View*, No.50, 2011, P. 26.

<sup>406</sup> - Abdul Rahman Al-Shairi Mandour, *op. Cit*, P. 10.

<sup>407</sup> - Karim Lahrash, *op. Cit*, P. 134.

<sup>408</sup> - Othman Zayani, manifestations of the continuity of tradition in light of changes in the Constitution: a reading in the semantic action Pledge of allegiance, *Journal of Point of View*, No.55, Winter 2013, P. 18.

<sup>409</sup> - Idris Jandari, The concept of the Pledge of allegiance between religious reference and political interpretation: reading in the Moroccan context, *Journal of Point of View*, No 55, Winter 2013, P. 10-11.

<sup>410</sup> - Rashid Shrit, *op.cit*, P. 50.

<sup>411</sup> - Abdel-Ilah Satti, Pledge of allegiance and the Islamists in Morocco: The Field and the Counter-Field, *Journal of Point of View*, No. 55, Winter 2013, P. 32.

that binds the governor to the governed, because of their effectiveness to influence the governed on the one hand and the continuity of the regime on the other<sup>412</sup>, where the legitimacy of the Royal Institution is based distinctly on the Foundation of the Faithful, as the Constitution works on makes this institution legal from this legitimacy<sup>413</sup>.

The system of Government in Morocco is based on written formal rules, non-formal rules associated with its traditional and religious history, and the non-written rules, which really determine the nature of the system of Government<sup>414</sup>, and the tradition of Pledge of allegiance that is still in force to this day, and therefore it can only establish the result of the king above the constitution<sup>415</sup>.

## 1.2: Variables of the King's Constitutional fields

In the Moroccan political system, the king has a pivotal role<sup>416</sup>, either as Leader of the Faithful or head of state the king has retained broad and effective powers, which allow him to remain in the center of the political system and the main determinant of his orientations and decisions, but added new powers to it.

In addition to his availability the " Saved field " which makes it a monopoly on the right of initiative in strategic areas: the religious sphere, the security field, the existence of a "partner" with him in some other

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<sup>412</sup> - Abdul Ilah Satti, Symbol and Authority: A Study in the Mechanisms of Legitimacy in the Moroccan Political System, Journal of Point of View, No.62, Fall 2014, P. 31.

<sup>413</sup> - Othman Zayani, manifestations of the continuity of tradition in light of changes in the Constitution: a reading in the semantic action Pledge of allegiance, op. cit, P. 19.

<sup>414</sup> - Idris Jandari, from the Sultanate to absolute Monarchy: The challenge of political modernization in Morocco and the challenges of the royal legacy, Journal of Point of View, N. 52, Spring 2012, P. 19.

<sup>415</sup> - Abdul Latif Hosni, the Monarchy outside the constitutional text: Pledge of allegiance and the Leader of the Faithful, Magazine Point of View, No.62, Autumn 2014, P. 22.

<sup>416</sup> - Mohammed Al-Sassi, The Relationship between the Constitution and the Democratic Transition in Morocco: Two stages - Two Views, Moroccan Journal of Political and Social Sciences, No1, Fall-Winter 2010-2011, P. 21.

Specialties, does not prevent him from having the last word in it, as evidenced by the continued dependence of the Government on him, and his continued interference in the work of Parliament<sup>417</sup>, in addition to the diplomatic powers exercised by him as a representative of the Executive Authority<sup>418</sup>.

The fundamental change brought about by this constitution is the rationalization of the distinctive presidential character of the regime in exchange for strengthening the parliamentary character, in the 2011 constitution has many elements of the parliamentary system, as a kind of constitutional balance between the various constitutional institutions to grant the Council of Representatives the power to dismiss the Government by the censorship petition, while at the same time giving the Head of Government the right to dissolve parliament<sup>419</sup>.

The main innovation, at least in terms of form, is the disappearance of chapter 19 which had in the previous constitutions, the distribution of the provisions of chapter 19 of the 1996 constitution, according to a new formulation on two chapters distinct 41 and 42 in the new Constitution, has led to the distinction of the King's powers as the Leader of the Faithful, on his terms of reference as head of State while keeping them together, and on the constitutional recommendation, in order to

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<sup>417</sup> - Ahmed Bouz, "Democratic Choice" in the new Moroccan Constitution, the symposium of 18-19 April 2013, The new Moroccan constitution on the test of practice, the research group on constitutional law and political science, Faculty of Legal, Economic and Social Sciences Suesi, Rabat, 2014, P. 112.

<sup>418</sup> - Ahmed Saad Abdullah Al Buainain, Foreign policy between the executive and legislative authorities: Comparative analytical study, Journal of Legal Sciences, Series of Constitutional and Political Studies, Al Omnia Press Rabat, N.5, 2015, P. 163.

<sup>419</sup> - Mohamed Zinedine, The Constitution and the System of Government in Morocco, op. Cit, P. 189.

emphasize the adherence to these two functions in relation to ownership in its Moroccan version<sup>420</sup>.

Although the 2011 constitution gives the impression that many of the King's powers have been delegated to the Government and the parliament, in fact, he has made a clever and systematic distribution of the various constitutional powers in the direction of strengthening the king's functions rather than weakening, the Moroccan monarch still has a number of executive, legislative and judicial executive functions, in a way that makes him the actual president of the Executive Authority<sup>421</sup>.

The provisions of chapters 41 and 42 did not specify definitively the powers vested in the King, but left room for interpretation in order to give broad powers either in the name of the traditional powers granted him by chapter 41 or the powers of "modern" in the name of the constitutional document nor should one overlook the most important thing, that Monarchy practices are not subject to judicial control<sup>422</sup>, as Leader of the Faithful he is above accounting<sup>423</sup>.

That the division of chapter 19 of the 1996 constitution into two Chapters in the new constitution did not diminish the powers of the King, the debate did not end about the modern and the traditional use of them together to attend intensive of the institution Monarchy<sup>424</sup>.

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<sup>420</sup> - Abdul Samad Hiker, op. Cit, P. 36.

<sup>421</sup> - Mohamed Zinedine, The Constitution and the System of Government in Morocco, op. Cit, P. 189.

<sup>422</sup> - Nouredine jalal, Constitutional Reform in Morocco: Between Political Monism and "Social Demand" and the Controls of Parliamentary Monarchy Model, op. Cit, P. 19.

<sup>423</sup> - Idris Jandari, from the Sultanate to absolute Monarchy: The challenge of political modernization in Morocco and the challenges of the royal legacy, op. Cit, P. 19.

<sup>424</sup> Nouredine jalal, Constitutional Reform in Morocco: Between Political Monism and "Social Demand" and the Controls of Parliamentary Monarchy Model, op. Cit, P. 19.

A reading of the requirements for the amendment of the constitution bears a clear indication of support for the hegemony of Monarchy over the most important authority in the constitution the subsidiary constituent authority, any power to amend the constitution<sup>425</sup>, giving the king the power to amend the constitution through direct recourse to parliament, along with the other possibility shared with the Head of Government and the Parliament and it Make him control and monopolize the Subsidiary constituent authority<sup>426</sup>.

The constitution of the Royal Amendment of the constitution appears through what is being quoted in chapters 172 and 174 of the 2011 constitution, based on the contents of chapter 172, the proposal initiated by the king to amend the constitutional document and is called a project, as distinct from the proposal initiated by the Head of Government or which is the source of Parliament, and it Presented by the king directly to the referendum to take the opinion of the people about it.

The constitution of 2011 strengthened the constituent authority of the King by a new amendment provision in chapter 147, this chapter authorizes the King to amend the constitution without resorting to the popular referendum rule, which was stipulated in Chapter 172, the King become can after consultation with the President of the constitutional court, who is appointed only for this task by the king under a "Royal Dahir", present the draft revision of some of the constitutional requirements to the Parliament, which approves the amendment by a two-thirds majority of members in a joint meeting of both councils defines the modalities of the internal system of the council of

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<sup>425</sup> Rkia El Mossadeq, *mirage change in the new draft constitution*, books Point of view, No.24, New Success Press, First Edition 2011, P. 64.

<sup>426</sup> Ahmed Bouz, "Democratic Choice" in the New Moroccan Constitution, op Cit, P. 112.

Representatives in all cases, the constitutional court shall monitor the validity of the review procedures and shall announce its outcome<sup>427</sup>.

Although the new constitution gave the Head of Government the authority to "appoint civil servants in public administrations the establishment of a list of "civilian posts" and "high posts" in which appointment is required for compulsory passage by the Ministerial Council that makes the final word in appointing officials responsible for areas of strategic importance to the King as long as he presides over the Ministerial Council and decides on its affairs.

Moreover, the referral of chapters 49 and 92 of the constitution to a Regulatory Law in order to define the "list of strategic institutions and contracting " in which the appointment will be made by the King "on the proposal of the Head of Government and at the initiative of the Minister concerned, in addition to those assigned to the Government Council, devoted the continued monopolization of Monarchy to the appointing authority in broad areas<sup>428</sup>, as reflected in the draft Regulatory Law prepared for that purpose.

The new constitution has tended to reduce the number of powers of the king which became shared with the Head of Government especially in the field of appointments in high positions without the military and religious domain, which remained exclusively the king's jurisdiction, the Government was given a set of powers shared by parliamentary and

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<sup>427</sup> - Abdelmajid Boukir, Sub-constituent authority between the authority of the King and the competence of the Head of Government In the light of the 2011 Constitution, Moroccan Journal of Legal, Political and Economic Studies, No.3, 3rd Edition December 2017, P. 5-6.

<sup>428</sup> - Ahmed Bouz, The King and Head of Government, The Limits of Change in the New Moroccan Constitution, Forum on Arab and International Relations, The Experience of Constitutional Reform in Morocco, First Edition 2015, P. 45.

semi-parliamentary systems, including the authority to determine the economic, social and administrative policy of the country<sup>429</sup>.

## **2: The powers of the king in extraordinary circumstances**

The head of the State shall enjoy in the constitutional order powers that may be considered additional in exceptional circumstances these powers enable the king to face the extraordinary situations that affect and threaten the stability of the state.

### **2.1: The Case of Exception**

Constitutions usually give the head of state broad powers to be able to cope with the extraordinary situations that threaten the security of the state and the safety of the country<sup>430</sup>, the King is required to exercise several powers in exceptional circumstances, whether during the period of exception or during the period of siege and war<sup>431</sup>, the state of exception is an absolute concentration of all powers in the hands of the ruler, and the abolition of all powers vested in the other constitutional institutions by the text of the constitution within the framework of legality<sup>432</sup>, all the Moroccan constitutions, from the 1962 constitution to the 2011 constitution, have given the King the possibility of declaring the state of exception, and by declaring it back all powers within the State revert to the King, in order to take measures to overcome it<sup>433</sup>,

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<sup>429</sup> Mohamed Zinedine, *The Constitution and the System of Government in Morocco*, op. Cit, P. 189.

<sup>430</sup> - Karim Lahrash, op. Cit, P. 156.

<sup>431</sup> - Ahmed Hadrani, *Comparative constitutional systems: An approach to International and Morocco experiences*, op. Cit, P. 128.

<sup>432</sup> - Mostafa Al-Haymer, op. Cit, P. 25.

<sup>433</sup> - Omar Bennaim, *Executive Authority in the Moroccan constitutional order in light of the 2011 Constitution*, Mohammed V University, Faculty of Legal, Economic and Social Sciences Rabat, Master Thesis in General Law, University Year 2016-2017, P. 21.



As in the French constitution of 1958, which authorizes the President of the Republic to resort to article 16 if the institutions of the Republic are threatened, national independence, the integrity of the national territory or the implementation of its international obligations, as well as the need for the normal functioning of the public authorities<sup>434</sup>.

The declaration of a state of exception could be the result of a threat to the possession of the national territory, namely the exposure of Morocco to external aggression or the threat of aggression, its declaration by the King authorizes him (Despite all the contrary provisions) in taking the measures imposed by the defense of the homeland and the return of constitutional institutions to normal course, which was confirmed by the Constitution of the Kingdom of Morocco in 2011 in this area, in connection with the same chapter, 59 the King is the Supreme Commander of the Royal Armed Forces and has the power to appoint in military posts, article 53 also authorizes the king to declare war after deliberating it in the Ministerial Council, and he also heads the Supreme Security Council as a body for consultation on internal and external security strategies for the country based on chapter 54.

Chapter 52 of the constitution also gives the King the power to address the nation and the Parliament, his speech is addressed before both councils, its content can not be subject to any discussion within them, the content of this type of this discourse provided for in this chapter would be focused on fateful issues<sup>435</sup>.

Thus, the extraordinary powers of his Majesty in the constitution of 2011, framed in accordance with the requirements of Chapter 59, which

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<sup>434</sup> - Mansour Mouloud, *Research in Constitutional Law*, Mufem Publishing, Algiers, 2010, P. 188.

<sup>435</sup> - Mustafa Wlqadi, *op. Cit*, P. 142-143.

adopted the perceptions that were in force under the provisions of the constitution of 1996 with the emphasis on the inability to dissolve parliament during the exercise of exceptional powers, and the survival of freedoms and fundamental rights provided for in the Constitution guaranteed<sup>436</sup>.

Reading chapter 59 concludes that the 2011 Constitution changed the wording that was adopted in the previous constitutions, adding that the need to consult the Head of Government to the formal procedures, and not to prejudice the rights and freedoms provided for in the constitution<sup>437</sup>, such as France where the President of the Republic to declare the state of exception after consultation with the Prime Minister, Heads of chambers as well as the constitutional council, and notify the people by speech<sup>438</sup>.

It is clear, then, that there are formal conditions, and other essential conditions for establishing the state of exception, the first is to threaten the national territory, obstruct the normal functioning of the constitutional institutions, while the second requires the king to conduct a series of consultations, while retaining on the fundamental freedoms and rights stipulated in this constitution, and these additions of the constitution of 2011, which stressed the failure to dissolve parliament<sup>439</sup>, like the French Constitution of 1958, which recognized the state of exception, with a

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<sup>436</sup> - Mohammad Yahya, op. Cit, P. 267.

<sup>437</sup> - Omar Bennaim, op. Cit, P. 22.

<sup>438</sup> - Mansour Mouloud, op. Cit, P. 188.

<sup>439</sup> Ahmed Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. Cit, P. 129.

single constitutional requirement is that the National Assembly can not be dissolved during the period of use of the text of article 16<sup>440</sup>.

The case of exception in chapter 59 of the new Moroccan constitution is clear and unambiguous in contrast to previous constitutions, through the deletion of some words that were vague in the text of the constitution, as the words "What would" in chapter 35 of constitution 1996, chapter 59 of the 2011 constitution is very similar in its subject to what happened in modern constitutions of granted the head of the State extraordinary powers to face extraordinary circumstances, such as the French Constitution of the Fifth Republic of 1958 in article 16<sup>441</sup>, although neither article 16 nor any other provision of the French constitution specifies what exceptional circumstances, that Meaning, it did not enumerate for example some of these circumstances, which means that the assessment of these circumstances is up to the President himself<sup>442</sup>.

Thus, the 2011 constitution enshrines the launching of the King's authority in terms of declaring the state of exception without linking it to any restriction or condition, except for those formalities mentioned in the various previous constitutions, such as non-binding consultations of the heads of Government, Parliament and the Constitutional Court, so the constitution did not provide for the presentation of the state of exception to parliament to take his opinion, although it stipulated that the parliament should not be dissolved in this duration however, by stipulating "the king is empowered to take

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<sup>440</sup> Ibrahim Abu Khuzam, Mediator in Constitutional Law: First Book (Constitutions, State and Governance) New United Book House, Lebanon, 3rd Edition January 2010, P. 356.

<sup>441</sup> - Mustafa Al-Haymer, op. Cit, P. 25-26.

<sup>442</sup> - brahim Abu Khuzam, Op. Cit, P. 355.

the measures imposed by the defense of territorial integrity", the work of Parliament has been frozen for the duration of the exception case, because the King during the case of exception collects all the legislative and executive powers, as well as that the judiciary is originally Follow him<sup>443</sup>.

It is obvious that exceptional cases can not be going by ordinary rules, so the constitutions provide for this possibility to open the way for the concentration of power in the hands of the presidency, to take the necessary measures to return the situation to what it was, and allow the return of institutions to normal course, " that in Morocco", this general rule of discussion should focus on the search for texts on the conditions necessary for the declaration of such an exceptional situation and its accuracy or generality"<sup>444</sup>.

## 2.2: The cases of siege and war

The King embodies the symbol of unity and the basis of order, and the owner of the decisions of peace and war<sup>445</sup>, if the various constitutions are given to the Executive Authority in times of crisis and natural conditions the right to address situations that threaten the security and safety of the country, however, they sometimes differ from the exception situation<sup>446</sup>.

All Moroccan constitutions Since the first constitution from 1962 until the 2011 constitution, the King was given the right to declare the state of

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<sup>443</sup> Abdelhak Balfakih, In the evaluation of the new constitution: change in the shadow of continuity, Journal of Pathways in Thought, Politics and Economy, The Constitution and the New Constitution in Morocco: A Reading in Context and Meaning, No. 43-44, 2013, P. 31-32.

<sup>444</sup> - Mounem Aqtib, The Privilege of Property in the Moroccan Political System, An Attempt to Understand and Define, op .cit, P. 27

<sup>445</sup> Hind Arob, the Holy Monarchy and the illusion of Change, op. Cit, P. 8.

<sup>446</sup> - Mustafa Al-Haymer, op. Cit, P. 29.

siege and war, in order to be able to take the necessary action and necessary measures for the establishment of security and stability<sup>447</sup> of the country, the constitution granted the King, through his presidency Ministerial Council, the right to declare the state of siege and to declare war without reference to the legislative institution<sup>448</sup>.

Where it can be said that the crises that impose the declaration of the state of siege may be earthquakes, famine and epidemics, It may be for social and political reasons such as demonstrations and armed insurrection, the emergence of terrorist movements or extremist groups, these crises may be confined to a specific region and may include several regions, or may be short or may extend for weeks or several months<sup>449</sup>, as a result of the state that siege narrowing the scope of public freedoms, and impose some strict measures, such as allowing the armed forces to shoot at anyone who does not comply with their orders, and authorize the extraordinary judiciary (military courts) to consider in certain crimes committed<sup>450</sup>.

The crises that impose a state of siege vary where they can be natural or for other reasons economic, social, political, as different according to its gravity and its duration, and the area in which it is confined.

In such crises and natural circumstances, the constitutions give the executive power the right to deal with situations that threaten the security and safety of the country, in Morocco, in order to declare the state of siege, this matter is dealt within the Ministerial council, after which a

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<sup>447</sup> - Omar Bennaim, op. Cit, P. 23.

<sup>448</sup> - Abd Abdelhak Balfakih, op. Cit, P 31.

<sup>449</sup> - Mustafa Al-Haymar, op. Cit, P. 29.

<sup>450</sup> - Ahmed Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. cit, P. 132.

“Royal Dahir” is issued and countersignature by the Head of Government<sup>451</sup>.

Referring to chapter 49 of the 1996 Constitution, it reads as follows: "The state of siege can be declared for thirty days under a “Dahir”, and the 30-day period can only be extended by law"<sup>452</sup> While Chapter 74 of the 2011 Constitution provides for that "the state of siege can be declared for 30 days, under a “Dahir” countersignature by the Head of Government, and this term can only be extended by law" it is understood from this chapter that the declaration of the state of siege does not involve the approval of Parliament, but only if there is an intention to extend the duration of the siege which was determined by the constitutional text in thirty days, this chapter also added another issue, which is reflected in the countersignature of the Head of Government on the back of the declaration of the state of siege, the declaration of the state of siege is circulated in the Ministerial Council in accordance with article 49 of the 2011 Constitution,<sup>453</sup> the King has this powers necessary for the security and stability of the situation chapter 74 of the 2011 constitution regulating the state of the siege did not give a detailed statement about it and its limits and gravity, leaving the declaration of its practice to the absolute appreciation of his Majesty.

The Moroccan constitution gave the king a 30-day period, thus, the Moroccan constitution contradicted its historical French source, which limited the duration of the siege in 12 days which is a short period in which it is difficult to contain the crisis.

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<sup>451</sup> - Omar Bennaim, op. Cit, P. 23-24.

<sup>452</sup> - Mustafa Al Haymar, op. Cit, P. 29-30.

<sup>453</sup> - Omar Bennaim, op. Cit, P. 23.

In France, the state of siege is imposed by a decree of the Council of Ministers, as article 36 of it stipulates "The state of siege shall be declared by a decree in the Council of Ministers and may not be extended for twelve days just with the authorization of the Parliament"<sup>454</sup>.

The powers of the king in exceptional circumstances extend to his right to declare war when the State is exposed to an external threat that threatens the possession of the national territory, all attack by a State or an intention to attack it on the national territory, here, the head of the State has the right to defend the security of the State and the safety of its citizens and to declare war, whether defensive or offensive<sup>455</sup>, where there are a set of conditions that must be made available to declare war, and a distinction is made between substantive conditions and formal conditions.

With regard to objective conditions, the State must be exposed to an external threat to the national territory, that is, this threat threatens the independence and security of the country by a state that seeks to usurp a part of the national territory or overthrow the regime to bring it in line with the goals and interests of the invading state or behind the invaders state therefore, it is the right of the Head of State to declare war in order to repel the danger to the State and the safety of individuals, whether this war is offensive or defensive<sup>456</sup>, as for the formal conditions, the circulation of this matter within the Ministerial Council, in addition to consulting the King with Parliament before the declaration of war, article 99 of the 2011 constitution stipulates that "the decision to declare war

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<sup>454</sup> - Mustafa Al Haymer, op. Cit, P. 29.

<sup>455</sup> - Omar Bennaim, op. Cit, P. 24.

<sup>456</sup> - Youssef Thifa, op. Cit, P. 64.

shall be made within the Ministerial Council in accordance with article 49 of this Constitution, and after the Parliament was informed of this by the King", the same is true for the previous constitutions, since the 1996 constitution mentioned the state of declaration of war in chapter 66 which deals with matters referred to the Ministerial Council, it added in chapter 74 the question of consulting the parliament before the declaration of war, and the 1962 constitution states in its chapter 51 that "The declaration of war is authorized by Parliament", the benefit of this chapter is that the parliament is the one who has the word to declare war, and the king must ask the permission of Parliament and obtain his consent to declare war<sup>457</sup>, is declared it when the State is exposed to an external threat to the national territory, which calls for resorting to war to avoid foreign danger, defend the state and the safety of individuals whether the declared war is defensive or offensive<sup>458</sup>.

Unlike the Moroccan constitution, the declaration of a state of war in the French constitution is approved by the Parliament as provided for in article 35<sup>459</sup>.

## **II: Executive Authority of the Head of Government**

The new Moroccan constitution has delegated the exercise of executive power to the Government, which operates under the authority of its president, in accordance with the principles of responsibility, delegation, coordination, tracking, monitoring, evaluation, Government solidarity and integration in the initiative.

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<sup>457</sup> - Omar Bennaim, op. Cit, P. 24.

<sup>458</sup> - Ahmed Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. Cit, P. 132.

<sup>459</sup> - Youssef Thifa, op. Cit, P. 65.



## 1: The Head of Government and the new Constitutional roles

The head of the Government under the new amendments is the head of the Executive Authority and assumes full responsibility for the Government and the public administration, he shall lead and implement the Government program, he shall also countersignature the Royal actions according to the provisions of the constitution, so that the Head of Government bears full responsibility as Executive Authority.

### 1.1: Tasks of the Head of Government

The 2011 Constitution came with fundamental reforms to develop the Moroccan constitutional order<sup>460</sup>, and a special section was devoted to the fifth section to the talk about the Executive Authority, this section talks about the institution of Government only with a clear absence of the King's institution<sup>461</sup>, as the constitution worked to expand the powers of the Government, whether it is the tasks of its President or the attachment of its competences as a constitutional institution it solidarity and integration<sup>462</sup>, and it assigned a set of tasks which it exercises as a collective body or in the person of the Head of Government<sup>463</sup>, as part of the reformulation of the functions of the authorities allows a degree of balance and clarity in powers (2011)<sup>464</sup>.

The Constitution of 2011 promoted the constitutional status of the Head of Government, and became the President of Minister, it also stated

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<sup>460</sup> - Abdelkader Bayneh, Activating the 2011 Constitution with the existence and application of the legislative plan contained therein, Moroccan Association of Constitutional Law, Fifty Years of Moroccan Constitutional Life: What is the outcome ?, New Knowledge press, 2013, P. 35.

<sup>461</sup> - Abdelali Hami Eddin, The Political Context of the 2011 Constitution: From presidential Monarchy to parliamentary Monarchy, op. Cit, P. 22

<sup>462</sup> - Aziza Al Ghaddani, The Government Tasks in the 2011 Constitution: reading in the text, a series legal and political alternative, New Knowledge Press Rabat, First Edition 2014, P. 37.

<sup>463</sup> - Omar Bennaïm, op, Cit, P. 27.

<sup>464</sup> - Idris Lkrini, The new constitution and prospects for political participation, Journal of Legal Sciences, Series of Constitutional and Political Studies, No. 1, 2013, P. 11.

that the Government is operating under the authority of its president<sup>465</sup>, and has devoted full responsibility to all members of his Government team, where it gave him authorized to propose and terminate their tasks and leadership and coordination of Government action and supervision of public administrations, also the constitutional legislator enabled him to appoint in senior Government positions<sup>466</sup>.

The 2011 constitution also authorizes the exercise of the Head of Government the regulatory authority, and he has the right to delegate some authority to ministers, and the regulatory decisions issued by the head Government are countersignature of the Ministers responsible for their implementation, thus, the 2011 constitution maintained the rule established by the three constitutions 1972-1992-1996, with regard to limiting the exercise of regulatory authority to the Head of Government<sup>467</sup>.

Thus, the Head of Government, in relation to executive power, moved from a weak and formalism to a situation in which he occupies a major position alongside the king in the Executive Authority, where he is propose in the appoint in the civilian jobs, and he can preside the Ministerial Council with the authorization of the King, in addition to that he has the right to ask the King to hold the Ministerial Council, even more so, the constitution of 29 July 2011 it pointed out, clearly, in chapter 89 and the Government can exercises Executive Authority, in addition, the issue of the constitution of the Government council and the issues it deals with( Chapter 92).

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<sup>465</sup> - Aziza Al Ghaddani, op. Cit, P. 37.

<sup>466</sup> - Karim Lahrash, op. Cit, P. 202.

<sup>467</sup> - Omar Bennaim, op. Cit, P. 28.

Nor should we forget the provisions of the second paragraph of chapter 93 that ministers perform the duties assigned to them by the Head of Government and inform the Council of Government about this<sup>468</sup>.

The 2011 Constitution ensures that the Head of Government has the authority to supervise and regulate the administration clearly<sup>469</sup>, by providing the Head of Government with authority over directors of public administrations, institutions and persons with positions high who were part of the public debate prior to the 2011 constitutional amendment as they were appointed by the King by “Dahir” in accordance with the requirements of the 1996 Constitution this was an obstacle for the Prime Minister in his relationship with directors of public institutions and persons with positions high<sup>470</sup>, the Head of Government no longer exercised the power of appointment under the mandate as in previous constitutions, as the 2011 Constitution gave him real authority in the field of appointment<sup>471</sup>, Which means that the constitutional upgrading of the Council of Government to the ranks of the institutions of the report on important strategic topics, and an attempt to reduce the degree of association with the meetings of the Ministerial Council which was in previous constitutional experiences<sup>472</sup>.

the Head of Government can to appoint in civil and public administration, and in senior positions in public institutions and public companies, without prejudice to the provisions of chapter 49 of the

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<sup>468</sup> Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P. 152-153.

<sup>469</sup> - Aziza Al Ghaddani, op. Cit., P. 41.

<sup>470</sup> - Marwan Abu Abdullah, op. Cit, P. 121.

<sup>471</sup> - Omar Bennaïm, op. Cit, P. 34.

<sup>472</sup> - Ahmed Aarab, the Ministerial Council of the Moroccan constitutional system, a series of university works, the publishing house of knowledge, New Knowledge Press, Rabat, 2018, P. 249.

constitution, the head of the Government can delegated this authority<sup>473</sup>, he was also assigned appointment of the directors of the central departments in public administrations, university presidents, deans, school principals and higher institutions, as well as appointment to the other senior positions referred to in the organizational law No. 02.12, but without prejudice to the provisions of chapter 49 of the constitution, and may delegate such power.

However, this appointment was very ambiguous and ambivalent, for example, this constitution provides to the right of the Head of Government to appoint directors of companies subject to the requirements of commercial law, which would lead shareholders in this type of companies to the possibility of rejection of the appointment issued by the Head of Government as is the case with Morocco Telecom<sup>474</sup>.

The 2011 constitution provided for the Head of Government to be able to deliberate on issues and texts relating to the conduct of public policy of the State in the Government council, but these powers remain subject to the presence and inspection of the Ministerial Council which is presided over by the king<sup>475</sup>.

On the one hand, the constitution in its chapter 91 grants the Head of Government the right to be appointed to civil posts in public administrations as well as in senior positions in public institutions and corporations, while Chapter 49 makes the appointments of a number of issues that the Head of Government is obliged to present to the attention

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<sup>473</sup> - Mokhtar Mutai, Constitutional Law and Contemporary Political Systems, op. Cit, P.270.

<sup>474</sup> - Mohamed Zinedine, The Constitution and Regime in Morocco, op. cit, P. 214.

<sup>475</sup> - Nouredine jalal, Constitutional Reform in Morocco: Between Political Monism and "Social Demand" and the Controls of Parliamentary Monarchy Model, op. cit, P. 20-21.

of the Ministerial Council for deliberation, which means that the authority of the Head of Government in this area is more formal than it actual, as long as it needs to be approved by the head of the State who has the final say in this regard.

On the other hand, if it is assumed that major decisions, including those of a strategic nature, through which it is possible to objectively judge any Governmental experience in the field of public affairs, Must be taken by the Government Council and under the direct responsibility of the Head of Government, a simple comparison between the list of issues and files that the Ministerial Council deals with confirms that the Council of Ministers remains the Executive Authority<sup>476</sup>.

By returning to Chapter 42 of the Constitution, it grants the King powers to make political decisions, but makes the Prime Minister a partner in making these political decisions in parallel with the head of state By stating that the “Royal Dahir” in which the king exercises his duties must be countersignature.

Where there are many of the “Royal Dahir” taken to exercise his constitutional powers mainly associated with the leadership of the Executive Authority, and countersignature this “Royal Dahir” by the Head of Government, except what is excluded from them explicitly.

The Head of Government in the partnership position in the political decision-making alongside the king, appears within the same chapter on the signature of the Head of Government it specifically specifies the

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<sup>476</sup> - Marwan Abu Abdullah, op. Cit, P. 118.

circumstance where the King does not need the signature of the Head of Government<sup>477</sup>.

## 1.2: The powers of Head of Government in the legislative field

Under the provisions of the 2011 Constitution, the Government implement the Government program and ensures that laws are implemented under the authority of its President Chapter 89<sup>478</sup>. The Government intervenes significantly in the field of legislation, if the latter is within the powers of the Parliament, Chapter 72 establishes the Government's non-exclusive sphere of legislation, the regulatory area is concerned with articles that are not covered by the law, but even the latter can be discharged to the Government, which has the possibility to change the legislative texts in terms of form by decree, after the approval of the constitutional court, if its content falls within the areas in which the regulatory authority exercises its tasks, and so on according to article 73 of the Constitution<sup>479</sup>.

The department is also the Government's main instrument for the implementation of State policy, in addition to being prepared under the authority of the Government legislative texts submitted to Parliament, the department is unique in that it prepares regulatory texts aimed at implementing laws on the one hand, and those concerned with the

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<sup>477</sup> - Omar Bennaim, op. Cit, P. 72-73.

<sup>478</sup> - Abdel Fattah Belkhal, Javad Al Rabaa, Presidency of the Government: Renewal or continuity?, Moroccan Center for Research and Policy Analysis, Morocco after the events of 2011, what changed ?, Edition 2016, P. 63.

<sup>479</sup> - Ahmed Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. Cit, P. 141.

enactment of legal rules that are outside the sphere of legislation and regulate the public life of individuals and institutions, on the other<sup>480</sup>.

This possibility, which was passed on by successive Moroccan constitutions of the constitution of the Fifth French Republic (Constitution of 1958) Provides the Government apparatus with great opportunities to legislate through the so-called regulatory decrees, thus making it a "Major legislator" in areas normally within the jurisdiction of the law in parliamentary systems<sup>481</sup>.

The Parliament, which is empowered by the Constitution as a legislative authority to vote on the law and authorizes its members to propose laws, is in the status of subordination at the level of the legislative procedure, where the Government has priority over parliament in various stages of legislation<sup>482</sup>, although the proposal process is for both the Head of Government and members of Parliament (Chapter 78)<sup>483</sup> except for the draft financial law, which is a Governmental competence in terms of preparation and preparation, where it is inconceivable to has a parliamentary initiative in this area<sup>484</sup>, article 82 of the 2011 Constitution states: "The Bureau of each House of Parliament shall set its agenda, this table shall include draft laws and proposals of laws in precedence and in the ranking determined by the Government".

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<sup>480</sup> - Abdelali Hami Eddin, The 2011 Constitution on the test of application: The executive power between the dialectic of democratic interpretation and the excesses of practice, the work of the symposium 18-19 April 2013, Research Group on Constitutional Law and Political Science, Faculty of Legal, Economic and Social Sciences, Rabat, 2014, P. 89.

<sup>481</sup> - Ahmed Bouz, "Democratic Choice" in the new Moroccan Constitution, op. Cit, P. 120.

<sup>482</sup> - Al-Bashir Al-Mutaqi, The Problem of the Distribution of Power in the Moroccan Constitutional and Political System: A Study on the Developments of the 2011 Constitution, Proceedings of the National Seminar organized on 29 November 2012, The New Constitution: A Fundamental Document for the Democratic Transition in Morocco, Series of Conferences and Symposia, National Printing and paperwork, First Edition 2013, P. 172.

<sup>483</sup> - Suleiman Al-Tigrini, The direction of constitutional reform towards restricting the powers of the government in the ordinary legislative process, the Journal of Legal Sciences, Series of Constitutional and Political Studies, Al Omnia Press, NO 5, 2015, P. 38.

<sup>484</sup> - Ahmed Bouz, "Democratic Choice" in the new Moroccan Constitution, op. Cit, P. 122.

Therefore, based on this text, the draft laws placed priority on the proposals of laws within the agenda of each council, the Government therefore became sovereign in the legislative initiative, making it included on the agenda of either council as it wished according to their priorities, which cancels or delays at least the proposals of laws submitted by deputies and advisers as long as chapter 82 did not pay any attention to whether the law proposal was submitted by a deputy or an adviser. Preceding the date of submission of the Government project for which it takes precedence.

Article 83 also gives the same motion by giving the Government the right to object to any amendment that has not previously been submitted to the committee concerned, the Government can also force parliament to vote on a full text (closed vote) by rejecting all amendments submitted by the deputies, however, the new constitution gave the parliament the right to object to this procedure by a majority of its members<sup>485</sup>, nevertheless, Parliament's ratification and adoption of the draft Finance law, does not prevent the possibility of the Government's intervention for reconsideration in it<sup>486</sup>.

Thus, it is clear that the legal sphere is not monopolized or confined to the parliamentary system, but is also intersected by the Executive Authority, within the framework of so-called parliamentary rationalization, which is reflected even at the level of the legislative procedure<sup>487</sup>.

The new constitution gave the Head of Government the right to initiate constitutional review, along with the king and the parliament, this new

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<sup>485</sup> - Al-Bashir Al Mutaqi, op. Cit, P. 172-173.

<sup>486</sup> - Ahmed Bouz, "Democratic Choice" in the new Moroccan Constitution, op. Cit, P. 123.

<sup>487</sup> - Ahmed Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. Cit, P. 142.



task, although it has restored one of the tasks of reference that was granted to it by the 1962 constitution Before the "Constitution of the case of exception" of 1970 which made it just of tasks the king , this old new tasks remains linked to the will of the King, first, because the constitution imposes the presentation of the Head of Government project relating to the review constitutional to the Ministerial Council, which he heads the King, and Second, because the constitution makes projects and proposals for constitutional review submitted to the referendum by Royal decree<sup>488</sup>.

The provisions of Chapters (173 and 174) of the Constitution of 2011 have regulated the constitutional amendment procedure submitted by the Prime Minister, the last paragraph of chapter 173 of the Constitution described this initiative as merely a proposal to distinguish it from the draft submitted by the King, Perhaps in this conventional choice, which refers to the logic of the legislative hierarchy and the order of the authorities, which espouses the Moroccan political system, however, it strikes at what has been established in this regard after using the same term (proposed) even for the initiative to amend the constitution which comes from members of Parliament, this is reminiscent of the tendency of the framers of the Constitution to devote the Royal Highness, even through terminology at least.

It can be said that the proposal to amend the Constitution, which is initiated by the Head of Government, must follow a very complicated procedure, Starting with the need to be deliberated by the Ministerial Council headed by his Majesty the King for approval, (Chapter 173) states in its last paragraph: "The proposal submitted by the Head of

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<sup>488</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, op. Cit, P. 115.

Government to the Ministerial Council shall be presented after deliberation in the Council of Government".

After passing the proposal of the Head of Government to amend the Constitution this stage successfully the imposition of chapter (147) offer it , such as projects that come from the Royal will and the proposals emanating from Parliament, to the people in order to referendum Under "Dahir" as a legal instrument through which the Royal institution exercises its authority, the review shall not be final until after the approval of the referendum under the supervision of the Constitutional Court, which makes sure the validity of the review and announce the result, Chapter 174 of the 2011 Constitution states: "The drafts and proposals of the Constitution, by virtue of a "Dahir", shall be submitted to the people for the purpose of the referendum, after a final review to be approved by referendum, the Constitutional Court is monitoring the procedures of this review and declaring its outcome"<sup>489</sup>.

of the new powers conferred by the 2011 Constitution to the Head of Government on the authority to resort to the dissolution of the council of Representatives, this powers, it would strengthen its position, especially with regard to the Council of Representatives, and thus gives a balance between the executive and legislative institutions as long as the latter also possesses weapons capable of undermining and overthrowing the Government (censorship petition), it raises two problems, first, that the initiative of the Head of Government in this regard is not free, but linked to the will of the King, given that they are taken only after consultation with the King and the Speaker of the council of Representatives, and can only be done by decree in the Ministerial Council, Second, the same

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<sup>489</sup> - Abdelmajid Boukir, op. Cit, P. 6-7.

power is vested in the King, who may also resort to dissolving the councils of Parliament or one of them with a “Dahir”, without being restricted, only with some formal conditions, such as the consultation of the President of the Constitutional Court, and to inform the Head of Government and President of the council of Representatives and Chairman of the Council of Advisors.

And here it seems strange, somewhat to give the heads of executive power the possibility of dissolving the legislative institution, at a time when semi-presidential systems give this power to the head of state, While in parliamentary systems, both Monarchy and republic, entitle the Prime Minister to the initiative, In a formal way to the King or the President of the Republic Which he confirm it<sup>490</sup>.

## **2: Activating the constitutional powers of the Head of Government**

In addition to the traditional tasks of the Government under the previous constitutions, the 2011 Constitution gave the Government as a collective body or in the person of the Head of Government a set of tasks in the executive field, which are only activated by a set of Regulatory Laws.

### **2.1: Regulatory Laws**

The last constitutional review of 2011 provided to the Regulatory Laws with the competence to regulate a number of fields and determine the rules of some constitutional institutions and how to install and configure it exclusively<sup>491</sup>.

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<sup>490</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, Moroccan, op. cit, P. 115-116.

<sup>491</sup> - Marwan Abu Abdullah, op. Cit, P. 222.

The seriousness and importance of Regulatory Laws lies in the fact that they occupy second place in the hierarchy of laws after the Constitution<sup>492</sup>, which are complementary to the Constitution, detailing the articles that have been included in the Constitution, The mode nature of the constitution has been carried out according to the various Moroccan constitutions since the 1962 Constitution until the constitutional review of 1996 these constitutions should address Regulatory Laws exclusively in specific chapters without others, in this sense, it is noted that the constitutional legislator and in comparison with the Constitution of 13 September 1996 he adopted through the last constitutional review the idea of expanding the areas of Regulatory Laws, Since the 1996 Constitution provided for nine Regulatory Laws, while the 2011 Constitution has increased the number of areas in which jurisdiction has been assigned to such laws(Regulatory Laws), to reach nineteen Regulatory Law, thus, the constitutional legislator has rectified the omission of the previous Constitution for a range of fields in which jurisdiction has not been vested in the Regulatory Law which by their very nature are important priority subjects in the legal, in constitutional and in national system in general<sup>493</sup>.

Thus, the new constitution contains many Regulatory Laws, which are important laws related to vital issues such as the Regulatory Law to determine the stages of activating the official character of Amazigh, and the Regulatory Law for the functioning of the Government, the Regulatory Law of the National Council for Moroccan Languages and Culture and the Regulatory Law on the conditions and modalities of

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<sup>492</sup> - Abdelali Hami Eddin, The Constitution of 2011 on the test of application: Executive Authority between the dialectic of democratic interpretation and the excesses of practice, op. Cit, P. 95.

<sup>493</sup> - Marwan Abu Abdullah, op. Cit., P. 222-223.

submitting petitions in the field of legislation by citizens and the Regulatory Law on the a conditions of exercising the right of citizens to submit petitions to the public authorities, and the Regulatory Law for determining the conditions for exercising the right to strike and the Regulatory Law for the regulation of strategic institutions , contracting and the Regulatory Law of the council of Representatives, the Regulatory Law of the council of Counselors and the Regulatory Law of fact-finding committees ,the Regulatory Law Financial, the Regulatory Law of the Supreme Council of the Judiciary <sup>494</sup> , moreover, the constitutional text did not specify the powers of reference of the head of state, but rather referred to the regulatory and legal texts<sup>495</sup>.

The Head of Government in the Moroccan Constitution and similar political regimes is the source of many regulatory texts<sup>496</sup>, it was the first test of the Government of Mr. Abd Elah Benkirane who appointed by the King on 3 January 2011 Is in its Activation of the Regulatory Law on appointment to senior positions 02.12, where observers considered that some of the contents of this law do not go in the direction of democratic interpretation of the constitution and also It does not tend to highlight an Executive Authority that has executive decision authority.

This particular reading of the concept of "consultation" and of the area of joint powers, in which the Government waives its right to prepare and formulate, calls for some observations, the adoption of all the drafts the law (regular and organizational) in the previous five constitutions, are passed through the gate of the Ministerial Council before referring them

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<sup>494</sup> - Abdelali Hami Eddin, The Constitution of 2011 on the test of application: Executive Authority between the dialectic of democratic interpretation and the excesses of practice, op. Cit, P. 95.

<sup>495</sup> - Abdelhak Balfakih, op. Cit, P. 24.

<sup>496</sup> - Abdelali Hami Eddin, The Constitution of 2011 on the test of application: Executive Authority between the dialectic of democratic interpretation and the excesses of practice, op. Cit, P. 90.

to Parliament, but no Government since the 1960s has considered this requirement in the sense that laws should be formulated jointly by the Government and the Royal Court.

In addition, the Government considers the laws relating to good governance bodies to be prepared in coordination between the Government and the Royal court, the Constitution explicitly states that these institutions shall be established and regulated by ordinary laws after such institutions have exit from the womb of Chapter 19<sup>497</sup>.

It has been released the Regulatory Law, referred to in Chapters (49 and 92), to determine the areas of the appointment of the king under Royal “Dahir” within the Ministerial Council and the areas of appointment of the Head of Government under decrees within the Council of Government, however, this law has been accompanied by a series of criticisms and is viewed as an inability<sup>498</sup>, and devoted the continued monopolization of Monarchy in the appointing authority in broad areas<sup>499</sup>.

Instead of defining clearly the meaning of senior positions and the concept of strategy, and checking the standards so as to know on the basis of them, are these positions within the framework of senior positions or not, and therefore it falls within the institutions and strategic contracting until the appointment is made within the Ministerial Council in accordance with Chapter 49 or the appointment is only within the Council of Government, on the contrary, it has become the account of the positions which determines the nature and the gender and the institution, which will create in the absence of this precise definition of

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<sup>497</sup> - Marwan Abu Abdullah, op. Cit, P. 133-134-135.

<sup>498</sup> - Ahmed Aarab, Ministerial Council, in the Moroccan Constitutional System, op. Cit, P. 249.

<sup>499</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, Moroccan, op. Cit, P. 112.

the concept of strategy, a kind of confusion between the powers of the Head of Government and the Head of State in this appointment<sup>500</sup>.

## 2.2: Interpretation of the powers of the Head of Government

The 2011 Constitution worked to strengthen then the Government's role by expanding its powers<sup>501</sup>, where Chapter 47 of the Constitution gives from the beginning a status the constitutionality to the Head of Government in his relationship with the king specifically, which qualifies it in constitutional principle to exercise its constitutional powers independently<sup>502</sup>.

The Government became exercising Executive Authority, indeed, this latter phrase is the title of section v, accordingly, they have a variety of functions, which are exercised by the Government as a whole or in the person of its President<sup>503</sup>, with the new constitutional covenant that was passed by the constitution in July 1, it is possible to emphasize the democratic emergence of the Executive Authority under the leadership of the Head of Government, where the constitutional status of the Prime Minister was upgraded to become Head of Government, the same scenario applies to the Government apparatus, which confirmed the new constitution on the mandatory appointment from the party which won the legislative elections(The Council of Representatives), Embodying the

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<sup>500</sup> - Ahmed Aarab, Ministerial Council, in the Moroccan Constitutional System, op. Cit, P. 251.

<sup>501</sup> - Abdel Fattah Belkhal - Jawad al-Ruba'a, op. Cit, P. 62.

<sup>502</sup> - Abdul Ilah Amin, Fixed and variable In the Moroccan political system in light of the 2011 Constitution, Moroccan Journal of Local Administration and Development, No. 121, March-April 2015, P. 75.

<sup>503</sup> - Ahmad Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. Cit, P. 138.

emergence of the Government from the general will of the nation by direct universal suffrage<sup>504</sup>.

An important finding of the Government as an Executive Authority is the distinction between two institutions that were interrelated in terms of tasks in previous Moroccan constitutions in, this context, the Royal Institution and the Prime Minister's institution and the Government, was the Prime Minister come in second place after the king in the ladder of Executive Authority, and the whole Government was the Government of his Majesty the King working under to his command and direction, today, things are clear as the Head of Government is the actual president of the Executive Authority, which is the Government who exercises the regulatory authority, under chapter 90 of the new constitution, and he can delegate some of his powers to the Ministers.

Always in the same area, the new constitution has tended to reduce the number of powers of the king, which became common with the Head of Government especially in the field of appointments in high positions without military and religious which remained exclusively the king's specialties, that the Government was given a set of competencies shared by parliamentary and semi-parliamentary systems, including the authority to determine the economic, social and administrative policy of the country, the new constitution explicitly provides for this Governmental power to remove any doubt or ambiguity in this area, as the Government has emerged from a parliamentary majority descended from elections It

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<sup>504</sup> - Mohammad Yahya, op. Cit, P. 277.



was necessary to give it this authority to be responsible for the implementation of its program in front of, the deputies of the nation<sup>505</sup>.

in contrast, the 2011 constitution extended the powers vested in the Head of Government by giving him the right to appoint in civil service in public administrations and to senior posts in public institutions and contracting, without prejudice to the provisions of Chapter 49 of the constitution<sup>506</sup>, with the exception of some high-ranking positions provided exclusively for the appointment to be made in the Council of Ministers on the proposal of the Head of Government, all other senior civilian posts are appointed by the Head of Government<sup>507</sup>.

The most expressive form of this situation remains the Regulatory Law on the application of the requirements of Chapters (49 and 92) of the Constitution Respectively, in the areas of appointment in the Ministerial Council and those subject to the deliberations of the Government Council, at a time when the constitution was explicit in the naming of some "Civil Positions in Public Administrations" and "Senior positions in institutions and public contracting, which The king appoints in it, referred to a Regulatory Law to determining "List of Strategic Institutions and Contracting", which is appointed by the King "Upon the proposal of the Head of Government and at the initiative of the Minister concerned".

However, what is noted in this law, which was the first test to activate the requirements of the new constitution, is that it dispelled the belief that prevailed before the legislative activation of the constitution a moment of

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<sup>505</sup> - Youssef Thifa, op. cit P. 83-84.

<sup>506</sup> - Muhammad Yahya, op. Cit, P. 284.

<sup>507</sup> - Abdelali Hami Eddin, The Constitution of 2011 on the test of application: Executive Authority between the dialectic of democratic interpretation and the excesses of practice, op. Cit, P. 90.

more scrutiny of powers and clarify the tasks and give political practice a real democratic breath, as evidenced by the large and decisive role he gives to the king in the field of appointments, and the large number of institutions and contractors in which the king retained his appointment, and the strategic importance it represents in the economic and social field, in addition to the powers granted to him by the constitution by explicit text, highlights to what extent the king still has great influence in the field of appointments, Which mean, of the continuation loss of initiative in vital and strategic areas from the hands of the electorate, whom the new constitution has made the sole source of the nation's sovereignty<sup>508</sup>.

In overall , the withdrawal of the executive powers from the king, offset by the indirect demand to giving it to the Government as the core element of Executive Authority in States with a single or bilateral, parliamentary system these demands, which will be answered by King Mohammed VI, through the speech of the ninth of March, When the fourth pillar on constitutional reform was devoted to the benefit of the Government, said "An elected Government comes from the people's desire, expressed through the ballot box, and enjoys the confidence of the majority of the council of Representatives, the appointment of the Head of Government from the political party Who won the council of Representatives elections, and on the basis of its results, as well as strengthening the position of the Head of Government, as head of an effective Executive Authority, with full responsibility for Government and public administration, and to lead and implement the Government program".

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<sup>508</sup> - Ahmed Bouz, "Democratic Choice" in the new Moroccan Constitution, op. Cit, P. 127-128.

Where, based on his powers and given the political and social context in which the Constitution of July 2011 came, the Head of Government in Morocco became a personality to contract with People and works to implement its program, which includes the field economic, political, social and cultural, both internal and external<sup>509</sup>.

Many and important are those powers granted by the Moroccan Constitution to the Head of Government, with regard to his participation in specified tasks of the King in his capacity as Head of State, or associated to the Executive Authority, the Supreme Council of Accounts or the relationship between the authorities, or the revision of the constitution.

But what the Head of Government used from his constitutional powers is limited and traditional, as if the 1996 constitution still governs until today, after his appointment by the King, he presented to the two councils of Parliament, together, the Government program, which included the main lines that the Government intends to do, in various areas of national activity, in particular in the fields of economic, social, environmental, cultural and external policy (chapter 47), under its regulatory authority, the Head of Government is responsible for the implementation of the Government program, as well as the implementation of the laws (Chapter 89) with some his powers delegated to ministers (Chapter 90), he also can appointed in to senior positions in public institutions and corporations (Chapter 91), every Thursday, he chairs the Government council and he shall inform the Head of State of the outcome of his deliberations (Chapter 92) and provides answers Government to parliamentary questions related of public policy, during the thirty days

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<sup>509</sup> - Youssef Thifa, op.cit, P. 84-85.

following the referral of the question to the Government, and one session per month is devoted to these questions (chapter 100)<sup>510</sup>.

The general framework governing the drafting of the 2011 draft constitution is radically different from that of previous constitutions that governed the nature of the political conflict between the king and the opposition<sup>511</sup>, but in spite of being a boycott with previous constitutions at several levels<sup>512</sup>, the current readings go to it as a constitution embodied in the structure and meaning of a constitutional philosophy intended to change under the continuity, or reform in the framework of continuity, some justify this approach to the nature of political and social geography known to Morocco, where the reality of the political elite, the degree of democratic awareness, and the political culture governing institutions are all variables that make change within continuity the best and most appropriate option for the path of political development in Morocco<sup>513</sup>.

## **Chapter 1: The relationship between the Authorities**

The Constitution of 2011 has brought about important developments that go towards devoting the role of the Head of Government as a key participant to the king in political decision-making, and give him full authority to manage and supervise Government work in accordance with the nature of parliamentary Monarchy system.

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<sup>510</sup> - Radwan Zahro, Constitution 2011 after five years of the outcome and prospects, Journal of Pathways in Thought, politics and economics, New Success Press Casablanca, No. 39-40, 2016, P. 5.

<sup>511</sup> - Rashid Lazzak, the Moroccan Constitution of 2011 and the right to submit petitions, Journal Point of View, No 53, Summer 2012, P. 58.

<sup>512</sup> - Hassan Khoukhou Khalil, With regard to some obstacles to the implementation of the 2011 Constitution, Moroccan Journal of Public Policy, Special No18, Fall 2015, P. 191.

<sup>513</sup> - Abdel Moneim Lazar, Parliamentary institution in Morocco: Descriptions of the deterioration and the stakes of the new constitutional reform of 2011, Journal of Point of View, No 50, 2011, P. 44.

## **I: Government subordination of the King**

The Government in Morocco is subordinate to His Majesty the King, and the ministers only implement the directives and instructions, there has been no significant change in the procedure for appointing and dismissing ministers, which is the basis for the continued subordination of ministers to Royal directives.

### **1: Appointment of Government**

The king's freedom to appoint a Prime Minister is no longer absolute, but restricted, since he is not entitled to grant the Head of Government to anyone other than the party that wins the election, The Constitution gives the Head of Government, who has been appointed, the power to propose ministers to the King thus, the 2011 Constitution follows the same procedure as the 1996 Constitution.

#### **1.1: The Head of Government and mandatory appointment**

The Prime Minister was considered the second element in the Executive Authority, where he ranks first in the ministerial body and exercised powers far superior to those exercised by the other ministers and but he is not considered the head of the ministerial body<sup>514</sup>, the King was in accordance with chapter 24 of the 1996 constitution has absolute power to appoint the Prime Minister, without being bound by any condition, standard or advice<sup>515</sup>, came the first paragraph of chapter (47) is the essence of constitutional reforms, which clearly

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<sup>514</sup> - Omar Bennaim, op. Cit, P. 59.

<sup>515</sup> Abdul Samad Hiker, op. Cit, P. 61.

reflect the heart of the parliamentary character of the political system by restricting the king's hand in appointing a Head of Government<sup>516</sup>,

By making his choice restricted within the circle of "the political party that won the elections of the members of the council of Representatives and on the basis of its results<sup>517</sup>", thus, chapter 47 of the July 2011 constitution, it went to link the political decision to the ballot boxes<sup>518</sup>, moving from Royal appointment of the Prime Minister to the symbolic and formal appointment of the King to the Head of Government<sup>519</sup>.

Despite the observations raised by the constitutional wording, it can be emphasized, however, that the manner in which the new Constitution is stated, make sure that the process of selecting the Head of Government is linked to the electoral process which embodies the sovereignty of the nation through the selection of its representatives, as well as to link responsibility to accountability and make the legitimacy of the institution of the Head of Government based on the ballot boxes on the one hand and the symbolism of the Royal appointment from the second hand<sup>520</sup>.

The 2011 constitution confirmed that the king appoints the Head of Government from the political party that won the election based on its results<sup>521</sup>, this chapter did not stand at the party that won the elections only, but that the win must be derived from the outcome of the

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<sup>516</sup> - Amin Al-Saeed, In the need for a democratic constitutional debate with Professor Nadia Bernoussi, Chapter 47, Public Dialogue Series, February 2017, P. 69.

<sup>517</sup> - Abdul Samad Hiker, op. Cit, P. 63.

<sup>518</sup> - Amin Al-Saeed, The Presidency of the Government in the New Arab Constitutions Model of Morocco - Tunisia - Egypt, Moroccan Journal of Public Policy, Special No. 18, Fall 2015, P. 140.

<sup>519</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P. 104.

<sup>520</sup> - Abdul Samad Hiker, op. Cit, P. 63.

<sup>521</sup> - Karim Lahrash, op. Cit, P. 142.

elections<sup>522</sup>, it thus determines the mandatory appointment of the Head of Government from the party with the largest number of parliamentary seats even if there is a union of parties holds an absolute majority of members of the council of Representatives, where the map of the distribution of parliamentary seats depends on parties it does not concern the map of the distribution of parliamentary seats to the parties' unions and the parliamentary groups<sup>523</sup>.

If the Moroccan constitution is clear in linking the position of the Presidency of the Government with the results of elections (the Members of the council of Representatives)<sup>524</sup> in line with the will expressed Partisan and official in Morocco, during the preparatory phase of the 2011 constitution, to link the election results and the appointment of the Head of Government<sup>525</sup>, that the wording of this paragraph of chapter 47, the identity of the person concerned has not been identified in this appointment<sup>526</sup>, where the paragraph mentioned from this chapter came general it did not specify exclusively who appointed by the king from the winning party<sup>527</sup>.

The King is not obliged to choose a particular person, the Secretary-General, for example<sup>528</sup>, and has the possibility of appointing a second person from within the same party that won the majority in the

<sup>522</sup> - Abdul Kabir Tbeih, Chapter 47 means: urging the Head of Government to negotiate to form a parliamentary majority, Chapter 47, Public Dialogue Series, February 2017, P. 59.

<sup>523</sup> - Mohammed Al-Sassi, 2011 Constitution: Problems Without Solutions, Symposium Proceedings 18-19 April 2013, The new Moroccan Constitution on the test of practice, Group on Constitutional Law and Political Science, Faculty of Legal, Economic and Social Sciences, Rabat, 2014, P. 48.

<sup>524</sup> - Abdelali Hami Eddin, The problem of lack of Government majority And the inevitability of recalling the provisions of Chapter 98, Chapter 47, Public Dialogue Series, February 2017, P. 122.

<sup>525</sup> - Hassan Tariq, Chapter 47 Controversy of the Constitution and Politics, Chapter 47, Public Dialogue Series, February 2017, P. 173

<sup>526</sup> - Hafeez Ainou, Appointment of the Head of Government in the Moroccan Constitutional System, Chapter 47, Public Dialogue Series, February 2017, P. 133.

<sup>527</sup> - Amhamed Malaki, So as not to tie the neck of Chapter 47, Chapter 47, Public Dialogue Series, February 2017, P. 164.

<sup>528</sup> - Karim Lahrash, op. Cit, P. 142

elections<sup>529</sup>, according to the Moroccan Constitution, his Majesty alone has the power to decide on the appointment of the Head of Government, he issues this decision under a "Dahir" that does not countersignature<sup>530</sup>, as understood in chapter 47 of the constitution, that the constitution came in a flexible and open format that gives the king the authority to choose a Head of Government from outside the post of secretary-general or head of the party<sup>531</sup>.

The problems that may arise from application of the first paragraph of chapter 47 has always been present<sup>532</sup>, on the one hand, the constitutional text does not answer the question of what to do in the case which may not be able "Head of Government appointed" to obtain a parliamentary majority<sup>533</sup>, as the constitutional possibilities available to overcome any failure to form a Government one of the topics that is still the subject of constitutional and political debate<sup>534</sup>.

This vacuum gives the king a great margin to act, based on what he is entitled to chapter 42 of the constitution, which makes it "A guarantor of the state's continuity", and supreme governance among its institutions<sup>535</sup>, "Where the king can appoint another person from the first party" always, in the hope that he can manage the order to obtain a new alliance and ensure the vote of the majority of members of the council of Representatives on the second Government program<sup>536</sup>, considering that

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<sup>529</sup> - Rkia El Mossadeq, Which government will be formed under the path of decomposition from the Constitution ?, Chapter 47, Public Dialogue Series, February 2017, P. 27.

<sup>530</sup> - Abdul Latif Wahbi, Chapter 47 Between the Actual and Formal Authority of the King, Chapter 47, op. cit, P. 51.

<sup>531</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P. 209.

<sup>532</sup> - Hassan Tarik, Chapter 47, Chapter 47, Public Dialogue Series, February 2017, P. 167.

<sup>533</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, Moroccan, op. cit, P. 107.

<sup>534</sup> - Hafeez Ainau, op. Cit, P. 129.

<sup>535</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, Moroccan, op. cit, P. 107.

<sup>536</sup> - Mohammed Al-Sassi, The Constitution of 2011: Problems Without Solutions, op. Cit, P. 44-45.



the restriction of the king's authority to appoint a Head of Government is not only related to the initial appointment of the Prime Minister and members of the Government, but extends even after the failure of the Government to obtain the confidence of the council of Representatives on the basis of chapter 88 of the constitution<sup>537</sup>.

On the other hand, the problem of appointing the winning party for election results may be raised when two or more parties are equal in the final results<sup>538</sup>, the constitutional text did not clarify what was meant by "election results", seats or votes, this issue seems important in two cases: The situation in which a party may have won the election results in terms of the number of votes without winning in terms of number of seats, this is what is happening in the Moroccan electoral system, to claim its "right" to be head minister, a situation where more than one party may be in the first place, for example, is it possible to resort to a specific interpretation that makes the votes which obtained is the specific criterion in this case<sup>539</sup>.

## **1.2: The role of the Head of Government in its formation**

Ministers in the Moroccan political system were appointed by the king and they were accountable to him, and are discharged from their duties by his will, none of them has the power to decide in the sector in which they are represented, the king who determines the general political

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<sup>537</sup> Abdul Ilah Amin, op. Cit, P. 73.

<sup>538</sup> - Abdel Rahim Khalis, these proposals for a constitutional amendment to the formation of the government in Morocco, Chapter 47, Public Dialogue Series, February 2017, P. 78.

<sup>539</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, op. Cit, P. 108.

direction of the country and the role of ministers is limited to implementation<sup>540</sup>.

The Government in Morocco consists of the Head of Government and ministers and can include a state book, after the king appoints the Head of Government from the party who won the elections of members of the council of Representatives<sup>541</sup>, chapter 47 of the 2011 Constitution, unlike chapter 24 of the 1996 constitution, restricts the King's authority in appointing the Government and the head of Government<sup>542</sup>, the latter will conduct consultations, in order to propose members of the Government in accordance with the same chapter<sup>543</sup>, the Constitution assigned the task of proposing members of the Government to its President<sup>544</sup>, in recognition of the full responsibility of the Head of Government on its members, the constitution explicitly authorizes the head of Government to propose, and end their duties, lead and coordinate Government action, and supervise public administration<sup>545</sup>.

The commissioning Royal of the Prime Minister (Head of Government) to consult for the formation of the Government, requires a period of time separating the date of the appointment of the Prime Minister (Head of Government) and the date of appointment of the Ministers<sup>546</sup>.

Considered appointment the Royal of members of the Government at the suggestion of its chairman an articulated stage leading to the

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<sup>540</sup> - Abdul Latif Hosni, The Ministers of King Mohammed VI, Journal of Point of View, No. 43, Winter 2010, P. 32.

<sup>541</sup> - Omar Bennaim, op. Cit, P. 63.

<sup>542</sup> - Abdul Ilah Amin, op. Cit, P. 73.

<sup>543</sup> - Youssef Thifa, op. cit, P. 97.

<sup>544</sup> - Aziza Al-Ghaddani, op. Cit, P. 40.

<sup>545</sup> - Youssef Thifa, op. Cit, P. 97.

<sup>546</sup> - Amina Massoudi, Ministers in the Moroccan Political System: 1955-1992, Originals - Exits - Destiny, First Edition 2011, P. 212.

constitutionally effective existence of this new Government in waiting completion of the parliamentary inauguration stage<sup>547</sup>, if the constitutional document in chapter 47 did not address the stage of consultations or how to engineer the Government or the distribution of ministerial posts<sup>548</sup>, the king appoints ministers who are usually chosen by the Government coalition which chosen by the head of Government with the majority parties and compatible with him in his political orientation, from this point of view, the head minister will try to persuade the parties allied to his party to strengthen his strength and fortify his majority<sup>549</sup>.

In contrast, the duration of the formation of the Government of the requirements that the Moroccan constitutional legislator did not give any place within the constitutional document, so that the Head of Government appointed can not be obliged to make any time limit in forming a Government that may stumble upon her birth<sup>550</sup>.

It can be said that the Moroccan constitutional document of 2011 is a group of contradictory, so that it recognizes parliament state, while authorizing the king to be the supreme representative of the state and as well above all constitutional institutions and its "Dahir" above all laws issued by these institutions<sup>551</sup>.

On the one hand, the Council of Government is enshrined in the Constitution to enable the Government to exercise its organizational and

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<sup>547</sup> - Abdul Latif brouhou, The constitutional basis for the formation of the government away from the chaos of political Fatwas, Chapter 47, Public Dialogue Series, February 2017, P. 108.

<sup>548</sup> - Mohammad Reda Muqtadir, The formation of a government between the constitutional framework and political practice, Chapter 47, Public Dialogue Series, February 2017, P. 141.

<sup>549</sup> - Youssef Thifa, op. Cit, P. 98.

<sup>550</sup> - Mohammad Reda Muqtadir, op. Cit, P. 146-147.

<sup>551</sup> - Jawad Al Rabaa, The constitution of 2011 and the problem of democratic transition in Morocco, Proceedings of the National Seminar organized on 29 November 2012, the new Constitution: a substantive document of the democratic transition in Morocco, Series of Conferences and Symposia, National Printing and paperwork, First Edition 2013, P. 112.

operational responsibility, thus, the position occupied by the Head of Government in the speech of June 17, 2011, and enable him the right to propose, and exempt members of the Government, make him the actual and real president of the Executive Authority, the proposal of the members of the Government regarding the appointment, the availability of the Head of Government on the power to exempt members of the Government, it make the Head of Government exercise constitutional authority that the king can not appoint or exempt from outside it, and it is a complete authority, with no exceptions and no ministries of a special nature<sup>552</sup>, while the King can intervene as an institutional entity that allows him to appoint Different ministers, which means that he also has the right to oppose any character he deems inappropriate<sup>553</sup>.

On the other hand, the appointment of members of the Government and their dismissal by the Royal Institution Requires the subordination of the Government institution with all its members to the instructions and directions of the king, and the Constitution places on the king of the country the duty to guide the policy of the state and direct the ministers, who are working on their application<sup>554</sup>.

Constitutional engineering, by its quasi-presidential nature and its parliamentary diversity, has made the presidential and parliamentary dimensions present within the balance of relations between institutions and authorities, this in practice leads to the perception of a structured political tension of the relationship within the executive, between the

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<sup>552</sup> - Amin Al Saeed, Head of Government's Foundation in the 2011 Moroccan Constitution, op. Cit, P. 75.

<sup>553</sup> - Abdul Hamid Ben Khatab, In returning to the interpretation of Chapter 47, Public Dialogue Series, February 2017, P. 214.

<sup>554</sup> - Amina Massoudi, Work of Government Members in Morocco: Powers and Borders - Responsibilities 1955-2016, New Success Press Casablanca, 2017, P. 19.

Royal institution and the Government, there is no doubt that the common ambiguities between them will feed him<sup>555</sup>.

## **2: Dismissal the Government**

Since 1962 the Moroccan constitutions have granted the king the power to exempt and dismiss the Government, while the 2011 constitution limits its absolute authority, but the ambiguity of the constitutional text opened the door to various interpretations, especially when the formation of the Government falters.

### **2.1: Dismissal of the Head of Government**

If the right to appoint a Head of Government is reserved for the head of state in political systems with different the conditions and factors of this choice, in view of the orientation and philosophy of each constitution separately, it is natural that the right to put an end to the functions of this institution shall also be reserved for the Head of State, with the difference in constitutional rules and regulations, and the margin of freedom conferred upon the Head of State<sup>556</sup>.

If the king has powers exempt the Head of Government or exempt the Government with an initiative under the 1996 Constitution (Chapter 24)<sup>557</sup>, that the 2011 constitution goes to make the Head of Government away from the king's interference with the exemption procedure, and the first can be referred to in Chapter 47 of the 2011 constitution is that the

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<sup>555</sup> - Hassan Tariq, The reign of King Mohammed VI and the question of institutional and constitutional reforms: from the continuing postponement to the February 20 response, op. Cit, P. 18.

<sup>556</sup> - Abdul Hafid Al Maliki, The Prime Minister's Institution in Morocco, Spain and France: Comparative Study, Master Thesis in Public Law, Faculty of Legal Economic and Social Sciences, Tangier, University Year 2007-2008, P. 25.

<sup>557</sup> - Khaled Al Assri, Political Responsibility of the Government in Moroccan Constitutional Development, Journal of Pathways in Thought politics and economics, New Success Press Casablanca, No. 39-40, 2016, P. 83.

King does not have the right to exempt the Head of Government, this is understood from the operative paragraph III, which states that the King, on his own initiative, after consultation with the Head of Government, to exempt one or more members of the Government from their functions<sup>558</sup>, since it is not possible, constitutionally the King to exempt the Head of Government who appointed him<sup>559</sup>.

In addition, the same chapter linked the continuation of the Government in the performance of its functions by the survival of its President in the performance of his functions, paragraph VI states that "the resignation of the Head of Government shall result in the exemption of the entire Government by the king", which strengthened him from the position of head of Government within the Executive Authority and linking the entire Government to his survival, it is a sound constitutional link stemming from the strong foundation of its presence as a member of the party that won the results of the elections of members of the Council of Representatives and on the basis of its results<sup>560</sup>.

Pursuant to the constitutional requirements of 2011, there are two cases for the removal of the Head of Government from the King, The first case the head of Government resigns, due to lack of confidence of the Council of Representatives, or when he moves his political responsibility through the censorship petition by the Council of Representatives, in the second case, the king exempts the Government following the death of the Head of Government, or to submit his resignation on his own

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<sup>558</sup> - Amin Al-Saeed, The Presidency of the Government in the New Arab Constitutions Model of Morocco - Tunisia - Egypt, op.Cit, P. 142.

<sup>559</sup> - Mohammed Al-Sassi, The Constitution of 2011: Problems Without Solutions, op. Cit, P. 43.

<sup>560</sup> - Ahmed Aarab, Ministerial Council, in the Moroccan Constitutional System, op. Cit, P. 83.

initiative or as a result of disagreement and contradiction between the King's policy and the policy of the Head of Government<sup>561</sup>.

The drafters of the 2011 constitution were limited to stipulating the appointment of the king to the Head of Government by the party winning the election and on the basis of its results<sup>562</sup>, and contradicts with it every constitutional possibility to dismiss the Government and the Head Government by the king<sup>563</sup>.

What the constitutional legislator had set for the process of appointing the Head of Government did not take into account the fate of the situation that ends with the failure to reach a Government based on a majority Parliamentary<sup>564</sup>, who will not become Head of Government "already" unless he succeeded in forming a majority and the formation of a Government that receives the inauguration of the council of Representatives<sup>565</sup>, thus it turns out that the Government does not have a parliamentary majority it can not be inaugurated<sup>566</sup>.

The chapter is constitutional 47 intentionally make it be incomplete, which seems normal compared with many constitutions and does not need to be adjusted to complete the existing shortage<sup>567</sup>, if it does not regulate the situation in which the person in charge fails to form the majority, here may move from the provisions of Chapter 47 to the requirements of Chapter 42 of the Constitution.

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<sup>561</sup> - Youssef Thifa, op. Cit, P. 104.

<sup>562</sup> - Ahmed Bouz, Chapter 47 impasse, Chapter 47, Public Dialogue Series, February 2017, P. 176.

<sup>563</sup> - Abdul Ilah Amin, op. Cit, P. 74.

<sup>564</sup> - Ismail Azouag, reading in the last paragraph of Chapter 47, Public Dialogue Series, February 2017, P. 189-190.

<sup>565</sup> - Mohammed Darif, winning the elections and the ability to form a government are weighing the democratic option, Chapter 47, Public Dialogue Series, February 2017, P. 39.

<sup>566</sup> - Abdul Kabir Tbeih, op. Cit, P. 63.

<sup>567</sup> - Mohamed Darif, Chapter 47 of the Constitution and Possible Options for the Formation of the Constitution, Public Dialogue Series, February 2017, P. 185.

If the powers of the King to appoint the Head of Government come exclusively from chapter 47, the legal and constitutional nature of these powers does not find its source in this chapter, but in chapter 42<sup>568</sup>.

And the powers provided for in chapter 42 which gives the King an arbitral authority that enables him to ensure the proper functioning of the constitutional institutions<sup>569</sup>.

One of the historical characteristics of Moroccan Monarchy, as an institution of arbitration by nature<sup>570</sup>, the Moroccan constitution granted multiple powers to his Majesty the King from different locations, sometimes as administrator and sometimes as guarantor, as an administrator when deciding and as a guarantor when maintaining a political situation or enjoying certain rights<sup>571</sup>.

Thus, the King may, in this case, resort to all options provided that the person in charge belongs to any party and is able to form a Government<sup>572</sup>.

In the French constitution, it went so far as to make the Prime Minister take his powers from the President of the Republic, and the President of

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<sup>568</sup> - Abdul Hamid Ben Khatab, op. Cit, P. 213.

<sup>569</sup> - Abdul Latif Wahbi, The Option to Return to Elections, Chapter 47, Public Dialogue Series, February 2017, P. 153.

<sup>570</sup> - Hassan Tariq, The Blockage and Royal Arbitration?, Chapter 47, Public Dialogue Series, February 2017, P. 159.

<sup>571</sup> - Abdul Latif Wahbi, Government formation crisis and the Constitutional choices of the king, op. Cit, P. 15.

<sup>572</sup> - Mohamed Darif, Chapter 47 of the Constitution and Possible Options for the Formation of the Constitution, op. Cit, P. 186.



the Republic may withdraw it from him, however, he cannot obtain the resignation of the Prime Minister, unless if it accepted by the latter<sup>573</sup>.

If all the constitutional experiences that preceded the 2011 constitution have expressly authorized the king to dismiss the Prime Minister, the 2011 Constitution makes no explicit reference to the possibility the King to the removal the Head of Government, which carries more than a sign that the king respects the will of the nation, which chose the Head of Government with choose the party to which he belongs, however, the constitutional status of the king, and in more than one constitutional chapter, indirectly authorized the king this possibility<sup>574</sup>.

## **2.2: Continuity of subordination of Ministers to the King**

The paragraph III of chapter 47of the 2011 constitution states that the King, on his own initiative and after consultation with the head of Government, has the right to exempt one or more members of the Government from their duties this reflects the centrality of the Royal Institution and its supervision of the Executive Authority, where the direct indications of this quote is reflected in the ministers as individuals belonging to the king, he is entitled to dismiss one or a group of them and they are accountable to him and may evaluate their work regardless of the opinion of the head Minister<sup>575</sup>, thus, the constitution retained the possibility of the King exempting one or more members of the Government<sup>576</sup>, the same chapter also provided the possibility for the Head of Government to ask the King to exempt one or more members of

<sup>573</sup> - Ahmed Aarab, The political and constitutional determinants of strengthening the weight of government within the Ministerial Council, Journal of Pathways in Thought, politics and economics, New Success Press Casablanca, No. 39-40, 2016, P. 93.

<sup>574</sup> - Ahmed Aarab, Ministerial Council, in the Moroccan Constitutional System, op. Cit, P. 82.

<sup>575</sup> - Omar Bennaim, op. Cit, P. 68.

<sup>576</sup> - Omar Bando, relations between authorities Separation or mixing in the Authorities?, op. Cit, P. 121.

the Government<sup>577</sup>, under the 2011 constitution, the exemption of members of the Government is a common right between the King and the Head of the Government<sup>578</sup>.

One of the most important developments in chapter 47 of the 2011 constitution is to strengthen the organic relationship of the head of Government with the rest of its members, the exemption of the King for one or more members is only after consultation with the Head of Government, and for the first time he was entitled to ask the King to exempt one or more members, which embodies the constitutional authority of the Head of Government to the rest of members, thus constituting a sound harmony with the principle of parallelism to the procedures assumed that the person entitled to the proposal for appointment has the right to propose for exemption<sup>579</sup>.

Despite the Government's responsibility before Parliament, the ministers are accountable to the king, indicating that he could exempt one or more of them, even if he did not obtain the request for exemption from the Head of Government<sup>580</sup>.

Exemption shall be granted to one or more members of the Government, via "Dahir" and countersignature it by the Head of Government, but in

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<sup>577</sup> - Nouredine Jalal, Constitutional Reform in Morocco: Between Political Monism and "Social Demand" and the Controls of Parliamentary Monarchy Model, Op. Cit, P. 20.

<sup>578</sup> - Aziza al-Ghaddani, op. Cit, P. 40.

<sup>579</sup> - Ahmed Aarab, Ministerial Council of the Moroccan Constitutional System, op. Cit, P. 83.

<sup>580</sup> Mohammed Al-Sassi, King introduces the Constitution: reading in the relationship between the text of the royal speech of June 17, 2011 and the text of the new constitution, books Point of view, New Constitution and the Importance of Change, New Success Press, First Edition 2011, P. 18.

practice requires participation in the responsibility of drafting the text, and thus sharing responsibility on the report<sup>581</sup>.

The king in this case cannot be constitutionally to provide for the exemption of the rest of the members of the Government without prior consultation to the Head of Government, because it is the latter who has the power to propose them, therefore, it is constitutional to Majesty the King to consult with the head of Government as the first official of the Government formation, which were appointed by his proposal, and it is up to him in the proposal who will appointed by the king to replace a member or members of the Government who may be exempted, in this case, the nature of the party alliances must be taken into consideration, and the nature of the relationship between the Government and its parliamentary majority should be taken into account, so that the Royal exemption of Government members will not lead to Government instability.

And therefore it became very necessary that the king take the opinion of the Head of Government because of the emergence of the latter of the majority produced by the ballot boxes, and therefore his opinion in this context is the same opinion must be taken by the King and cannot be considered in any case an advisory opinion does not oblige the King to take it, because it is the rules of political practice and the rule of continuity of constitutional institutions that dictate this<sup>582</sup>.

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<sup>581</sup> - Khaled Al Asri, Limits of variables in the relationship between the components of the executive authority in the 2011 Constitution, Moroccan Center for Research and Policy Analysis, Morocco Beyond events 2011, What has changed ?, Edition 2016 P. 48.

<sup>582</sup> - Yousef Ashhashah, Relationship of the King to the Government through the procedure of appointment and exemption in light of the Constitution of 2011, Al Manara Journal for Legal and Administrative Studies, No. 14, July 2016, P. 268-269.

The power of constitutional consultation should not be underestimated, it is an authority granted by the constitutional legislator to the head of Government and can be accepted by the King's decision relating to the exemption of one or more members of the Government, the Head of Government can also express his rejection through the nature of the consultation, his rejection could be translated by resigning, dissolving Parliament and re-election, The Head of Government can also negotiate with the king in the counseling phase especially if the Head of Government was supported within parliament and if he has a strong charisma to persuade the king to waive the decision to exempt one or more cabinet members<sup>583</sup>.

It should also be noted in this regard that the appointment of the King to the members of the Government was proposed by its president via "Dahir" countersignature by the Head of Government, so that the latter bears political responsibility, and as long as the head of Government must not exceed the status enjoyed by the King, and the "Dahir" it has taken in appointing ministers due to his constitutional rights and the status he occupies in the Moroccan legal system, consequently, the exemption of members of the Government on the initiative of the Head of Government necessarily entails recourse to the King in this regard<sup>584</sup>.

Article 47 of the 2011 constitution provides that "the Head of Government have to request the King to exempt one or more members of the Government" this is a request the Head of Government to the King but the latter does not mean that he will comply with his request in other words the new constitution enabled the Head of Government to the

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<sup>583</sup> - Amin Al-Saeed, *The Presidency of the Government in the New Arab Constitutions Model of Morocco - Tunisia - Egypt*, op. Cit, P. 144-145.

<sup>584</sup> - Yusuf Ashhashah, op. Cit, P. 269.

possibility of proposing the dismissal of one or more ministers than was not allowed previously, and the final decision remains in the hands of the king<sup>585</sup>.

From the above, the constitutional development of the organic Relationship between the king and the Government is evident, particularly in its connection with exemption and dismissal, a development that tends towards a real involvement of the Head of Government as an expression of constitutional advancement and as a balanced pole within the Executive Authority<sup>586</sup>.

Thus, the Government in the 2011 constitution is not an independent body, but a belonging t body whether through the procedure followed in its appointment or in those relating to the discharge of its functions or in the exercise of its powers<sup>587</sup>, And the possibility of exempting the king to one or more ministers Although he did not receive a request of the Head of Government, and the continuity of the presence of "independent" ministers in the Governments after the constitution of 2011, constitutes clear manifestations of the responsibility of ministers before the king, which makes possible is talking about the continuity of one of the manifestations of constitutional tradition, related some important ministries stay away of from partisan affiliations, as a manifestation of the concentration of subordination of ministers to the king<sup>588</sup>.

The nature of the Government's responsibility to the king is greatly influenced by the nature of the Moroccan political structure, which is

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<sup>585</sup> - Omar Bennaim, op. Cit, P. 64.

<sup>586</sup> - Ahmed Aarab, Ministerial Council of the Moroccan Constitutional System, op. Cit, P 84.

<sup>587</sup> - Omar Bando, relations between authorities Separation or mixing in the Authorities?, op. Cit, P. 119.

<sup>588</sup> - Khalid Al Assari, op. Cit, P. 49.

unique, that the same outputs are not expected even if the inputs are similar, in other words, constitutional texts alone cannot explain to us the nature of the relationship that combines its components, as a result, the pattern of Government responsibility in front of the king, is not framed only by constitutional texts, but beyond it to be influenced by other factors that may be crucial in determining their nature<sup>589</sup>.

## **II: The king's supervision of the Government**

In the 2011 Constitution, the King retained a set of tools and mechanisms that allowed him to continue overseeing the work of the Government, through the Ministerial Council, which has wide powers and is chaired by the King, or through the King's directives to ministers and directing him of the Government program.

### **1: The Role of the Royal Institution in Government Work**

The King's presidency of the Ministerial Council is the constitutional crossing for supervising Government work and the 2011 Constitution although it gave the Head of Government the possibility of presiding over the ministerial council with a specific mandate but did not bring significant changes at the level of rationalization of its powers and reduce them in favor of the Council of the Government.

#### **1.1: Presidency of the Council of Ministers**

The legal debate regarding the institution of the Ministerial council usually begins with the size and nature of the issues that the council is

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<sup>589</sup> - Zaidan Al Mdahi, The political responsibility of the government before the king: The dialectic of submission and independence, Al Manara Journal for Legal and Administrative Studies, No. 19, 2017, P. 202-203.

concerned with<sup>590</sup>, Monarchy plays a central role in the field of Government work, through its chairmanship of the Ministerial Council, which is the constitutional channel in which it is decided on the general policy of the State, the Ministerial Council is one of the most important constitutional institutions in general, and Government institutions in particular.

The Moroccan legislator gave special importance to this institution, which is transformed into a democratic channel to participate in the exercise of power between the Royal institution and elected constitutional institutions.

It is constitutionally known that the King is the head of the Ministerial Council, which consists of the head of Government and Ministers, which is convened at the initiative of the King, or at the request of the Head of Government<sup>591</sup>.

In France, the President of the Republic presides over meetings of the Council of Ministers and sign the decrees issued jointly with the Prime Minister, although the President is the one who heads the Council of Ministers but is not politically accountable to Parliament, Political responsibility lies with the Prime Minister and members of his Government<sup>592</sup>.

In returning to the previous constitutions beginning with the Constitution of 1962, as well as 1970 did not include any chapter that defines the powers of the Ministerial Council, while the constitutions of 1972-1992-

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<sup>590</sup> - Abd Al Ilah Amin, op. Cit, P. 76.

<sup>591</sup> - Mustafa Al Haymer, op. cit, P. 17-18.

<sup>592</sup> - Ibrahim Abu Khuzam, op. Cit, P. 351.

1996 exceeded this problem, as did the 2011 Constitution in its chapter 49<sup>593</sup>.

The requirements of chapter 49 confirm that the helm of the country and its policy are managed and deliberated within the Ministerial Council, the new constitution preserved not to determine the convening of the Council periodically, and at the initiative of the King, although the Constitution added "or at the request of the head Minister", the Council's first important issues, "Strategic Directions for State Policy", So when talking about the strategy of the state, it is a matter of conducting studies and strategic diagnoses and drawing the general direction and the Government should just implement this policy, moreover, the financing of Government action is also dependent on the direction drawn up by the Ministerial Council because that the latter whose is broadcast in the "General Directions of the Finance law<sup>594</sup>".

The Constitution gave the presidency of the Ministerial Council of the King and consists of the Head of Government and Ministers, but not only those who attend the work of the Council, there are advisers of his Majesty the King, and some senior employees, it is due to the king alone determining the place, time and agenda of the Ministerial Council, he may invite to attend his work, his advisers or any senior official if he considers his presence important, it remains for the Government to express views, which do not restrict the king who has the final word, while it is presented to the Ministerial Council, and it should be noted that the General Secretariat of the Government, which is charged with preparing the agenda of the Ministerial Council, the Head of Government

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<sup>593</sup> - Mustafa Al Haymar, op. Cit, P. 18.

<sup>594</sup> Nouredine Jalal, Constitutional Reform in Morocco: Between Political Monism and "Social Demand" and the Controls of Parliamentary Monarchy Model, op. Cit, P. 21-22.



takes note of it and sends it to ministers 48 hours before the Council convenes<sup>595</sup>, the Constitution did not stipulate that it should be held periodically.

The Ministerial Council occupies a more important position than the Council of Government, it retained the powers of strategic and arbitration and guidance<sup>596</sup>, despite the upgrading of the "Council of Government" to the status of the constitutional institution, and grant its the power to decide the final cases in which the decision was due to the "Ministerial Council" such as regular law draft and draft regulatory decrees, is a positive issue and constitutes a response to the constitutional demands contained in the memos of constitutional reform since the beginning of the nineties of the last century, however, despite the constitution of the Council of Government, it limited the terms of reference of the latter in deliberation on a number of issues the report goes back to the Ministerial Council, In a manner that can not read the requirements of Chapter 92, which sets the functions of the Council of Government in isolation from the terms of reference of the Ministerial Council provided for in Chapter 49<sup>597</sup>.

The retention of the "Ministerial Council" greatly limits this "constitutional step" the Presidency of the Council by the King, and its continuation as a necessary transit for the most important texts and issues presented to the Government council, making it the "policy-making apparatus"

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<sup>595</sup> - Youssef Thifa, op. Cit, P. 51.

<sup>596</sup> - Mohamed Madani, the new constitution, concentration of authorities and weak guarantees, books Point of view, No. 24, New Success Press, First Edition 2011, P. 102-103.

<sup>597</sup> - Moneim Aqtib, Government nstitution in the 2011 Constitution Between representative democracy and separation of powers, Proceedings of the National Seminar organized on 29 November 2012, the new Constitution: a substantive document of the democratic transition in Morocco, Series of Conferences and Symposia, National Printing and paperwork, First Edition 2013, P. 187.

moreover, a lack of a fixed-term meeting could make it a hindrance to the performance of the Government<sup>598</sup>.

The Royal hegemony is reflected in the Council of Ministers in two main aspects: First, the presidential character of this Council, where the King presides over the Ministerial Council itself, Secondly, by the limited role of ministers in decision-making, since the authority of the Government while in the Ministerial Council remains advisory only.

The importance lies the Presidency of the Ministerial Council as well as the hierarchy through which the constitution regulated the relationship between this council and the Government council, Where the Government council can deliberate on the general policy of the state, but this before presenting them to the ministerial council, the Government council can also discuss the draft public finance law after presenting its general directions to the Ministerial Council.

Although the Moroccan legislator stipulated that the King presides over the Ministerial Council through Chapter 49 of the 2011 constitution, and other chapters there is no legal provision for the Council of Ministers in Morocco, which stipulates how the agenda should be defined, held or the nature of the debate within it, and who has the power of decision, and authorized to attend<sup>599</sup>, the King may be delegated to Head of Government Presidency the Government Council<sup>600</sup>, however, taking into account that this authorization remains absolute Royal tasks and

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<sup>598</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, op. Cit, P. 110-111.

<sup>599</sup> - Youssef Thifa, op. Cit, P. 49.

<sup>600</sup> - Lubna Ashkif, The new constitution between the problematic reference and the requirements of democratic transformation, Proceedings of the National Seminar organized on 29 November 2012, the new Constitution: a substantive document of the democratic transition in Morocco, Series of Conferences and Symposia, National Printing and paperwork, First Edition 2013, P. 40.

that even in the case of recourse to it, it was "carried out according to a specific agenda"<sup>601</sup>.

While the previous constitutions did not address the right to participate in the presidency of the Ministerial Council<sup>602</sup>, if all the constitutional experiences prior to the constitution of 2011, does not give any party the right to request the convening of the Ministerial Council nor the right to delegate the King in the presidency of this Council<sup>603</sup>.

Through all of the above, the Presidency of the Ministerial Council by the King, means control of all Government legal production, access to various aspects of Government activity, and directing to the destination he wants, he does not interfere in the details of the Government's actions, but merely determines the general policy, through the chairmanship of the Ministerial Council, and although the Constitution gave the Government a set of powers exercised by decrees, but in practice and legal practice under the supervision of the King, who heads the Ministerial Council, the Government is merely a tool or means of implementing Royal policy, the important topics can not be decided except through a decision from the Ministerial Council<sup>604</sup>.

As for granting the head of Government a right to preside over the Council of Ministers as an important constitutional precedent, since the latter is considered the most important institution for the make of Moroccan political decision, it opposed "barrier" that this right comes on

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<sup>601</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, op. Cit, P. 111.

<sup>602</sup> - Youssef Thifa, op. Cit, P. 50.

<sup>603</sup> - Ahmed Aarab, Bilateral Executive In the Moroccan constitutional system: An analytical vision of the possibility of delegating the King to the Head of Government Presidency of a Ministerial Council Based on a specific agenda , Moroccan Journal of Legal and Judicial Governance, No.3-4, 2018, P, 74.

<sup>604</sup> - Youssef Thifa, op. Cit, P. 52.

the basis of a Royal mandate first, and then it comes on the basis of a specific agenda second, these are two conditions that can void this right of its content, in exchange for the Constitution of the Council of Government and its allocation of special tasks and issues not discussed in the Ministerial Council, we find "barrier" the need to inform the king of his deliberations through the Head of Government<sup>605</sup>.

### 1.1: Government program

There are two basic conditions for the formation of the Government, the first is the appointment of the head Government from the party that issues the elections, and the second is to obtain the confidence of the council of Representatives by an absolute majority<sup>606</sup>, where Article 88 of the constitution sets forth a set of provisions relating with the parliamentary appointment of the Government and a majority vote is required for members of the new council of Representatives<sup>607</sup>.

Chapter 88 provides that once the Government is formed, the head of Government shall present the program which he intends to implement before both councils of Parliament together<sup>608</sup>, this program should include the main lines of action that the Government intends to undertake in various areas of national activity, Particularly in the fields of economic, social, environmental, cultural and external policy, the program referred to above is the subject of discussion before both chambers, Followed by a vote in the council of Representatives<sup>609</sup>, according to the constitution of 2011, the Government is considered to

<sup>605</sup> - Zaidan Al Medahi, op. Cit, P. 204.

<sup>606</sup> - Mohammed Darif, winning the elections and the ability to form a government are weighing the democratic option, op. Cit, P. 40.

<sup>607</sup> - Abdul Latif bRouhou, op. Cit, P. 97-98.

<sup>608</sup> - Omar Bando, relations between authorities Separation or mixing in the Authorities?, op. Cit, P. 124.

<sup>609</sup> - Mokhtar Mutai, Constitutional Law and Contemporary Political Systems, op. Cit, P. 269.

be a inauguration after obtaining the confidence of the council of Representatives<sup>610</sup>, where the Government does not complete its legal and actual existence only after obtaining it<sup>611</sup>.

The Head of Government presents his program, which he intends to implement before the chamber of deputies and the council of Advisers together and that the purpose of this presentation to inform parliament on the broad plan contained in the Government program, if the constitutions of 1962, 1970 and 1972 do not confirm the right of the Parliament to vote to confer confidence and support its program, where the Government was considered a legal inaugurated, as soon as the oath before the king, however, the 2011 constitutional review stipulated that the Government program is subject to discussion before both chambers after being discussed in the council of Representatives it is will voted on the Government will not be inaugurated if the absolute majority of members of the council of Representatives votes against its program, the parliamentary inauguration of the Government means that the latter is elected by Parliament<sup>612</sup>, although the Government program under the control of the two chambers together, however, the penalty resulting from this observation is the competence of the council of representatives without a council of Advisers, by voting on the said program, not only that, but the vote was linked to the inauguration of parliament to the Government, according to a specific legal quorum<sup>613</sup>.

Although the constitution connects the Government's initiation into its work, after being inaugurated by the king, by voting by the council of

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<sup>610</sup> - Aziza Al Ghaddani, op. Cit, P. 38.

<sup>611</sup> - Hafeez Ainau, op. Cit, P. 135.

<sup>612</sup> - Omar Bennaim, op. Cit, P. 63.

<sup>613</sup> - Ahmed Hadhrani, Comparative constitutional systems: An approach to International and Morocco experiences, op. Cit, P. 135.

Representatives on its programs, this program is often subject to adaptation to the "Royal Program" Moreover, the Government program is not presented to parliament only after it has been approved by the Ministerial Council to it headed by the King, with all that it means to possess the final word in determining its direction, it is often subject to adjustment, and also the Monarchy speeches often included procedures, measures and schemes that were not part of the Government program which is assumed to be the result of a contract between representatives of the nation and the Government<sup>614</sup>.

It is supposed to link the constitutional inauguration of the Government with a program, and to emphasize its responsibility to the Parliament for the implementation of that program, the Government should be put that program, and that the latter be applied in practice, if the previous practice of the 2011 constitution showed that the "Royal Program" was replacing the "Government Program" the amended constitution did not contain what might be useful in overcoming this duality between "Government Program" and "Royal Program"<sup>615</sup>.

There has been an update in the 2011 constitution regarding the role of ministers, or members of the Government, in the preparation of the Government program, in accordance with chapter 93 of the current constitution, they are responsible for "the implementation of the Governmental policy in their respective sectors and in the framework of Governmental solidarity".

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<sup>614</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, op. Cit, P. 103.

<sup>615</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, op. Cit., P. 113.

In addition to the contribution of ministers in the preparation of Government policy through their participation in the completion of the Government program, the first steps to activate Government policy are reflected in the various meetings attended by members of the Government<sup>616</sup>.

The 2011 constitution has made the terms of reference of the Council of Government deliberate on the Government program, This is clearly stated in Chapter 92, which mentioned a number of what is being deliberated within the Council of Government "The general policy of the State before being presented to the Ministerial Council", and the Government program constitutes the Government's vision for its public and sectoral policy in all fields, Which is useful to him that the presentation of the Government program on this council for deliberation an appearance that embodies this constitutional requirement.

But if there is a text that must be transmitted to the Council of Government, on the basis of this constitutional provision, it is the Government program that constitutes the gathering of the state policy and strategies, article 38 of the organic Law 065-13 states that the duties of the new Government appointed by the King, upon the proposal of the Head of Government in accordance with the provisions of article 47 of the Constitution, which has not yet been inauguraed by the council of Representatives, the preparation of the Government program which the Head of Government intends to present to Parliament, Which means with him, implicitly, Submitted to the Council of Government for deliberation before being submitted to Parliament.

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<sup>616</sup> - Amina Massoudi, Work of Government Members in Morocco: Powers and Borders - Responsibilities 1955-2016, op. Cit, P. 57-58.

In this new procedure, a clear emphasis is placed on strengthening the institution of Government in the Moroccan political system, by granting it independence in the formulation of their program.

The granting of such power to the Government comes in response to a set of principles on which the new constitution is based which is to devote the Government as a party within the Executive Authority, in return, for full responsibility for its work which it Government program front the parliament, which has established the public policies that embody the program presented<sup>617</sup>.

## **2: The king's domination of Government work**

The Royal Institution controls Government work through a range of mechanisms which outside the constitutional text, it stems from the ancient Royal tradition, these mechanisms vary between letters and Royal speeches, as well as appointments both in the Government and in the Royal Court, weakening the status of the Head of Government.

### **2.2: Mechanisms of intervention of the Royal Institution**

The king in Morocco is a central authority in Moroccan public law, the Royal authority has the upper hand and control over all the organs of the state without exception, the king is the one who directs the Government through instructions, directives, orders, decrees and Royal speeches<sup>618</sup>.

The King's aides are at the fulcrum of the so-called Royal court, consisting of the King's own writing, the director of the Royal court, the attachés in the Royal court and the Counselors, and its exited is also

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<sup>617</sup> - Ahmed Aarab, Ministerial Council of the Moroccan Constitutional System, op. Cit, P. 210-211.

<sup>618</sup> - Ahmed Saad Abdullah Al Buainain, op. Cit, P. 168.



from the legal framework, it looks like a black box through which the economic, social and political life of the kingdom is managed<sup>619</sup>.

Supreme Instructions: A set of oral orders that occupy a higher status than the law and the Constitution, which are not published in the official Gazette and are not monitored by the Secretariat of the Government or the judiciary<sup>620</sup>.

Although the current constitution, like its predecessors of the constitutions of King Hassan II, does not include any reference to Royal supreme instructions, the king usually exercise his authority, especially in dealing with members of his Government, through the issuance of the "supreme Instructions"<sup>621</sup>.

Royal Letters: One of the basic and effective tools in the formulation and implementation of public policy, the Government must be subject to and obey the directives contained in the Royal Letters, which he directs to the Head of Government in accordance with the constitutional powers vested in the King<sup>622</sup>.

Royal directives: The public perception of Government policy is drawn up in the Royal Instructions and guidelines contained in the appointment of the Government as well as on various national occasions, these directives serve as a means of action for ministers, members of the various Moroccan Governments, the basic document and the decisive reference to their Government work.

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<sup>619</sup> - Abdul Latif Hosni, Mechanisms of working the Moroccan Monarchy outside the constitutional text, Journal of Point of View, No. 62, Autumn 2014, P. 2.

<sup>620</sup> - Mohammed Madani, op. Cit, P. 96.

<sup>621</sup> - Mohammed Chcair, Executive Monarchy in Morocco: Between the Royal Will and the Constitutional Document, Journal of Point of View, No 62, Autumn 2014, P. 6.

<sup>622</sup> - Omar Bennaim, op. Cit, P. 88.

Before implementing various Royal directives and instructions, the means and procedures related to their achievement shall be determined and elaborated in meetings and councils which brought together the king and some ministers on one hand, and between the king and all members of the Government on the other hand<sup>623</sup> .

Royal Speeches: The centrality of the king as a strong actor makes his speeches and what he says the reference first and top in Morocco and strong on the other references of partisan and parliamentary<sup>624</sup> .

The Royal Speeches expresses authority and a guiding force not only to emphasize the foundations of governance in the Moroccan political system Where the Royal institution takes the lead, control and hegemony, but also emphasizes the dedication of the logic of work instructions and directives, which may go beyond the constitutional document in itself<sup>625</sup> the speaker or a political thinker is not a normal man, but it is a king, a head of state, the Leader of the Faithful, as a first actor, and therefore every word uttered by the King is serious and binding<sup>626</sup> .

Royal speeches are usually presented in the form of directives it take supreme Reference<sup>627</sup> , which the basic principles of the regime and the

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<sup>623</sup> - Amina Massoudi, The Government Members of Morocco: Powers - Limits - Responsibilities 1955-2016, op. Cit, P. 27.

<sup>624</sup> - najeeb Al-Hajjawi, Reading in the nature of transitional reformist speeches: Royal speeches model, Journal of Political Studies and Social Dialogues, Series of Seminars and Forums, New Knowledge Press Rabat, Edition 2012, P. 77.

<sup>625</sup> - Othman Al Zayani, The Royal Speeches: An Approach to Text Morphology and Hegemonism, Journal of Point of View, No. 62, Fall 2014, P. 10.

<sup>626</sup> - najeeb Al-Hajjawi, Reading in the nature of transitional reformist speeches: Royal speeches model, op. cit, P. 76.

<sup>627</sup> - Othman Al Zayani, Approach in Constructions and functional dimensions: Monarchy and monopoly of the legality of the act and the achievement, Journal of Point of View, No48, Spring 2011, P. 12.

controls that govern political practice are determined<sup>628</sup>, it is also considered the Royal speeches addressed to the people during national occasions and holidays, an opportunity to remind members of the Government of some pillars of Government policy<sup>629</sup>.

Royal speeches come from a legal source Carries with it very strong linguistic and legal gains, such as talk about concepts Monarchy citizenship, national initiative for human development, the new concept of power, the modern democratic society project<sup>630</sup>.

Working sessions: Working sessions or mini-councils chaired by the King are meetings based on norms that have been followed and respected since Morocco's independence to this day<sup>631</sup>, these are mini-sessions chaired by the king and often devoted to a specific theme, in the presence of ministers and officials of the concerned ministerial sectors and Managers of relevant public institutions and utilities, as these sessions are usually known the presence of some of the king's advisors, and the continuation of these sessions after constitution 2011 in the same format, again raises the problem of the "implicit with explicit" in the Moroccan constitutional and political order<sup>632</sup>.

Advisory bodies: The duplication of the formal Government and the actual Government is reflected in the roles played by other bodies with a direct connection to the king, so that they often act as the actual

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<sup>628</sup> - Othman Al Zayani, *The Royal Speeches: An Approach to Text Morphology and Hegemonism*, op. Cit, P. 9.

<sup>629</sup> - Amina Massoudi, *Work of Government Members in Morocco: Powers and Borders - Responsibilities 1955-2016*, op. Cit, P. 26.

<sup>630</sup> - Othman Al Zayani, *Approach in Constructions and functional dimensions: Monarchy and monopoly of the legality of the act and the achievement*, op. Cit, P. 12.

<sup>631</sup> - Amina Massoudi, *Work of Government Members in Morocco: Powers and Borders - Responsibilities 1955-2016*, op. Cit, P. 29.

<sup>632</sup> - Abd Al Ilah Amin, op. Cit, P 78.

Government in addition to the well-known "Traditional bodies" (the Royal Court , the general secretariat of the Government, the workers and the Governors), in the early years of the reign of King Mohammed VI, a remarkable increase was seen in the consultative bodies, with which the public political space became unusually full, with Advisory councils, the question became whether the state had become a state of advisory councils, which leads to a reduction in the role of institutions emanating from the ballot boxes, those institutions that are already in a precarious position"<sup>633</sup>.

Ministers of sovereignty: There is no specific definition of the ministries of sovereignty in general, the concept has emerged since independence, it was between the political actors at the time, national movement and Monarchy , a kind of balance of power, the Government was the first field Which started the conflict between the parties, because the constitution was an open project is still in its infancy, this struggle has been largely rooted in the Ministry of the Interior and the Ministry of Defense.

Over time, the ministries gradually entered a hierarchy, the less important ministries were given to political elites, while the Royal Institution retained the most important ministries which were the tools embodied by its the authority and system"<sup>634</sup>.

Despite the absence of the constitution, which justifies such a distinction between "party ministers" and "ministers of sovereignty" But the reality of political practice confirms this, It is concerned For either with ministers enjoying their own status of their supervision of Government sectors inherently sovereign (interior, justice, foreign affairs, endowments and

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<sup>633</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, op. Cit, P. 103.

<sup>634</sup> - Omar Bennaim, op. Cit, P. 89-90.

Islamic affairs) or ministers acquire this situation through the special relations they woven with the palace and its surrounding, regardless of the nature of the Government sectors they supervise<sup>635</sup>.

As the Royal appointment in Government positions is a mechanism that enables the king to intervene, for the selection of those deemed to be the most appropriate to implement the general policy and which he put its out its core objectives<sup>636</sup>.

Advisor to the King: Before the appointment of the Government of Abdul Ilah Benkirane end of 2011, the King will initiate the renewal of the "staff" of his advisers<sup>637</sup>, although the status of the King's advisers was not directly present in the public debate on the revision of the 1996 Constitution, the 2011 document, like all previous constitutions, does not, however, include any requirement of their "powers" and status, that the public debate that accompanied the activation of the Constitution, especially after the appointment of Abdul Ilah Benkirane as head of Government, had recorded during a group of stations, the return of talk about the limits of the powers of advisers to the king in relation to Government powers<sup>638</sup>.

Nothing in the Moroccan Constitution refers to the tasks of reference of the Royal Chancellor or his appointment, which is subject only to one authority, namely, the authority of the King, and the Head of Government does not intervene in the appointment of advisers in the Royal court only through the publication of the "Dahir" appointment in the Official Gazette

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<sup>635</sup> - Ahmed Bouz, Head of Government in New Constitutional Engineering, op. Cit, P. 102.

<sup>636</sup> - Omar Bennaim, op. Cit, P. 91.

<sup>637</sup> - Ali Anzula, Advisor to the King: Authorized Ruling or the Godfather of Power?, Journal of Point of View, No. 62, Autumn 2014, P. 28.

<sup>638</sup> - Hassan Tariq, Between Constitution, Practice and Interpretation: In the Slow Death of the Parliamentary Idea, op. Cit, P. 154.

issued by the Government officially, although the Royal adviser is appointed by a "Royal Dahir", but there is no legal provision or in the Constitution provides for that, and even Chapter 49 dealing with appointments to senior positions within the Ministerial Council, which shall be carried out in accordance with the provisions of the Constitution on the proposal of the Head of Government or at the initiative of the Minister concerned, but of all these appointments, there is no indication of the appointment of the Royal adviser, the risk and sensitivity of this position lies in the fact that its owner can play a crucial role in identifying some options or making some decisions that have a direct impact on public policies, however, it is not subject to question or oversight from any institutional body<sup>639</sup>.

All these transformations have posed many questions as to whether the renewed team of advisers would resemble a "shadow Government" possibly own real power, and monitor the Government work, as long as the main economic directions and political options of the country, determined by the king, this raises the issue of the real political responsibility of the Government<sup>640</sup>, And the "Battalion of Counselors" and by virtue of their proximity to the King acquire wide powers not stipulated in the constitution nor in the laws of the Kingdom<sup>641</sup>.

## **2.2: The weakness of the Head of Government 's position**

Monarchy occupies a privileged position among constitutional institutions it is on its head<sup>642</sup>, It is clear that the requirements of article 47 make the

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<sup>639</sup> - Ali Anzula, op. Cit, P. 29.

<sup>640</sup> - Hassan Tariq, Between Constitution, Practice and Interpretation: In the Slow Death of the Parliamentary Idea, op. Cit, P. 156.

<sup>641</sup> - Ali Anzula, op. Cit., P. 27.

<sup>642</sup> - Hassan Tariq, Monarchy and Reform, Journal of Research, No.59, 2010, P. 35.

King retain great power over the members of the Government, whether in terms of appointment or exemption, and as chairmanship of the Ministerial Council, which remains a necessary crossing to a number of issues, Making it in control of the Government's choices and orientations, and in the initiatives of its president, and thus becomes the actual president of the Executive Authority and the main determinant of the state's policy<sup>643</sup>.

The dominance of Monarchy emerges with the adoption of mechanisms and channels which contribute greatly to the control of the political field and the Monarchy of the power of the act and the authority of the report in the Government's work, with reason the Government of the palace or the shadow Government, which plays a pivotal role in political life through which the king directs the management of major issues and politically sensitive files and the practice of governance, it is, therefore, it is the central point within the system as long as the king relies on his advisers, who play an important role in the shadow within the terms of reference entrusted to them, to address these issues and files.

It is certain that the unclear status of legal and organizational advisers makes their political role characterized by a lack of clarity, The advisers work within the Royal court , which is the most important body that works on the major political decision-making especially in a political system in which the Royal institution occupies a central position within the country, in a system in which the king reign and governs and a system where all decisions remain unfulfilled in the absence of the king's character, this strong presence of the king within the political life requires his personal representation within the various political, cultural and sports fields,

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<sup>643</sup> - Ahmed Bouz, Democratic Choice in the New Moroccan Constitution, op. Cit, P. 113-114.

Which often forces him to send representatives to economic forums, political forums, religious seasons and cultural conferences.

Even under the new constitution and with the birth of the Government of Abdul Ilah Benekiran, the king was quick to strengthen his team of advisors with a group of personalities and competencies, the event was read as an announcement to form a "shadow Government" which has been assigned a central task is to rein in the Government of Abdul Ilah Benekiran and subjecting them to the will of the king, those who were responsible for certain sectors became advisers in areas that were within the tasks of the Government, as their number increased<sup>644</sup>.

It is through these data that the influence and control exercised by the shadow Government, which was formed by the King's advisors in the Government of Abdul Ilah Benekiran, it had a long hand in the implementation of the king's program and not the Government's program, resulting in a real abortion to build a legal and leadership center for the Head of Government and give he the power to make decisions and exercise his powers in the management of the Government with kind of independence away from the decision centers within the corridors of the Royal palace.

The transition at the constitutional level, from the status of the prime minister to the level of the head of Government, has not kept with the level practical and realistic, any development in this context, due to impediments due mainly to the constitutional provision, which despite this development left a state of ambiguity and confusion at the level of

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<sup>644</sup> - Othman Al Zayani, Forward-looking approach through geopolitical transformations and democratization mandates: The Future of Monarchy in the Moroccan Political System, Journal of Point of View, No. 59, Winter 2014, P. 9.



determining both the field of competence of the King and the field of competence of the Head of Government first, and secondly the cultural structure framed between the Head of Government relationship with the King, in addition to the weakness of the head of Government position, in which personal and psychological factors overlap.

The Monarchy is still operating in the logic of hegemony and does not allow the legitimacy of any legitimacy whatever its component and source, even if the electoral legitimacy which the Head of Government enjoyed its, thus, the issue of granting the Head of Government independence in work and employment is a threat to his entity, over time, it could create "competing charismatic figures" can compete with him in his legitimacy and take it from him, and contribute to the dismantling of elements of the hegemony and control in the Moroccan political system<sup>645</sup>.

Moroccan constitutional construction is based on the vision of the Executive Authority, based on the sharing of powers between the Royal Institution, which retained general supervision and strategic direction, and between the Government, which has become self-sufficient and independent in the area of daily management of public policies.

and this geometry assumes a kind of friction and confusion and tension, but the Highness of Royal Institution, and the retention of a reserved area and keep powers of religious and political, makes the sharing of executive power, does not refer to the balance of powers, and does not hide the hierarchical dimension of the relationship, and practice now indicates that the initiative is still in the hands of the Royal Institution and

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<sup>645</sup> - Othman Al Zayani, Forward-looking approach through geopolitical transformations and democratization mandates: The Future of Monarchy in the Moroccan Political System, op. Cit, P. 10.

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that it still holds the force of implementation while the Government has only the will to express opinion, thus, it is the king, not the Government, who can implement the reform, and hence the Government must serve the Royal will in the end<sup>646</sup>.

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<sup>646</sup> - Youssef Thifah, op. Cit, P. 86-87.

## Conclusion

Immediately after the independence of Morocco, and after freezing the idea of the Constitutional Council, which was created by Mohamed V and appointed Alal Al Fassi as its president, after a difficult period and long discussions, in 1962, King Hassan II presented the first draft constitution to the popular referendum, despite the strong opposition from the most important Moroccan parties, but it was voted (yes) to the Constitution, it was adopted as the first Moroccan constitution, and as a reference to the rest of the subsequent constitutions, and all this constitutional amendments the king modified its.

The 2011 constitution came in a context linked to the Arab Spring which had witnessed of many Arab and Islamic countries, on the grounds that the amendments made by this Constitution did not come from a vacuum, but were a result of the difficult period of interaction and popular movement, the revolutionary waves that hit more than one Arab country have weighed heavily on the Moroccan political reality and have prompted some of the Moroccan political and youth elite to react to this situation.

The result was a large protest movement called the February 20 Movement was at the top of its demands to establish a democratic constitution, which would drive the country out of a political recession and clogged horizon, and which the Royal Institution attempted to interact with through the royal speech of March 9, 2011, in which it announced its intention to make extensive constitutional amendments and reforms.

However, in terms of the constitution-making methodology, the Royal Initiative did not go beyond what had prevailed during the previous constitutional amendments, but in terms of content, the 2011 Constitution has made important changes to the Executive Authority, especially the terms of reference of the Head of State and the Prime Minister (Head of Government), given that the Moroccan political system, which is based on double Executive Authority, with the presence of the Head of Government alongside the Head of State, The 2011 constitution tried to overcome this situation by making the Government emerge from the elected parliament and under the leadership of the Head of Government, the latter is appointed by the king and based on election results, ie from the party in which he won, and the inauguration of the Government by the absolute majority of the House of Representatives, as an additional condition that reflects the Government's responsibility front of Parliament.

and was the main objective from this amendments which was inflicted on the Executive Authority to enabling the Head of Government from exercise effective Executive Authority, the Constitution, when it emphasized the democratic emergence of the Government led by the Head of Government, and upgrading status Constitutional from the Prime Minister to the Head of Government, was not aimed at changes in names only, but was intended to indicate his effective presidency of the Government, where he becomes a real leader and head of the Government team, with put the administration at his disposal, And his exercise of real Executive Authority and large tasks in field of appointment in civil service, which can be considered as a response to the demands of the Moroccan political bodies, which wanted the democratic and transparent elections in Morocco to produce an

independent Government, which shall be responsible for the development and supervision of public policies, this makes it possible to question the extent to which the 2011 constitution responds to these demands in form and substance.

The 2011 Constitution enshrined the King's continued stewardship of the Executive Authority and the content of its decisions, given its historical and religious place, the Moroccan Government carries out its functions under the supervision and guidance of the King, through its chairmanship of the Ministerial Council as the highest governing body in the public policies of the State, the king is exercising an effective presidency and not only an honorary minister of the cabinet is he who prepares its and set his agenda and guide its discussions, Since this Council is the one that deals with the strategic directions of the State policy and the general directions of the draft Finance Law, it means that the consent of the king is necessary to draw the orientations of the state, Despite the constitution of the Council of Government and the right to broadcast in ordinary laws and ordinances, this must be done within the framework of the strategic directions set by the Ministerial Council, and not in isolation from it , overall, the 2011 Constitution devoted the king's continued stewardship to Executive power and the content of its decisions.

The Moroccan constitution of 2011 came with many new requirements, which, despite their diversity, do not hide the fact that the Constitution is still far from the diagnosis of parliamentary monarchy rules, the king still has the power to decide choices and orientations that require the voter to be the one to decide in its , Parliamentary Monarchy is the only formula for conciliation between the genetic character of property and the rules of modern democracy.

The 2011 Constitution has tried to introduce modern techniques to the traditional character of the Royal Moroccan institution, which is an ancient system characterized by its ancient tradition, derives their legitimacy from historical factors which made it the Royal institution reigns and governs, in addition, the king enjoys religious legitimacy as Leader of the Faithful, through Chapter 19 of the previous Moroccan constitutions, which is one of the most prominent and controversial chapters, some even called it a constitution within the Constitution or above the Constitution, giving the King unlimited powers to intervene.

The first concerns the organization of the field of the Principality of the Faithful, as there was no amendment to this jurisdiction, because the king retained tasks regulate religious affairs exclusive, and the second section regulates the powers of the king as head of state and its supreme representative and symbol of national unity, and the guarantor of democratic choice and the basic interests of the country.

In addition to the religious powers granted by the Constitution to the King, it has a set of functions and competencies and other presidencies, he heads several constitutional councils or appoints their superiors (Supreme Council of the Judiciary, Supreme Council of Security, Royal Armed Forces, Constitutional Court, Economic and Social Council, Supreme Council of Accounts, Institutions of Governance).

It can be seen from the above that the king's authority dominates the Executive Authority, as long as all powers intersect in the hands of the king, which makes it difficult to access parliamentary Monarchy, which takes the principle that the king reigns and does not govern.

thus the study of the various powers exercised by the Head of State under the Constitution of 2011 in normal or unusual situations and all tasks that preserve the continuity of constitutional and political institutions, show that he is the actual president of the Executive Authority, and there is a continuity in the direction of the Moroccan constitutions to making the royal institution superior to the rest of the constitutional institutions, and it is an approach which the Constitution of 2011 has followed, Making it Monarchy reigns and governs, apart from the comparative experience of parliamentary Monarchy the king still has real power to determine and guide the country's policy as evidenced by the provisions of the current Constitution and thus that all organs of the state remain subject to the King and not to the Head of Government.

Summary: The Moroccan political system involves a very special peculiarity, which the researcher can not overcome, this peculiarity stems from the fact that Moroccan constitutional experiments Since the inception of the Moroccan constitutional system it has only worked on a constitution experience of the historic Monarchy institution Continuous and profound With its religious, institutional and practical dimensions, which made the Moroccan constitution a royal constitution with distinction.

The Royal institution remained faithful to its traditional method of relinquishing executive powers in exchange for strengthening other powers, which is the approach followed by it since the first constitutional experience in 1962, and until the Constitution of 2011, and thus interact with the events and political circumstances prevailing during the periods of constitutional amendments, but it does not depart from its main

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principle in maintaining which the Highness of Monarchy in front for the rest of the constitutional institutions.



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