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The Constitutional Protection of Fundamental Rights during State of Exception

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جميع الحقوق محفوظة

1- Introduction

If the state has the duty to protect fundamental Rights and promote it, the integration of human rights norms into its own legal system, and especially its constitution, is the first step to fulfill this moral duty. Why the constitution? Simply because it represents the supremacy of the legal system, the comprehensive Regulation which regulates the Public Power[1] and all the values and principles on which society exists.

In the Moroccan context, the constitutional recognition of Human Rights norms has emerged since the first constitution in 1962. This is reinforced, despite the contradiction between the theoretical level and practice at this stage[2], by the different Moroccan's constitutions[3], most recently the 2011 Constitution which represents a new mutation in the Moroccan constitutional history. The study of the 2011 constitution shows, with no doubt, that this constitution represents the state's will to protect and promote Human rights, especially that it contains, unlike the other constitutions, a variety of rights and freedoms, from natural rights[4], to civil and political rights[5], to economic, social and cultural rights[6]. More than that, the 2011 constitution contains for the first time many principles that were absent in the previous Constitutions, such as the principle of separation of powers, the parliamentary ownership system (art1), the recognition of the judiciary as an independent authority (art107) and the rule of law (the preamble).

If all these elements and principles are present, then we'll be able to speak about the achievement of constitutionalism. Constitutions with these characteristics rule out any absolute or arbitrary power of man over man. By submitting all government actions to rules, a constitution makes the use of public power predictable and enables the governed to anticipate government behavior vis-à-vis themselves and allows them to face government agents without fear. A constitution provides a consensual basis for persons and groups with different opinions and interests to resolve their disputes in a civilized manner and enables peaceful transition of power. Under favorable conditions the constitution can even contribute to the integration of society, its development and its stability[7]. Thus the constitution is considered as "a body of meta-norms, those higher order legal rules-and principles that specify how all other legal norms are to be produced, applied, enforced and interpreted"[8].

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[1] For more expansion see: Hicham Khalfadir (October 2017), the constitutional institution in the 2011 Constitution, Jochen Lobah and Hamza Tayebi (Ed), Trajectories of Change in Post-2011 Mena: Challenges and Prospects Edited by, Published by Hanns Seidel Foundation..

[2]This stage has been characterized by human rights violations, because of the fierce conflict between the Monarchy and the opposition.

[3] The 1970 Constitution, the 1972 Constitution, the 1992 Constitution, and the 1996 Constitution.

[4] Such as: the right to life (art 20), the protection from torture and inhuman or degrading treatment (art 22), personal freedom (art 23), and others.

[5] Such as: freedom of thought, of opinion and of expression (art 25), the right to information (art 27), freedom of the press (art 28), freedom of reunion (art 29); and others.

[6] Such as: right to healthcare, right ro social protection, right to education, right to decent housing (art 31).

[7] See: Dieter Grimm (Mai 2012), Types of Constitutions, Michel Rosenfield and Andras Sajo (Ed), the Oxford Handbook of Comparative Constitutional Law, Edited by, Oxford University Press, P 104.

[8] See: Alec Stone Sweet (2008), Constitutionalism, Rights, and Judicial Power, Faculty Scholarship Series, Paper 77, 2008, P 219.
URL: http://digitalcommons.law.yale.edu/fss_papers/77

All these principles and others represent in other words "the objectives of the Constitution" called « constitutionalism » which refers to the constitutional design, the identification of authorities, the distribution of powers, the separation of power, the fundamental rights and the rule of law. In other words, "constitutionalism" refers to the commitment, on the part of any given political community, to accept the legitimacy of the political system and to be governed by constitutional rules and principles[9] that determine who rule, how and for what purposes. In the same context, the Oxford English Dictionary (OED) refers to constitutionalism as an attitude or disposition - "adherence to constitutional principles"[10], and "adherence to a constitutional system of government"[11]. Also, by using the terms of Carl Friedrich, constitutionalism refers to "limited Government", it's a situation in which the constitution effectively restrains those who control the coercive instruments of the State[12]. On the other hand, by using the word of "fundamental rights", I'll refer to several rights and liberties contained in the constitution.

The aim of this paper is to explore the constitutional principles (the separation of powers, the rule of law, the recognition of fundamental rights and the judicial review) by exploring their functions at the level of the promotion of democracy and the protection of fundamental rights in exceptional/emergency circumstances. The problematic of this paper is related to the ability or inability of the 2011 Constitution to protect fundamental rights during exceptional circumstances. In this context, the hypothesis of this paper is to explore the inability /the weakness of the 2011 Constitution to achieve a genuine constitutional protection of fundamental rights during exceptional circumstances.

To this end, I'll divide this paper into two axes: **The first** will focus on the constitutional principles that serve to protect the fundamental rights. **The second** will discuss the application of these principles to explore "*the inability*" and "*the weakness*" of the constitutional framework in the promotion of democracy and the protection of fundamental rights during exceptional circumstances.

2- Constitutionalism in the 2011 Constitution:

If constitutionalism represents set of constitutional principles that aim to protect and promote fundamental rights, it refers basically to the recognition of human rights norms (2.1), the Rule of Law (2.2), the Separation of Powers (2.3) and to the Judicial Review (2.4).

2.1 - The Recognition of Human Rights Norms:

The constitutional recognition of human rights norms is the first important step protecting the rights of citizens at the level of the national legal system. This recognition serves two purposes: the **first,** it helps to guarantee the rights and freedoms of individuals vis-a-vis the State. **Secondly**, it imposes restrictions on state authorities which must act according to the Constitution.

In this context, the fundamental rights derive its importance from the place that the International Law (IL) occupies in the Constitution, simply because the IL is one of the basic sources of human rights law. In the Moroccan context, the International Human Rights Law (IHRL) and International Humanitarian Law (IHL) occupy a special place in the Constitutional Construction of 2011. Thus, the Preamble of the Constitution stipulates that:

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[9]See: Alec Stone Sweet, Constitutionalism, Rights, and Judicial Power, Ibid, P 219.
[10] See: Jeremy Waldron (May 2012), Constitutionalism – a Skeptical View, New York School of Law, Public Law Research Paper No. 10-87, P 3.
[11] https://en.oxforddictionaries.com/definition/constitutionalism
[12] See: Alec Stone Sweet, Ibid, P 219.

"…the Kingdom of Morocco…, affirms its attachment to the Rights of Man such as they are universally recognized,…", and "To protect and to promote the mechanisms [dispositifs] of the Rights of Man and of international humanitarian law …", as well as *"To comply with [accorder] the international conventions duly ratified by it,…, and on the publication of these conventions, [their] primacy over the internal law of the country,…"*

Consequently, the 2011 Constitution recognizes explicitly the importance of the IHRL and the IHL, or what I refer to it by the term of "***the International Constitution of Human Rights***" (*ICHR*). This idea is confirmed by the Part Number 2 of the 2011 Constitution, entitled: "*Fundamental Rights and Freedoms*" which contains several rights and freedoms as they are recognized in the Universal Declaration of Human Rights (UDHR) of 1948 and the two International covenants of 1966: the international covenant on Civil and Political Rights (IPCPR) and the international covenant on Economic, Social and Cultural Rights (IPESCR).Thus, we find the Rights of the first generation (civil and political Rights), the Rights of the second generation (Eco, soc and Cult rights), as well as the Rights of the 3rd generation or the new Rights such as the right to peace, right to environment and the right to development.

In return, despite the constitutional recognition of Human Rights as it is Universally recognized, the Moroccan Constitutional Law (MCL) allows putting limitation on certain fundamental rights for reasons related to the national security, public order and the private life of persons (art 27), or for regulatory reasons requiring legislative intervention to regulate the enjoyment of fundamental rights (such as the articles 29, 28 and 35). These provisions lead to the redefinition of constitutional rights. The purpose of this process is to maintain public order and to achieve the requirements of collective and shared living.

In all cases, if the Constitution allows the Parliament to intervene to redefine the rights and freedoms, it doesn't justify the violation of these norms. On the contrary, it requires provisions that help to protect fundamental rights at the level of the legal texts promulgated by the Parliament.

1.2 -The Principle of the Rule of Law:

Among the principles that characterize constitutionalism, there is the principle of "the rule of law". It has a strong presence in legal theory, in traditions and branches of political theory because it contains several ideas (including constitutionalism, due process, legality, justice and sovereignty) that help to restrained the power of government[13].

The rule of law requires respect for the constitution. This means that government, although it exercises its functions under what they call law, this law might fail in some ways to be in accordance with the term of "rule of law"[14]. Only through the conformity of law with the constitution, the law appears as a mechanism of organization of the state and achievement of its objectives. Thus, the rule of law seems like a state in which the actions of executive are subject to the respect of the rule of law[15]. In other words, the rule of law can be defined as the submission of the state to the law. It would be, somehow, the government of laws, not of men[16].Consequently, the promotion and strengthening of the rule of law an important element that helps to the maintenance

[13] See: Martin Krygier: Rule of Law, the Oxford Handbook of Comparative Constitutional Law, Ibid, P 233.
[14]Ibid, P 234.
[15] Voir: Jean Rivero (1957), L'Etat moderne peut-il être encore un Etat de droit ?, des Annales de la Faculté de droit de Liège des Annales de la Faculté de droit de Liège, P 69.
[16] Voir: Jean Yves-Carlier (Mars 1992) de l'Etat de droit a l'état des droits, Journal des procès N 213 – 20, P 39.

of peace and security, it is the essence of the modern democratic State[17] in which people can guarantee the enjoyment of their fundamental rights under any situations.

To this end, the 2011 Constitution recognized the principle of the rule of law through several of provisions. In this context the preamble of the 2011 constitution states that:

"…the Kingdom of Morocco resolutely purses the process of consolidation and of reinforcement of a modern State governed…by law…"

Also, the article 6 provides that

"The law is the supreme expression of the will of the Nation. All, physical or moral persons, and including the public powers, are equal before it and held to submit themselves to it.…The principles of constitutionality, of the hierarchy and of the obligation of publication of juridical norms[,] are affirmed.…"

According to these constitutional provisions, state bodies must act in accordance with the Charter of the Land. Therefore, any laws or policies or procedures that are inconsistent with the Charter are invalid. All the constitutional provisions have to be respected not only by the state organs but also by all members of society. Thus, the government's actions must be conforming to all the constitutional norms and values. This condition indicates the principle of the hierarchy of laws where the constitution –as a supreme law– is at the top of the pyramid[18].

On the other hand, scholars distinguish between three forms of rule of law, as follows:

1.2.1 The institutional Model:

It's the model where the rule of law can be regarded as inhering in particular features of legal institutions. According to Albert Dicey[19], the rule of law depends on three characteristics: **the first** is a system of government which excludes the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint. **The second** is universal subjection to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. **The third** is a system whereby the general principles of the constitution are developed by giving rights to the private persons in particular cases brought before the courts[20].

1.2.2 Rule-based form:

Among the pioneers of this approach is the legal philosophers who tend to focus on more abstract features of legal orders than did Dicey[21]. Particularly prominent have been certain formal characteristics of legal rules, which H. L. A. Hart[22] called "principles of legality", and Lon Fuller[23] describes as the "internal morality of law". According to Fuller, the internal morality of law requires that it be expressed in general rules, rather than simply ad hoc pronouncements[24].

1.2.3 Procedural form:

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[17] See: the first paragraph of the preamble of the 2011 Constitution.
[18] See: Khalfadir Hicham : the constitutional Institution in the 2011 constitution, Ibid, P 47.
[19] (1835-1922) a British jurist , constitutional law theorist.
[20] See: Martin Krygier : Rule of Law, The Oxford Handbook of Comparative Constitutional Law, Ibid, P 235.
[21] For more expansion see :Martin Krygier, Rule of Law, Ibid, P 237.
[22] A British legal philosopher and a major figure in political and legal philosophy.
[23]A noted legal philosopher, who criticized legal positivism and defended a secular and procedural form of natural law theory.
[24] Ibid.

This form focuses primarily on the formal qualities of the messages legal institutions send out to citizens. However, law also draws citizens in, whether it is police picking them up on the street, or when they come in to courts and other official institutions to do combat with other citizens or with the state. How the law treats them at such points, where other means of resolving differences have not prevailed and the stakes are therefore often high, as a particular concern of many legal traditions[25].

Now it is clear that rule of law does not depend on the activation of the provisions of the law, but on the ways of its application and the ways by which the institutions of the State treat citizens and protect their fundamental rights.

2.3 - The Principle of Separation of Powers:

One of the most important constitutional principles of democratic countries is the “separation of powers”. Since the writings of Montesquieu, separation of the legislative, executive and judicial powers is deemed very important to avoid violations and abuses by the holders of these authorities. This explains why this principle exerted has a strong influence on many constitutional systems around the world.

Thus, to protect fundamental rights, the functions of the State must be separated and entrusted to separate organs. This doesn’t mean that these powers must be strictly independent of one another but it must be based on the collaboration. So, to obtain an effective constitutional protection of fundamental rights, the constitution must provide mechanisms of checks and balances to avoid intense and brutal between authorities invested with these functions, only then the arbitrariness will be curbed[26].

In the Moroccan context, since the adoption of the 2011 constitution -where the principle of the separation of powers was constitutionalized[27]-, the principle of separation of power becomes so much part of our political – constitutional culture especially that the old constitutions (since the 1962 constitution until the 1996 Constitution) didn’t recognized this principle. According to the 1st article of the constitution *“The constitutional regime of the Kingdom is founded on the separation, the balance and the collaboration of the powers, as well as on participative democracy of [the] citizen, and the principles of good governance and of the correlation between the responsibility for and the rendering of accounts.”*

The first step here is to strictly define the limits of the State before considering the question of its attributions. For that, all the constitutions, or at least the majority of them, refer to a single article which concerns the roles and the competences of the state. In the Moroccan context, the functions and the roles of Moroccan state are mentioned in the preamble of the constitution which provides that:

“…the Kingdom of Morocco {a} united state,…reaffirms that which follows and commits itself:

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[25] Ibid, P 239.

[26] Voir: Jean Philippe Feldman (4/2008) le constitutionnalisme selon Benjamin Constant, revue française de droit constitutionnel N 76, P 676.

[27] to incorporate in a constitution.

• *To protect and to promote the mechanisms [dispositifs] of the Rights of Man and of international humanitarian law and to contribute to their development within their indivisibility and their universality"*

This constitutional provision represents one of the most important functions of the Moroccan State. The importance of these functions derives from the recognition of human rights as they are recognized in the 2011 constitution. Thus, the principle of separation of powers or "the system of checks and balances" was based on the same goals and assumptions that supposed the recognition of human rights. Without a well-functioning of this system, decisions became less than rational and less guided by reason than by passion[28], and that may lead to violate one of the fundamental functions of the State. Once the powers are separated, where the State organs are separated and acting independently, the judiciary plays an active role in the protection of fundamental rights.

2.4 -The Judicial Review, the Constitutional Court:

Efficient impartial and independent judiciaries are the cornerstone of any functioning system of democratic checks and balances. They are the means by which powerful interests are restrained and subjected to the law of the land[29]. They guarantee that all individuals, irrespective of their backgrounds, are treated equally before those laws[30], as they offer effective judicial protection to Human Rights Norms, and therefore, individuals effectively have access to courts to protect their rights and interests.

Once political system decides to live under the Constitution, the problem of guaranteeing the supremacy of the Constitution over other laws arises. To overcome this problem, the Constitution must establish a system of "constitutional review" which helps to assess legality of all other legal norms[31]. A right might be conceived as more or less absolute; when an act of government violates the right, that act is unconstitutional, the right, being hierarchically superior, trumps any norm in conflict with it. The right might also be conceived as relative values, to be balanced against other constitutional values including State purposes, the Constitution grants powers to State institutions to do certain things, these purposes rise to constitutional status[32].

Sir William Blackstone[33] employed the adjective 'unconstitutional' to refer to egregious transgressions of the public trust. He admitted that some transgressions could be so egregious. Consequently, He suggests that laws passed by Parliament could be declared null and void by judges citing the higher law[34]. Whenever a particular statute contravenes the Constitution, it will be the duty of all authorities to adhere to the latter and disregard the former, where the Constitution is

[28] See: Roberto Gargarella: the Constitution and Justice, the Oxford Handbook of Comparative Constitutional Law, Ibid, P 341.
[29] See: Report by the Secretary General of the Council of Europe (April 2017), State of democracy, human rights and the rule of law, , Council of Europe, P 15.
[30] Ibid.
[31] See: Alec Stone Sweet: Constitutionalism, Rights, and Judicial Power, Ibid, P 222.
[32] Ibid, P 221.
[33] (1723-1780) English Jurist,
[34] See: Stephen Holmes: Constitutions and Constitutionalism, the Oxford Handbook of Comparative Constitutional Law, Ibid, P 212.

superior to any or all the individuals, even to the Legislature and of which the Judges are the guardians and protectors[35].

In front of this situation, it is necessary to have a body responsible for constitutional justice, called, in the Moroccan context, the Constitutional Court (CC). The CC exercises a supervisory role on the executive and legislative authorities. It has the duty to declare null and void all legislative acts contrary to the manifest tenor of the Constitution. According to the article 132 of the Constitution, the CC examines the constitutionality of laws, where two forms of control can be distinguished: the first is the direct constitutional review where the court could control directly the constitutionality of the organic laws without being deferred by the political authorities. The second form is linked to **ordinary laws** where the judicial review depends on a referral from these political authorities[36].

This review allows the CC to control the constitutionality of different legislations with the Constitution, despite the problem that arises regarding the second form related to the ordinary laws. If the Constitution allows the CC to control the constitutionality of organic laws without the need to a referral from political authorities, the second form requires a political referral. That proves that the CC does not exercise this function in an automatic manner. This situation may affect the principle of constitutionality, the value and the status of the Constitution.

To overcome this situation, the article 133 of the Constitution provides that *"the (CC) is competent to take cognizance of a pleading (exception) of unconstitutionality raised in the course of a process, when it's maintained by one of the parties that the law on which the issue of the litigation depends, infringes the rights and freedoms guaranteed by the Constitution."* Nevertheless, according to the organic law on the constitutionality of law, the CC examines '***indirectly***' the unconstitutional requirement because it depends on the 'mediation' of the Court of Cassation (la court de cassation). This means that there is no direct recourse to the Constitutional Judge, especially if we exclude election litigation where litigants have direct access to the constitutional judge.

This situation may affect the functions of the CC, especially as a protector or a guardian of the Constitution[37]. Faced with this situation, the court's mandate must be strengthened by allowing the Court to control directly the constitutionality of laws without the need for referral from the political authorities and this will improve the rule of law.

After studying the principles of Constitutionalism which help to protect fundamental rights in "normal situations", I'll highlight the application of these principles, especially if the State faces emergency/dangerous circumstances as follows.

3- Constitutionalism and State of Exception:

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[35] See: Stephen Holmes: Constitutions and Constitutionalism, Ibid, P 212.

[36] According to article 132 of the constitution, the political authorities are:

- The King.
- the Head of Government.
- the President of the Chamber of Representatives.
- the President of the Chamber of Councilors.
- one-fifth of the members of the Chamber of Representatives.
- or forty members of the Chamber of Councilors.

[37] Among the problems we find also that the justices of the Constitutional Court are appointed by the Monarchy and both Houses of Parliament, reflecting the politicized nature of the CC.

At the heart of IHRL lies a practical challenge intertwined with a theoretical problem. The practical challenge is that the most grave and systematic human rights abuses occur during public emergencies, when State employs extraordinary powers to address threats to public order. To deal with this challenge, the majority of the Constitutions permit States to declare state of emergency/exception, although such a statement would undoubtedly cause prejudice to constitutional order and common law, since it:

- Causes the attachment of rights and freedoms.
- Provoking redistribution and the organization of powers.
- Causing the suspension of the normal legal order.
- Affects the rule of law and democratic control.

All of these elements cause unevenly the violation of fundamental rights recognized by the Constitution. Consequently, state of exception/emergency may play a unique role in constitutional practice and theory; it affects all the principles enshrined in the Constitution (Constitutionalism). It relates to the situation in which the State faces a serious crisis requires the use of exceptional powers to confront the threat and deal with it.

In this context, the article 59 of the Moroccan Constitution, which represents the legal framework of the state of exception, follows "the executive approach" which delegates to the Monarchy (the Royal Executive Power) the authority to decide on whether there is an emergency and how best to respond to the emergency. This article states that:

"When the integrity of the National territory is threatened or [in case] that events are produced which obstruct the regular functioning of the constitutional institutions, the King can, after having consulted the Head of Government, the President of the Chamber of Representatives, the President of the Chamber of Councilors, as well as the President of the Constitutional Court, and addressing a message to the Nation, proclaim by Dahir (Royal Decree) the state of exception. By this act, the King is enabled [habilite] to take the measures that the defense of the territorial integrity imposes and to return, in the least time, to the normal functioning of the constitutional institutions.

The Parliament may not be dissolved during the exercise of exceptional powers.

The fundamental rights and freedoms provided by this Constitution remain guaranteed.

The state of exception is terminated in the same forms as its proclamation, once the conditions which have justified it do not exist."

Regardless of substantive and nominal conditions that must be achieved to declare a state of exception, I'll focus, as indicated in the introduction, on the subject of constitutionalism in its relation with the declaration of the state of exception and the exercise of the exceptional powers.

According to the first paragraph of the article 59, the Monarchy has the right to declare the state of exception by a Royal Decree (Dahir) after consulting the Head of Government, the Presidents of two Houses of Parliament and the President of the CC. Although the consultative nature of these requirements, they impose the "***symbolic democratic dimension***" on the declaration, especially that the opinions of these authorities do not limit the King's discretion. This is confirmed by the fact that the constitution doesn't provide any powers to these authorities during the state of

exception and doesn't confer any power to these authorities with regard to the application of exceptional regulations. More than that, the declaration of state of exception entails the reorganization and redistribution of powers which clearly undermines the system of separation of powers provided in the 1st article of the Constitution.

If the article 59 allows the Monarchy to declare a state of exception and to exercise the exceptional authorities, this means that there is a shift at the level of the principles of the Constitution that affects undoubtedly the constitutional protection of fundamental rights. Thus, the state of exception causes the transition from a system characterized by a "***multiplicity powers***", where there is legislative, executive and judicial power, to a system characterized by a "***unilateral power***" where the Monarchy exercises executive and legislative powers. In other words, the state of exception causes the transition from a system based on the "*separation of power*" to a system in which one authority exercises all the powers. Moreover, the state of exception defies the rule of law. If the rule of law prevails, at minimum public institutions that decides disputes impartially and non-arbitrarily according to pre-established legal principles[38], the legislative model of the state of exception in the Moroccan constitutional law allows the Monarchy to exercise legislative power through a Royal Decree as indicated in the 1st paragraph of the article 59 that states that:

"…the King is enabled [habilite] to take the measures that the defense of the territorial integrity imposes and to return, in the least time, to the normal functioning of the constitutional institutions."

This means that measures adopted to deal with the exceptional circumstance do not depend on the normal normative method which allows the parliament to intervene, and on the constitutional revision that follows it. On the contrary, the legislative acts of the Monarchy are not subject to any parliamentary discussion, even if the Parliament, according to the second paragraph of the article 59 of the constitution *"… may not be dissolved during the exercise of exceptional powers."* Also, the Monarchy acts are not subject to any judicial review whether in normal or exceptional situations. This legislative shift contradicts with the characteristics of the constitutional monarchy, simply because the ability to make and to pass legislation must resides with an elected Parliament.

Furthermore, state of exception imposes serious risks to fundamental rights, especially that dealing with the exceptional circumstances that threaten dangerously the public order require restrictions and limitations on fundamental rights, contrary to the third paragraph of the article 59 that states that *"The fundamental rights and freedoms provided by this Constitution remain guaranteed."* If the International Human Rights Law (IHRL), especially the International Covenant on the Civic and Political Rights (ICCPR), allows states to derogate from their international human rights obligations[39] and emphasize that certain rights could not be derogated in emergency

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[38]See: Evan J. Criddle& Evan Fox-Decent (2012) Human Rights, Emergency, and the Rule of Law, Human Rights Quarterly, Vol.34, P 46.
URL: http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2572&context=facpubs

[39]1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not

situations[40], it is too exaggerated that the Moroccan constitution stipulates that fundamental rights and freedoms could not be derogated during exceptional circumstances, especially that public order is a prerequisite for the enjoyment of fundamental rights.

This situation calls for a new understanding of the state of exception, by the establishment of a new regime of separation of powers, the rule of law and the democratic practice, to achieve the constitutional protection of fundamental rights during state of exception.

Conclusion:

Constitutionalism sis the rings of the glory of a constitutional promise, especially that the Kingdom of Morocco still at the beginning of the process of reform and democratization. The rule of law, separation of powers, human rights and the independent of the judiciary, are not just a normative theory about the forms and procedures of governance; it is about controlling, limiting and restraining the power of the state to guarantee the enjoyment of freedoms. For that purpose our scholars have to give more attention to the constitutional protection of fundamental rights during state of exception, with a view to drafting the Moroccan constitutionalism which is based on:

- ***The protection of fundamental rights, and***
- ***The respect of human dignity.***

These elements will allow establishing the egalitarian premise that all persons carry an inherent capacity for moral choice, self-respect and dignity; this denotes a shift from feudal subject-hood to real citizenship.

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inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

[40]2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision."
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