Ministry of Higher Education and Scientific Research
Abou Bakr Belkaid University - Tlemcen
Faculty of Law and Political Science
Department: Law

Theory of the State and the Constitution

For First-Year Law Students

Prepared by: Professor MAHCER LOTFI

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General introduction

Both law and society are considered indispensable necessities for the individual. As ancient philosophers explained, man is a social being by nature and cannot live except with others in a society; he cannot live in isolation. However, humans usually only care about their own interests and strive to achieve them, even if it is at the expense of others in society. For this reason, they always try to monopolize as much power as possible over them to fulfilll their material interests or personal whims, such as the love of control. This leads to conflicting interests and a state of chaos that may result in the collapse of society.

In order for society to function properly, it was necessary to have binding rules that regulate conflicting interests and prevent disputes from arising. The law is fundamentally based on reconciling conflicting interests and establishing a fair and satisfactory settlement for the interests raised by social relations, without sacrificing one

interest for another without specific regulations[1]. Therefore, all societies cannot function properly unless they are governed by order. This order is embodied in binding rules for individuals, established by public authorities and enforced, if necessary, by force, to define and regulate the relationships and connections that exist between individuals, between individuals and the society they live in, or between societies themselves.

The law is a set of rules that regulate behavior within a human group and differs from moral and religious rules in that it is binding, meaning that violating it leads to legal punishment[2]. Therefore, everyone must respect it, and this respect is enforced by public authority when necessary and we must not confuse the law in this broad sense with the law in its narrow sense, meaning the legislative texts issued by the parliament social relations among members of society are multiple and diverse, and each branch of law is concerned with regulating a specific type of relationship. Civil law regulates private relationships, while administrative law takes care of the relationships that arise between the administration and individuals.

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[1] See, Nouman Ahmed Al-Khatib, The Mediator in Political Systems and Constitutional Law, First Edition, Dar Al-Thaqafa Publishing and Distribution, Amman, Jordan, 2004, p. 439

[2] The word "law" is a foreign word in the Arabic language; it is of Greek origin—Kanun—and in Greek, it means the straight stick or something straight like a stick.

The straight stick or the straight thing like a stick. And it extended to the Arabic language with almost the same meaning, as it is used to indicate uprightness in behavior and rules, and not deviating from what is customary and acceptable by society. For more details, refer to Ammar Boudeiaf, "Introduction to Legal Sciences, General Theory of Law and Its Applications in Algerian Legislation," 2nd edition, Dar Rihana, Algeria, 1999, p. 14; see also, Amin Charef, "Concise Constitutional Law and Comparative Political Institutions," University Publications Bureau, Algeria, 2008, p. 01.

Constitutional law, on the other hand, organizes the links between rulers and the ruled.

The subject of constitutional law and political institutions is considered one of the most important subjects and branches of internal public law. Its teaching is of great importance within the framework of legal and jurisprudential studies, as understanding the state in terms of its formation elements, forms, and functions, and the constitution in terms of its drafting, amendment, termination, and protection of its provisions, is essential in the legal education of students, as well as for all those interested and researchers in law, and even for the general public.

Democracy has been defined as a structure, mechanisms, and political practice based on broad participation through state institutions. This participation was a popular demand embodied in various institutions, especially legislative ones, as they represent these people in assuming governance and act on their behalf in making decisions due to the impossibility of doing so directly. These institutions were indeed a manifestation of democratic freedom. Parliament occupied an important position in the political and constitutional system of every country, as it is the measure of true democracy in various countries and the source of strength of the legal system. It has always constituted the central institution for most systems of government. Looking back at the history of various democratic systems, we find that parliament or the legislative authority did not lose its powers all at once, but rather through stages

that witnessed many challenges until it reached what parliament has today in terms of legislative powers, represented in proposing and approving laws, oversight powers represented in holding accountable those working in various executive bodies, financial powers represented in approving the collection of revenues and the disbursement of expenditures, and political powers represented in participating in assuming the responsibility of approving the general policy of the state.

Democracy cannot exist if power-sharing is not achieved (and thus defined, supervised, and controlled). This division of power is based on a principle of fundamental constitutional value: the principle of separation of powers. We discuss this principle within the framework of a modern theory not questioning the classical theory of the Social Democratic Party as described by Locke and Montesquieu, but rather expanding it which we call the division of power in the state[3].

However, the constitutional experiences of each country lead us to distinguish between different forms of the separation of powers. It is clear that we are thinking within the framework of the state, and we can then, based on the teachings of comparative law, distinguish between two main methods: horizontal and vertical division of power; both methods are called to coexist and thus cooperate.

[3] - CF. PRELOT M et BOULOUIS J, Institutions politiques et droit constitutionnel, Dalloz, Paris, 1978, p. 31.

The horizontal division of power means that power will be distributed among the various bodies operating at the central level of the state: between the parliament and the government, that is, between the legislative authority and the executive authority, and between these two authorities and the established judicial authority. For the various jurisdictions present in the state. And this horizontal division is what leads to the distinction between several political systems (mostly parliamentary, mostly presidential).

The vertical division of power will relate to the distribution of power between the central state and the various communities that make it up. The changing forms of this vertical division will then lead to distinguishing what we call forms of states (federal state, unitary state, regional state, etc.).

Constitutional law is a branch of public law, as it encompasses the rules related to the structure of the state, the constitution of the government, public authorities, and the participation of citizens in exercising these authorities. This course aims to provide the foundations of French constitutional law. This course focuses on concepts found in other countries, such as the state, the constitution, and the separation of powers. Thus, the separation of powers leads to studying what happens in other countries because this concept appears in the United Kingdom and the United States. These two models (the parliamentary and presidential systems) are presented in this teaching. And constitutional law is a political right par excellence. And it is inseparable from politics because it is the branch of law that ensures,

according to André Hauriou, "the legal framework for political phenomena." It governs political relations whose main subject is the seizure of power and its exercise within the framework of the state. Constitutional law is not neutral; it always carries an ideology. The rules of constitutional law always appear as a legal translation of the concept of political power. "Constitutional norms are not a given; neither from divine providence nor from reason." In any country, the adoption of a constitution or the amendment of a constitution, whether the process is revolutionary or not, is always the result of the balance of political forces at a specific moment in its history.

On the other hand, most thinkers and jurists have agreed that the study of constitutional law is not limited to the rules and constitutional texts from a purely legal perspective, meaning those principles contained in the constitutions of various countries, whether codified or formed by constitutional custom. Rather, it extends further to include elements that may not be directly included in the constitutional document, which is known as the methods of exercising power that encompass electoral systems, political systems, and various forms of governance.[4]

Accordingly, what is constitutional law? And what is the nature of its rules? Are its rules legal rules like other legal rules? And what is the state, how did the state emerge, what are its pillars, and then what are its characteristics and the forms it takes? And what are the methods of

[4] CF. HAMON. F, TROPER. M, Droit constitutionnel, 34ème édition, L.G.D.J, Paris, 2013, p. 34

creating, amending, and terminating constitutions? And what are the types of constitutions? And are the means available to protect its rules, which are distinguished by their superiority and elevation over other rules, from being violated by the founding authorities sufficient? The answer to these questions and others will be the focus of this study, relying on simple methods, including descriptive, historical, and comparative approaches, considering that it is presented to first-year law students who do not have a background in legal studies.

Accordingly, this study will be divided into three sections, as follows:

The first section: The position of constitutional law

Section Two: The General Theory of the State

Section Three: The General Theory of the Constitution.

Chapter One: The Position of Constitutional Law

The position of constitutional law can be determined by defining the legal rule and clarifying its characteristics first, and highlighting the general division of law second.

The first requirement: Definition of the legal rule one of the fundamental assumptions of sociology is that humans are inherently social beings. This means that an individual cannot live and achieve their humanity in its full sense except within a certain society. An individual is a collection of instincts, inclinations, desires, and interests that form their personality and distinguish them from other individuals. If each individual were to unleash their instincts and desires freely and pursue their inclinations and interests without considering the inclinations and interests of other members of society,

society would turn into a jungle dominated by chaos and destruction.[5]

Reconciling human instincts, inclinations, desires, and individual interests with the necessity of coexisting in a society requires the existence of a set of mandatory rules that regulate the relationships between individuals and their relationship with society, as well as a public authority that ensures the application of these rules and secures individuals' respect for them, even by force. This set of rules is referred to as laws. Accordingly, the law is defined as "a set of mandatory rules of conduct that generally and abstractly regulate the relationships of individuals within society, and which a public authority ensures compliance with by the possibility of applying a penalty to those who violate them, in order to maintain a certain order in society."[6]

The legal rule is characterised by three features: first, it is a general rule because it applies to everyone.

Or in some cases, it applies to a specific group of individuals in society. Secondly, the legal rule is an abstract rule, meaning it is established regardless of individuals and is not made for the benefit of a specific person. For example, the marriage law applies

To all Algerians who wish to do so. As for the third characteristic, it is what gives the legal rule a special and distinctive nature, which is its obligatory nature coupled with a penalty. So anyone who violates it exposes themselves to a penalty that consists of a punishment.

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[5] CF. BRACHET. B, Droit public, Fascicule I, les cours de droit, 1986-87, p. 11

[6] Said Bouchaïr, Constitutional Law and Comparative Political Systems, Volume One, Tenth Edition, University Publications Bureau, Algeria, 2009, p. 151.

Material or physical. And this last element is what distinguishes between ethical rules that also regulate some bonds and relationships among individuals in society, and legal rules. Ethical rules are not associated with any penalties imposed by public authority in case of violation; they derive their respect generally from customs, traditions, and individual convictions.

Based on this general definition, we can classify legal rules according to their nature and fields.[7]

The second requirement: Classification of legal rules.

The rules differ in terms of their nature and content depending on whether they aim to regulate relationships between individuals or to regulate the functioning of public authorities and their relationships with individuals.

According to these criteria, the law is divided into two parts: public law and private law.

- Private law is defined as a set of legal rules that govern the relationships between individuals.

According to this definition, the provisions of civil law related to contracts and obligations, or the rights and duties of merchants within the framework of commercial law, fall within the scope of private law. Among the branches of private law, we mention civil law, commercial law, and labour law.

- As for public law, on the contrary, it is the set of legal rules that

[7] CF. PRELOT M et BOULOUIS J, Institutions politiques et droit constitutionnel, Dalloz, Paris, 1978, p. 31.

pertain to the organization of public authorities on one hand, and their relations with citizens on the other.

- Public law branches into two parts: external public law and internal public law.

* International or external public law: It is the law that regulates relations between sovereign states or between them and international organisations. Whereas private international law regulates the relationships between individuals, whether they are natural persons (Personnes Physique) or legal entities (Personnes Morales) of different nationalities.

* As for domestic public law: it is the set of legal rules that define the basic structure (Le Statut) of public authorities and govern the relationships existing between them on one hand, and on the other hand, the relationships between these public authorities
(the state, local communities, public institutions) and private individuals (Personnes Privees).

This branch of law also includes several sub-branches, which are:

• **Constitutional law**: It is the fundamental law for various branches of internal public law, as it deals with determining the foundations of the state and the rules of political organization within it. It also regulates the relationships between political institutions and the relationship between the rulers and the ruled.

• **Administrative Law**: It is the law that regulates the foundations on which the administrative apparatus is based and the rules according to which the administration's activities are conducted. It also regulates

the relationship between the administration and the citizens.

• **Financial law**: (or public finance): It is the law that encompasses the legal rules related to organising the state's revenues and expenditures, and it defines the state's relationships with citizens in the financial domain.

• **Criminal law**: It is the law that defines the crimes punishable by law and the penalties prescribed for each of them. And it regulates the relationship between the state and those who commit crimes or are accused of committing them.

Section One: The Concept of Constitutional Law

It is worth noting that what distinguishes the nature of both public law and private law is that public law aims to achieve the public interest, while private law seeks to achieve the private interests of individuals within the framework of legal relationships.

Public law seeks to achieve the public interest, while private law aims to achieve the private interests of individuals within the framework of legal relationships.

As for the second element that distinguishes between them, it is due to the fact that public law is characterised by inequality and lack of parity between its parties (the state and the citizens). The sovereign state is naturally in a superior position compared to the individual. In contrast, private law is characterised by equality and parity among its parties.

On the other hand, it is necessary to point out that the division of law into public law and private law is not absolute; rather, it is a relative

division and not an absolute one. What illustrates this is the extension of public law rules into the realm of private law as the state's activity increases and its intervention in economic and social fields expands. This is clearly observed in labour law, where the rules aimed at protecting employees increasingly limit the freedom of contract between employers and workers, as the freedom of contract in this field often becomes a source of injustice for employees.

On the contrary, and for reasons related to appropriateness (L'Opportunité), the administration may voluntarily subject itself to private law rules: for example, several public institutions are managed according to the ordinary rules of commercial law.

Despite this overlap between public law and private law, public law retains its independence not only in terms of its scope but also in terms of its characteristics.

In conclusion, constitutional law is a branch of domestic public law, which outlines the general structure and external framework of the state, defines its authorities, and determines how this authority is exercised and the relationships between them on one hand, and the relationship of individuals with these authorities on the other hand.

Based on this definition of the position of constitutional law, which is the subject of our study, we can now question its precise meaning, its relationship with the field of political science, and its scope.[8]

[8] CF. HAMON. F, TROPER. M, Droit constitutionnel, 34ème édition, L.G.D.J, Paris, 2013, p. 34.

Section Two: Definition of Constitutional Law

Defining constitutional law in depth is not an easy task due to the diversity of its contents and the varying approaches (methods) to its study. This difficulty in defining constitutional law is due to the intellectual differences in jurisprudence, which in turn stem from the political, economic, and social developments of Western capitalist society. These developments have also affected the nature of constitutional concepts and altered their original meanings. The transformations that constitutional law has undergone can be categorized into three phases: the formal legal perspective, the socio-political perspective, and the normative perspective.

The first requirement: The stage of the formal legal perspective of constitutional law

The term constitutional law first appeared in France in 1834 when Guizot, the Minister of Education during the reign of King Louis Philippe, decided to teach it as a legal subject at the Faculty of Law in Paris. Guizot's aim in creating the chair of constitutional law was to teach the Constitution of 1830 and promote the parliamentary system it introduced in order to gain the support of the French people for the new limited monarchy.

This historical origin of constitutional law in 1834 led, on one hand, to the connection between constitutional law and the constitutional document (the 1830 Constitution), and on the other hand, to the connection between constitutional law and the liberal parliamentary system that recognizes the rights and freedoms of individuals.

The effect of linking constitutional law to the circumstances of its birth was to consider constitutional law as the law of the constitution only, which led to the limitation of this subject to the study of the written constitution, and consequently to consider constitutional law as a set of legal rules contained in the constitution. This formal perspective will lead to considering constitutional law as a legal science that studies the political systems of states thru their written constitutions. This perspective has prevailed throughout the last century and the first half of the current century For countries thru their written constitutions. And this perspective has prevailed throughout the last century and the first half of the current century.

Despite the correctness and clarity of this definition from a formal perspective, as constitutional law indeed focuses on the study of constitutions, the formal legal perspective[9], by limiting the scope of constitutional law to the textual study of written constitutions, was incomplete due to its inability to study ancient political systems that do not have a written constitution but rather an unwritten constitution, with the British system at the forefront. Moreover, the constitutional document on which the formal perspective is based contains only the main rules of the political system, while the other rules governing political authority are included in regulatory laws, ordinary laws, decrees, customs, practices, and judicial interpretations.

In addition, the formal legal perspective has remained inadequate in studying the political reality of liberal systems due to the emergence

[9] CF. BRACHET. B, Droit public, Fascicule I, les cours de droit, 1986-87, p. 11.

of political parties, unions, and pressure groups, which are considered the main drivers of the political system with which they interact.

The inadequacy of the formal legal perspective and its inability to encompass all elements of the liberal political system led to its obsolescence and the adoption of new approaches to study and understand the political system. This was achieved by relying on political science and its methodologies.

The second requirement: The stage of the socio-political perspective of constitutional law

In light of the sterility of the formal legal perspective, constitutional scholars in the late 1950s turned toward political science, relying on new approaches to study and understand political systems. This shift is represented by the scholar "Duverger." Thus, researchers' focus shifted to studying the structures and mechanisms of governance as they are[10], rather than as they should be. As a result, constitutional law began to rely primarily on analysis instead of mere description, emphasizing the text and context (Texte et Contexte). It has also started to focus on other issues such as political life, political parties, pressure groups, public opinion, and the economic and social foundations of the social structure.

One of the positive effects of linking political science with constitutional law has been the enrichment of the latter with the results of social sciences (economics, sociology, social psychology) to understand the phenomenon of political power.

[10] CF. PRELOT. M, Institutions politiques et droit constitutionnel, Dalloz, Paris, 1969, p. 32.

The 1980s witnessed the emergence of a new approach to constitutional law, relying on its normative character.

The third requirement: The stage of the normative perspective of constitutional law

Starting from the 1980s, constitutional law witnessed a qualitative shift at the legal level. This transformation manifested in moving beyond considering the constitution merely as a political description for organising power and instead viewing it as a state law that the judge ensures is respected. Consequently, constitutional law has become a fully-fledged legal discipline, based on the interpretation of judicial precedents and the principle of sanction, which is manifested in the annulment of legal rules that contravene the constitution[11].

This qualitative transformation is what explains the evolution of constitutional law, which no longer focuses on the ruling institutions (or bodies) of the state but has instead aimed at protecting individuals and legally framing political life. What confirms this is the emergence of legal texts that regulate political fields that were previously considered outside the scope of the law, such as the financing of political parties, electoral campaigns, and the organization of public opinion polls (sondage d'opinion). This new trend can be summarised in the issue of the law encompassing politics, and among the results of the juridicization of constitutional law, we mention:

First: At the level of the nature of constitutional law:

[11] CF. LUCHAIRE. F, De la méthode en droit constitutionnel, Revue du droit public et de la science politique en France et à l'étranger, n° 2, 1981, p. 282.

Returning to the constitutional text according to a judicial interpretation and not a political one. And thus, constitutional law became a judicial law (un droit juris prudentiel) like administrative law.

Secondly: on the scope of constitutional law application:

It is noted that its scope has expanded, as the new constitutional law is no longer limited to describing the functioning of the state's political institutions (according to text and practice), but has also come to include all sources of law, whether private or public. It has also become, by explicitly stating the public freedoms of individuals, a law aimed at protecting human rights. The topics of the new constitutional law can be defined in three: institutions, legal rules, and freedoms, which are interconnected to the extent that they form a single system.

And according to all these data, constitutional law is considered as the law of the state, and as the collection of the supreme legal rules of the state of law and justice.

Our study of constitutional law topics includes, in its first section, a presentation on the general framework of constitutional law, and in its second section, a presentation on government practice.

Section two: The nature of constitutional law rules

The nature of constitutional law rules refers to understanding the legality of these rules, or in other words, whether these rules are legal in the proper legal sense, similar to the rules of other laws.

So, in order for us to be dealing with a legal rule, it must possess a set of characteristics, namely that it is a general and abstract rule, that it is

a social rule, and that it is binding and associated with a penalty that requires compliance from those to whom it applies. There is no dispute that constitutional law rules are general and abstract rules and that they are social rules. As for the extent of their binding nature, it is a subject of dispute among scholars due to the element of punishment. Therefore, if the legal rule is characterized by its connection and association with the element of punishment that ensures its obedience and respect, which makes it distinct from other rules such as moral and ethical rules, then a dispute has arisen regarding the nature of constitutional law rules. Do these rules possess a punishment that guaranties their respect and compliance with their provisions or not?

Therefore, legal scholars have disagreed regarding the presence of the element of punishment in constitutional law rules. While some accept the presence of this element in constitutional rules, and thus consider them legal rules in the true sense - the French school. Others deny the legal nature of these rules due to the absence of a punitive element that protects them and penalizes those who violate them - the English school. To reconcile the two approaches, the conciliatory approach emerged.[12]

Section One: The French School

The theory of acquiring the constitutional rule of legal character, adopted by the French school, implies that the legal rule has a sanction, but this sanction is not necessarily a material one; it can also be a moral sanction.

[12] Said Bouchaïr, the previous reference, p. 166.

Among the leaders of this school is the jurist "Duguit," who considers that the law, as a set of legal rules, has a penalty that inevitably follows its violation, represented by social reaction. The law carries its penalty within its folds, and thus, it is inconceivable for a law to exist without a penalty. It suffices for the penalty to be moral, manifesting as a reaction from society.[13]

Based on this school of thought, it is not necessary for the punishment to be a physical coercion imposed by the state; it is sufficient for it to be moral because the law predates the state, which is the sovereign entity.

Section Two: The English School

The theory of the absence of the legal character of constitutional law rules adopted by the English school

It considers that a sanction is not realized in a legal rule unless there is a specific penalty imposed by the state on its violators, and this is in the form of physical coercion ensured by the public authority with its means of enforcement.

In this regard, the English jurist "Austin" argues that the penalty should be material, taking an external form represented by the punishment or harm inflicted on those who violate the legal rule by the competent authorities in society, using the means prescribed for that purpose. And since the rules of constitutional law address these authorities, namely the ruling authorities responsible for imposing penalties, it follows that if those authorities violate the restrictions

[13] CF. DUGUIT. L, Traité de droit constitutionnel, tome 2, 3ème édition, Paris, 1928, p.202.

imposed by the constitution on how they exercise their powers, they must also be responsible for imposing penalties on themselves, which is an inconceivable scenario. Therefore, the rules of constitutional law are not legal rules in the proper legal sense, but rather mere political rules and guidelines with literary value, protected by purely literary penalties.[14]

According to this school of thought, constitutional law rules are merely ethical rules protected by moral sanctions. When a ruler violates a constitutional rule, their action is described as unconstitutional, but it cannot be described as illegal, thus denying the legal nature of the constitutional rule.

Section Three: The Reconciliation Approach

Proponents of this approach believe that the penalty resulting from violating the constitutional rule is necessary, but it does not necessarily have to be material. Instead, it may manifest in mutual oversight between authorities (such as a motion for oversight, withdrawal of confidence, etc.), or through the review of the constitutionality of laws in cases where an authority exceeds the constitution. The penalty may also be through popular oversight by not electing a ruler who violates the constitution.

Finally, we conclude by affirming the legal nature of constitutional law, and that its rules possess all the characteristics of law. The rules of constitutional law are social, general, and abstract rules, and they

[14] See, Saad Asfour, Constitutional Law, Volume One, Introduction to Constitutional Law, no publisher, 1954, p. 9

are also binding. Any violation of these rules or infringement of their provisions results in a penalty.

The third requirement: The relationship between constitutional law and other laws

Constitutional law is considered one of the branches of public law, and it can even be regarded as the most important one. Despite the novelty of this law, it is noteworthy that it is connected to various legal sciences. These latter, in addition to deriving their rules from the principles of constitutional law, must ensure that their provisions comply with the requirements of the constitution.[15]

It is also certain that the study of constitutional law goes beyond legal sciences, as the study of this law, being a science that frames the political organization of the state, requires familiarity with knowledge areas outside the field of law, such as history, sociology, and political science...

And because constitutional law constitutes a branch of public law, we will suffice with mentioning its relationship with other branches of public law.

Section One: The Relationship Between Constitutional Law and Public International Law

The relationship between constitutional law and public international law is manifested as follows:

- They both belong to the branches of public law.
- They both engage in the study of the theory of the state and its forms

[15] Said Bouchaïr, the previous reference, p. 166.

and composition. It is true that international law is concerned with studying the state for the purpose of organizing international relations, while constitutional law deals with it from an internal perspective. Just as there is no existence of international law without states, there is also no existence of constitutional law or a constitution in its technical sense without the tasks they perform.

Both constitutional and international law deal with the subject of sovereignty. The former, constitutional law, examines it in terms of the state's independence through the establishment of a constitution, the state's activities within the country, and its relations with institutions and individuals. The latter, international law, examines it in terms of the state's relations with other countries, that is, the state's external activities and its relations with other countries and international organizations. Additionally, constitutional law defines the competencies and authorities of the bodies and institutions tasked with representing the state before foreign countries and international organizations.

- Additionally, constitutional law includes several provisions that are core to the subjects of public international law, such as the majority of constitutions stipulating who has the right to represent states in foreign relations[16], the right to conclude treaties and ratify them[17], and

[16] Article 91, paragraphs 2 and 3 of Presidential Decree 20-442 dated December 30, 2020, concerning the issuance of the Algerian constitutional amendment, approved in the November 1, 2020 referendum, Official Gazette No. 82 issued on December 30, 2020.

[17] For example, see Article 91, paragraph 12 of the Algerian constitutional amendment of 2020.

the declaration of war[18]. And there are constitutions that stipulate that treaties ratified by the head of state are binding and superior to laws[19].

Section Two: The Relationship Between Constitutional Law and Administrative Law

The relationship between these two branches of law is stronger than any relationship between constitutional law and any other law. What confirms this relationship between the two branches is that, until the 19th century, they formed a single subject. Some jurists even prefer to combine the two branches under the term "public law" because they address common topics.

In general, the relationship between constitutional law and administrative law is manifested as follows:

- They both belong to the branches of public law.
- Constitutional law represents the pinnacle of the internal legal system in the state, and is thus considered the foundation and necessary prelude to administrative law, while administrative law is regarded as the culmination of constitutional law. What confirms this connection between them is what Barthelemy said: "Constitutional law shows us how the government machine was built, while administrative law shows how this machine operates and how each

[18] For example, see Article 100 of the Algerian constitutional amendment of 2020.
[19] For example, see Article 154 of the Algerian constitutional amendment of 2020.

part performs its function."[20]

- Constitutional law is concerned with the system and political activity of the state, examining the formation of authorities, their competencies, and their relationships with each other. Among these authorities is the executive authority. Administrative law, on the other hand, deals with the organization and administrative activity of the state, examining the executive authority, its competencies, and its administrative actions. Therefore, constitutional law is the law of the three public authorities, while administrative law is the law of public administration. Some jurists have expressed this distinction, stating that constitutional law establishes the fundamental principles of public law in the state, while administrative law is the one that puts these principles into practice.

- Administrative law draws inspiration from the general constitutional principles in its rulings, referring to the constitutional texts and relying on them in its studies. The theory of necessity, which is one of its most important topics, finds its basis in constitutional texts[21]. The establishment of regional entities, namely municipal and provincial, is also outlined in the constitutional provisions...

Section Three: The Relationship Between Constitutional Law and Financial Law

Although public finance constitutes an independent branch, its subject

[20] Ramzi Taha Al-Sha'ar, The General Theory of Constitutional Law, Fifth Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2005, p. 75.

[21] See, for example, Articles 97, 98, 99, 100, and 101 of the Algerian constitutional amendment of 2020.

is the study of the rules related

The financial activity of the state is defined by the organic finance law and the finance law. It refers to the set of legal rules related to the state's financial activity, specifically its expenditures and revenues and the balance between them. The financial law is the one that determines the state's budget. However, the connection between these two laws is also close, as follows:

- Financial law is also considered a branch of public law.
- As previously mentioned, although the rules related to the state's financial activity are defined by the organic finance law and the finance law, it is certain that the general principles of these two laws are framed by the provisions contained in the constitution. The latter is the one that determines the entity responsible for preparing the state budget[22], the entity that approves the finance law[23], and the monitoring of the expenses specified in this law[24], as the finance law is also linked to the state's ideology. In other words, the constitution regulates the powers and limits of both the legislative and executive authorities in the field of finance, as well as defines the relationship between them.

Section Four: The Relationship Between Constitutional Law and Criminal Law

[22] As an example, see Article 139, paragraphs 13 and 15, and Article 146 of the Algerian constitutional amendment of 2020

[23] - For example, Articles 139, Paragraph 12, and 146 of the Algerian constitutional amendment of 2020.

[24] For an example of that, see Article 199 of the Algerian constitutional amendment of 2020.

Although the scope of criminal law is clear, as it regulates the relationship between the state and individuals in the event of a crime they commit, including the definition of punishable offenses and the penalties prescribed for each, this does not prevent the existence of close connections between these two branches of law, which are manifested as follows: However, this does not prevent the existence of close connections between these two laws, which are manifested as follows:

- When constitutional law outlines the form of governance and organizes its rules, it simultaneously defines the substance of criminal law, which complements constitutional law to protect the legal idea, principles, and foundations guarantyd by the constitution. This is achieved by stipulating penalties for anyone who dares to violate the state's constitution or its system of governance, or the rulers holding power. Additionally, it establishes legal protection for the principles of freedom and rights to the extent determined by the constitution, preventing the violation of individuals' freedoms and properties. In other words, if constitutional law addresses the system of governance in the state in terms of the foundations it is based on and the goals it seeks, then criminal law aims to protect the system of governance as a whole from being attacked by individuals or rulers.
- Many provisions of criminal law are inspired by constitutional rules and principles. For instance, constitutions include many general rules that criminal law addresses in detail, such as the principle of the presumption of innocence for the accused until proven guilty by a

competent judicial authority and within the framework of a fair trial[25], the principle of non-retroactivity of criminal laws, the prohibition of criminalizing acts and imposing penalties except by law[26], the principle that no one may be prosecuted, detained, or imprisoned except in accordance with the law[27], and the establishment of a high court to try the president of the republic in case of committing high treason, and

the prime minister for crimes and misdemeanors committed in the course of performing their duties...

The fourth requirement: Sources of constitutional law

Sources of law generally refer to the origin from which the legal rule derives its content and obligatory nature[28]. That is, the origin or source from which we derive or from which something appears, and in legal language, we mean the texts or references in which we find the legal rules related to a specific subject or field.

Therefore, the sources of constitutional law refer to the origin from which the rules of this law are derived. Accordingly, the constitutional rule derives its content and substance from several sources that confer upon it its binding nature. The importance of these sources varies from one country to another, and may also change over time, depending on the differing circumstances and conditions of each

[25] Article 41 of the Algerian constitutional amendment of 2020

[26] For example, Article 43 of the Algerian constitutional amendment of 2020.

[27] See, for example, Article 44 of the Algerian constitutional amendment of 2020.

[28] See, for example, Article 183 of the Algerian constitutional amendment of 2020.

country individually. In this regard, jurisprudence distinguishes between official sources (Section One) and unofficial or interpretative sources (Section Two).

Section One: Official Sources of Constitutional Law

It is manifested in both legislation and custom, as follows:

First: Legislation (in its broad sense)

Legislation is considered a primary source of legal rules, especially constitutional rules, due to the increasing intervention of the state, the complexity of its activities, and its growing connections with other states, groups, and individuals[29]. It refers to the set of written legal rules established by an authorized authority, to which all individuals are subject regardless of their status. In other words, legislation in its broadest sense refers to all written legal rules issued by the public authorities of the state, regardless of their nature or the body that issued them.

And legislation, as an official source of constitutional law, takes various forms; however, these forms are not actually of equal importance and thus not in the same order of precedence. They are: basic legislation, international treaties, legislation, and regulations.

1- The fundamental legislation: It is the constitutional document issued by the founding authority, which is considered the most important source of constitutional law rules. The constitution occupies the highest rank among legal rules, meaning that all other sources must respect its supremacy, as it is the one that establishes the

[29] CF. DEVERGER. M, Institution politiques et constitutionnel, PUF, Paris, 1970, p.209.

political authorities in the state.

Due to the importance of the constitution, it cannot be amended or have some of its provisions repealed as easily as other laws can be revised. Instead, special procedures must be followed as stipulated in the amendment section of the constitution.

The constitution must also be protected from any violation of its provisions, which is why constitutional oversight of laws is organized. This process is usually carried out by a constitutional court or constitutional council, which ensures that the legislator respects the constitution when enacting laws and ratifying international treaties.

2- International treaties: International treaties consist of agreements between two or more subjects of public international law (states or international organizations), which makes them a fundamental source of public international law. International treaties can contain rules related to constitutional law, making them a source of constitutional law in this case[30].

- Legislation (in its narrow sense): By these laws or legislations in their narrow sense, we mean those enacted by the legislative authority in the areas specified by the constitution exclusively.

Despite the role played by the constitutional document as a primary source of constitutional law, there are topics related to the constitutional system stipulated in laws issued by the legislative

[30] In Algeria, for example, and according to the text of Article 154 of the Algerian constitutional amendment of 2020, international treaties ratified by the President of the Republic in accordance with the conditions stipulated in the constitution are ranked directly below the constitution, meaning they take precedence over the law in its narrow sense, which is the law issued by the legislative authority.

authority (parliament). The codified constitutional documents are usually unable to encompass all the details related to the organization of power. In such cases, the constitutional founder allows the legislative authority to enact some laws related to the system of governance, for example, or the formation of public authorities in the state, their competencies, etc. On this basis, legal texts are considered a source of the constitutional system.

These laws take two forms: organic or fundamental laws and ordinary laws.

A- Organic or fundamental laws[31]: These are the laws that complement the constitution, as they are a substantive extension of the constitution, which cannot detail all the provisions related to the system of governance and constitutional authorities. This makes them a primary source of constitutional law. They are issued by the legislative authority, and the procedures and conditions for their issuance are often different from those for ordinary laws. They are related to matters of a constitutional nature and primarily aim to regulate issues concerning public authorities in the state or the field of human rights.

For example, the Algerian Constitution has referred the regulation of constitutional matters to organic laws in many articles, such as Articles 53, 85, 87, 132, 146, 172... It also specifies in Article 140 the

[31] The idea of organic laws emerged in the French Constitution of 1958, where Article 46 states that organic laws are those laws that the Constitution has granted the nature of organic laws. Refer to Ammar Ouabdi, The Concept of Organic Law and Its Applications in the Law Governing Parliament and the Functional Relations Between It and the Government, Journal of Parliamentary Thought, Issue 2, March 2003, p. 52.

areas designated for organic laws, such as the organization and functioning of public authorities, the electoral system, the law concerning political parties, the law concerning the media, the basic law of the judiciary and judicial organization, and the law of financial laws.

However, these laws are approved in Algeria by an absolute majority of the deputies and members of the Council of the Nation, and their provisions are subject to review for constitutional compliance by the Constitutional Council before their issuance, in accordance with Article 140 of the Algerian constitutional amendment of 2020.

Organic laws hold a legal power and rank lower than the constitution and international treaties, but higher than ordinary laws.

B- Ordinary laws: These are the legal texts enacted by the parliament to exercise legislative authority in a regular manner, meaning without the need to follow the same procedures used for issuing, amending, or repealing organic laws. These laws can contain rules of a constitutional nature, such as those related to the rights and fundamental duties of individuals, and texts that affect the organization and functioning of public authorities in the state... .

4- Subordinate legislation: These are regulations issued by members of the executive authority, such as presidential decrees issued by the President of the Republic, executive decrees issued by the Prime Minister or Head of Government, and decisions issued by ministers.

And since these regulations aim to organize certain areas in the form of general and abstract rules, especially areas not designated for law,

where the President of the Republic independently organizes them, or clarifies how laws are applied and enforced, they are also considered a source of constitutional law.

Based on the above, constitutional law is characterized by the multiplicity and diversity of its sources. This multiplicity necessitates a specific arrangement of these sources in a gradual or hierarchical manner, requiring that the lower legal rule be subject to the higher legal rule. This is what is known as the legal hierarchy or the gradation of legal rules. And this hierarchical arrangement is considered the general or initial order for the various branches of law. And it is as follows:

The Constitution

International treaties

Legislation

Organization

The legal hierarchy or the hierarchy of legal rules

Secondly: Constitutional Custom

Custom is considered one of the oldest official sources of legal rules in general. Although the role of constitutional custom no longer holds the same importance it once did in the past, where the phenomenon of codifying constitutions has spread, it still represents the primary source of constitutional rules in countries that adopt customary constitutions, such as Britain.

Therefore, while constitutional custom plays a fundamental role in countries with unwritten constitutions, its role in countries with

written constitutions is merely supplementary. In order for customary constitutional rules to be binding, a set of conditions must be met, such as a governing body in a particular state consistently following a custom or practice regarding a constitutional matter without opposition from other bodies, until the members of the community recognize the necessity of respecting these rules, thereby giving them a binding character.

Generally, custom refers to people consistently following a certain behavior in a specific matter over a long period, making them feel its binding force like written law. As for constitutional custom, it is the consistent practice of a governing body in the state in conducting behavior related to a matter of governance to the extent that this behavior becomes obligatory and must be followed in every occasion it arises.

Therefore, the existence of customary constitutional[32] rules is accompanied by the presence of two essential elements; one is material and the other is moral.

1- The material element: The material element is represented by the repeated actions and decisions issued by one of the ruling bodies in the state, and these actions are related to the system of governance and the public rights and freedoms of individuals. It is required for the

[32] It should be noted that constitutional custom is not the same as customary constitution; the customary constitution arose from traditions born out of long years of practice where there is no written constitutional text. As for constitutional customs, they arise in countries that have written constitutions. They are unwritten constitutional rules that emerge from repeated actions and practices carried out by one of the governing authorities without opposition from the other authorities. The repetition of these actions gives them binding force. Constitutional customs exist alongside a written constitution either to interpret, complement, or amend it.

repetition of these actions to be effective in creating the constitutional rule that certain conditions must be met, including:

- Repetition: Custom does not arise from a single incident or action.
- Generality: It means that it is followed by those concerned, whether it is issued by the ruling bodies such as the head of state, the parliament, and the prime minister, for example, or it relates to the legislative authority in terms of its formation, its competencies, and its relations with other authorities... without opposition from others. Accordingly, an action issued by a governing body does not constitute an unwritten constitutional rule if it encounters opposition or lack of acceptance from other bodies.
- Stability: It must be consistently followed by those concerned without deviation, and its application must be repeated regularly and steadily, confirming its stability and permanence.
- Duration: This means that the custom must have the element of duration, continuing to be followed for a relatively long period sufficient for its stability, confirming that it was not the result of a temporary inclination or a sudden trend.
- Clarity: This means that the custom should be sufficiently defined to eliminate any ambiguity regarding it and to prevent confusion or inconsistency in its interpretation.

2- The moral element: It means that it should be established and settled in the minds of the community and its legal conscience, that customary law is a weak source of constitutional law, Moreover, it is necessary for the community to have a belief in the binding nature of

the customary rule, and that it is obligatory to follow it as it is a legal rule deserving of the same respect as other legal rules.

Through these two pillars, we conclude that the emergence of constitutional custom requires the transformation of the action or behavior issued by one of the ruling bodies into a general, stable, consistent, and clear habit. It also requires the belief of public opinion and all public authorities and governing bodies in the state in the binding nature of this customary rule, and that any violation or breach of its provisions results in a penalty.

Based on that, we can talk about several types of constitutional customs, which are the interpretative custom, the supplementary custom, and the amendatory custom, as follows:

1- The interpretative custom: When it aims to interpret the text of a constitutional rule due to ambiguity and vagueness, it does not create a new constitutional rule but rather clarifies how to apply a specific ambiguous constitutional rule. This is what Article 3 of the French Constitution of 1875 stipulated, stating that among the powers of the President of the Republic is the execution of the law. However, practice has established that the task of executing laws can only be done through the issuance of decrees. Therefore, constitutional custom has interpreted Article 3 to mean that the President of the Republic is permitted to exercise this authority.

2- The complementary custom: It pertains to organizing subjects that were not addressed by the constitutional founder. If the constitutional document neglects to address a certain subject, the customary

constitutional rule fills this gap (bridging the constitutional void). An example of this is what the French Constitution of 1875 stipulated, that elections are conducted based on universal suffrage without specifying the conditions of this election. The custom completed it by making it direct, meaning it is conducted in a single stage.

3- The amended custom: which leads to a change in the provisions of the constitution, either by addition or deletion, such as granting a governing body new powers not provided for in the constitutional document. An example of the amended custom in the form of deletion is the refusal of the President of the Republic in France to dissolve the National Assembly, despite being granted this right under the 1875 Constitution[33].

Scholars have disagreed regarding the legal value of these types of customs, especially concerning the amended custom, as it is a dangerous custom that, as we have seen, comes to abolish or change articles in the constitution, thereby affecting the principle of the supremacy of the constitution. Therefore, the majority of jurists have deemed it illegitimate based on the fact that written constitutions always stipulate methods for their amendment, and the modified custom ultimately does not respect these provisions, rendering it illegitimate. However, there are those who consider it legitimate because, in their opinion, custom is the true expression of the will of the nation, and thus the nation is free to amend constitutional provisions in the manner it sees fit. As for the interpretative custom

[33] Said Bouchaïr, the previous reference, p. 163

and the supplementary custom, the majority of jurists have placed them on the same level and rank as written constitutional texts, and thus they enjoy the same legal value.

Based on the above, it is worth noting that despite the important position that custom holds as a source of constitutional law, some jurists, especially proponents of the formalist school, have denied the legal status of custom. They argue that customary rules cannot have legal value unless they are enshrined in a written text. Their reasoning is that customary rules are characterized by instability, lack of clarity, and variability in interpretation. But the majority of jurists affirm the status of custom without classifying it at the level of written constitutional rules, as the legal nature of custom ultimately reflects the conscience of the community and the nation.

Section Two: Unofficial or Interpretative Sources of Constitutional Law

It refers to the entities that are referred to in order to understand the true meaning of constitutional law rules, that is, the true intent of the drafters of these rules. These sources are manifested in jurisprudence and judiciary, as follows:

First: Jurisprudence

It refers to the various studies conducted by legal scholars in a given country to analyze constitutional texts in order to reach the true intent of the legislator behind their enactment, thereby removing any doubt or ambiguity surrounding them, and also identifying any deficiencies

or shortcomings they may contain, and proposing solutions or alternatives capable of addressing these deficiencies or shortcomings.

It is worth noting that, in Algeria, the sources of constitutional law are not limited to jurisprudence and judiciary but also include religion. It occupies the second position after legislation in the sources of law according to Article 1 of the Algerian Civil Code (Order 75-58 dated September 26, 1975, which includes the Civil Code, amended and supplemented by Law No. 05-10 dated June 20, 2005, Official Gazette No. 44 issued on June 26, 2005, and also amended and supplemented by Law 07-05 dated May 13, 2007, Official Gazette No. 31 issued on May 13, 2007). It is also considered a source of constitutional law according to Article 2 and other articles of the 2020 constitutional amendment. Therefore, religion is not considered a source of laws and constitutional law in Western systems that separate religion from the state (secular or laic), whereas in Islamic countries, religion holds a special and distinguished position.

Jurisprudence is considered one of the important interpretative sources of legal rules in general, and constitutional rules in particular. Therefore, it does not possess any binding force against either the legislator or the judge. However, it holds significant importance in countries with customary constitutions. Therefore, it is an indirect source of constitutional law.

Secondly: Constitutional Judiciary

Judiciary is the sum of the rulings issued by the courts in the course of applying the law to the disputes brought before them. The judiciary is

divided into two sections: the first section includes rulings that do not deviate from being an application of the law and are called ordinary rulings. The second section, known as judicial precedents, is what concerns us as a source of constitutional law. These judicial precedents are the rulings issued by the courts that become models relied upon in similar cases.[34]

Therefore, some judicial rulings may actually include interpretations of the ambiguities and deficiencies in legal texts, or be considered as supplements to them, thus becoming judicial precedents and regarded as sources of constitutional law.

By analogy, in countries such as England, the United States of America, and Australia, the judiciary is considered an official source due to the precedents it establishes regarding the cases brought before it. The interpretation issued by one of the courts is considered a binding judicial precedent, meaning it is adhered to not only by the court that issued it but also by the courts of the same level and those below it. As for other countries, such as Latin countries like France and Italy, or Algeria and Egypt, the judicial ruling issued by a specific court that includes an interpretation of a constitutional text, although it is considered a judicial precedent, it is a non-binding precedent. The same court that issued it may deviate from it in another ruling and provide a different interpretation, as well as the constitutional law.

[34] See, for Rashid L. Raqm, Constitutional Law Lectures, delivered to first-year law students, Faculty of Law and Political Science, University of Jijel, 2017-2018, p. 16.

Section One: The Theoretical Framework of Constitutional Law

By the framework of constitutional law, we mean the area within which this law is applied. The state is the fundamental framework in which power is exercised in the manner defined by the constitution and the law. Therefore, studying the foundations of political organization requires examining both the state (Chapter One) and the constitution (ChapterTwo).

Chapter One: The State

What is the state?

It is not easy to provide a precise and definitive answer to this question, as the state is a concept with multiple meanings. It may refer to the organised society as any national political entity (for example, the Algerian state), or it may also refer to the totality of public authorities (les pouvoirs publiques). Finally, it may refer to the central authority (le pouvoir central), distinguishing it from decentralised authorities (les autorités décentralisées).[35]

And if we go beyond these overlaps in the use of the concept of the state and ask about its deeper meaning, we will notice that the state is one of the most difficult concepts to define. The state is not

[35] CARRE DE MALBERG, Contribution a la théorie général de l'état, Sirey, Paris, 1962, p.7

limited to the institutions it represents[36]; it transcends and rises above them. However, despite this, the state remains the mother institution that encompasses all political and non-political institutions. The state is also considered a means of coercion and pressure (contre et coercition).

So it is all of this at once, and even more than that. In fact, understanding the state reality (la réalité établique) requires us to determine the nature of the relationships between state authorities (le pouvoir étatique) and the society subject to them. In other words, is the state merely an external political authority distinct from society, or is it society as a whole?

Without a doubt, these two concepts are complementary: on one hand, a state cannot exist unless it is established over a human group, and on the other hand, a state cannot govern this group unless it embodies authority. Moreover, authority cannot be effective unless it is based on the consent and acceptance of society.

All these preliminary observations indicate that the state is a concept difficult to scrutinise, and this is partly due to its presence in almost all fields of knowledge: it is the subject of interest for historians, philosophers, sociologists, economists, and political scientists, each of whom, according to their specialisation, employs it from their own perspective and intellectual viewpoint. A branch of it in one of its fields (for example, administrative law and budgeting...). Among

[36] See, Said Bouchaïr, Constitutional Law and Comparative Political Systems, Volume One, Tenth Edition, University Publications Office, Algeria, 2009, p. 151.

these branches, constitutional law deals with the pillars, forms, and institutions of the state. And the effect of linking political science with constitutional law has made the latter also concerned with the origin of political power, in conjunction with the concept of the state. Accordingly, our study of the state will be conducted through our examination of the following topics:

Section One: The Concept of the State

Section Two: Forms of the State

Chapter One: The Concept of the State

The term "state" is considered one of the most common and ambiguous terms at the same time, so attempting to define it raises many differences even within the fields of knowledge that focus on the subject of the state.

Even from a constitutional perspective, the term and concept of the state are among the most popular and widely used terms, as we often read, hear, or talk about them. However, despite their widespread use and circulation, their definition remains shrouded in ambiguity. Scholars have disagreed on their definition of the state and have not settled on a specific definition. This is due to their differing criteria for clarifying the nature of the state as a particular group and their varying legal concepts of the state.[37]

Section One: Definition of the State

Accordingly, there is no disagreement that the subject of defining the

[37] See, Mohamed Anas Qassem Jafar, Political Systems and Constitutional Law, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1999, p. 11.

state is one of the topics that has garnered the attention of public law scholars. Therefore, each of them has attempted to provide a definition for it, resulting in several definitions.

- A political and legal phenomenon that means a group of people permanently and steadily residing in a specific geographical area.

And they are settled and subject to a political system.

- A stable group of people residing on a specific territory, following a certain social, political, and legal system aimed at the common good and based on an authority endowed with coercive powers.[38]

- It is a group of individuals residing in a specific territory in a stable manner, and it is subject to a supreme political authority with sovereignty.

- The state is considered every political community as long as it is based on the distinction between rulers and the ruled, and it only exists with the emergence of the distinction between the state's personality as an independent entity and the individuals who govern it.

- The state is that moral entity which political thought has conceived and created to transfer to it and assign to it the powers of governance, so that governance does not remain tied to the individuals who exercise it. Therefore, the state is the institution that possesses public authority, and thus it is above those who exercise governance.[39]

- It is a permanent and independent group of individuals who possess

[38] Carre de Malberg, Contribution a la théorie général de l'état, Sirey, Paris, 1962, p. 7-9.

[39] -CF. Burdeau. G, Droit constitutionnel et institutions politiques, L.G.D.J, Paris, 1969, p. 11.

a specific territory, and it establishes an organized authority to ensure that its members as a whole, and each one of them individually, enjoy their freedom and rights.

- The state is the legal entity that symbolizes a people settled on a specific territory, rulers and ruled, such that this entity possesses sovereign political authority.
- The word "state" is sometimes used to mean the government or the public authorities in the state, for example, it is said that a certain matter is regulated by the state. The word "state" is used in a narrower sense to refer to the central authority in its relationship with decentralized authorities. For example, it is said that the local or institutional individual is subject to the administrative guardianship of the state.
- The word "state" has taken on two or three meanings in common language, and it is advisable to distinguish between them:

• In the broad sense, the word "state" means an organized group, which generally has a social foundation, namely the nation.

• In a narrower sense, the state, in this political community, refers to the public authorities, to the rulers in relation to the ruled.

• In a third, narrower sense, the word "state" refers, within the public authorities, to the central element, which corresponds to regional public groups such as provinces, municipalities, and public institutions.

- The state means the rulers to distinguish them from the ruled, the public authorities in their entirety. In this sense, the state is

distinguished from civil society, which consists of individuals and private groups.

Based on the above, the state is nothing more than a group of individuals (the people) settled in a specific geographical area and subject to an organized political authority.[40]

Defining the concept of the state requires us to study the material elements of the state and its legal elements, as well as the functions it undertakes.

Section Two: The Origin of the State's Emergence

Since the state is considered one of the most complex social phenomena, on one hand, its origin dates back to ancient civilizations, and on the other hand, it has undergone numerous changes and developments over the ages, making it difficult to trace its emergence and understand the factors that contributed to it, including political, economic, social, religious, and other factors. Therefore, in an attempt to study the emergence of the state, a set of theories has emerged. However, these theories differ in identifying the factors that contributed to the establishment of the state, between those that rely on the religious factor and those that are based on power and dominance. Some of them are based on the social contract, while others attribute it to evolution[41].

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[40] CF. ARDANT. PH, Institutions politiques et droit constitutionnel, 13 édition, L.G.D.J, Paris, 2001, p. 18 ; PRELOT. M et BOULOUIS. J, Op.cit, p.189.

[41] The multiplicity of these theories is due to historical and philosophical considerations, as well as the differences in schools of thought regarding the powers and forms of governance. It is also because the state, which jurists have examined in terms of its origin and foundation, has undergone development in its emergence, causing some theories to lose their validity in

All these theories are considered justifications and explanations for the foundations from which the state derives its various powers and authorities.

First: Religious theories (supernatural, metaphysical, or theocratic)

Proponents of these theories (supporters of absolute monarchy) argue that the emergence of authority or the establishment of the state is attributed to God, as it is a right that He bestows upon whomever He wishes. Consequently, the ruler derives his authority from God, which elevates his will above that of the ruled due to the qualities that distinguish him and which enabled him to attain power over others in his society. These theories played a significant role, especially in ancient times, starting from the Christian era and the Middle Ages, and their influence did not fade until the early 20th century, when people believed that this world was subject to supernatural forces that were difficult to explain, leading them to accept the sanctity that rulers conferred upon themselves. However, despite the agreement among the proponents of these theories regarding the divine source of authority, they differed on the selection of the ruler and divided into three directions:

1- The Theory of the Divine Nature of the Ruler (Deification of Rulers):

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light of scientific analysis, thus making way for other theories. On the other hand, the disagreement regarding the origin of the state is due to the differences in schools of thought between those who sought a social origin for the state and those who sought a legal basis for it, as well as differing political objectives. Abdelhadi Boutaleb, the aforementioned reference, p. 74

It is also called the theory of the divine ruler, which considers the ruler as a deity who does not derive his powers and authorities from anyone, and no one can exercise oversight over him or oppose his decisions, on the grounds that any opposition to the ruler is opposition to the deity, exposing the opponent to worldly and otherworldly punishment[42].

This theory prevailed in ancient times when people considered their kings to be gods, worshiped them, and submitted to them completely. In ancient Egypt, where the king was considered a god, he was called "Horus" during the First and Second Dynasties, and "Ra" during the Fourth Dynasty. At that time, the king enjoyed absolute powers that encompassed everything related to the state's territory and its people. While the king in India is the human embodiment of the supreme god "Brahma." Until World War II, the Japanese viewed the Emperor of Japan as a god.

If this theory was well-received in ancient times, it is no secret that it confuses power with doctrine. However, what makes the mind gradually distance itself from and reject this theory is the divine nature granted to rulers, which has rendered this theory incapable of explaining the origin of the state today. Moreover, from a scientific perspective, this theory is considered an authoritarian theory that establishes the tyranny of rulers and their monopolization of power, free from any accountability or responsibility, based on the notion that

[42] Fouzi Oussadek, Al-Wafi in Explaining Algerian Constitutional Law, Volume One: Theory of the State, Third Edition, University Publications Bureau, Algeria, 2009, pp. 18-21.

the ruler is a divine being, exalted and sacred.

2- The theory of the divine right of kings (the direct divine mandate):

With the emergence of the heavenly religions (Judaism and Christianity) that separate God from humans, it became impossible to confuse God with the ruler. However, there was no complete break with the religious theory, as the proponents of this theory would claim that the ruler is not a god but derives his authority from God, who grants kingship to whomever He wills among His servants. He is the one who chooses them and provides them with the necessary powers to lead the affairs of humans[43]. Therefore, the subjects have no choice but to comply with and obey the orders of the kings, who are not considered responsible for their actions except before God, who chose them as rulers for His servants, entrusted them with the authority, and delegated them to govern their subjects, because they were directly chosen by God to rule and exercise authority, which is originally God's authority.

The Babylonians adopted this theory and considered the ruler as an intermediary between the god and the people, not a god himself.

This theory prevailed in Europe in the seventeenth and eighteenth centuries, particularly where it was embraced by churchmen to support the emperor's authority and submission to his loyalty. Consequently, the emperor was considered chosen by God

[43] CF. ROUVIER. J, Les grandes idées politiques des origines à J.J. Rousseau, Editions Bordas, Paris, 1973, p. 8.

and derived his authority from Him. This theory gained popularity in France in the early seventeenth century and was adopted by the church. The kings of France relied on it to solidify their rule and impose their authority on the people. Some 20th-century tyrants, such as Hitler in Germany and Franco in Spain, also used this theory.[44]

Therefore, within the framework of this theory, opposing the ruler's actions is not permitted, as any opposition to him or resistance to his actions and deeds is considered opposition and resistance to God who chose and appointed him, entrusted him with his powers as His vicegerent, and granted him the authority to rule in His name. Thus, this theory does not deviate from being a foundation for the tyranny and despotism of rulers, and for resisting any reform that originates from the people.

3- The Theory of Indirect Divine Right:

It is also called the theory of divine providence, and it differs from its predecessors in form, not in substance, as this theory states that the ruler is chosen by the people, but at the behest of God. According to this theory, it is God who directs the will of His servants to choose the ruler (a specific ruler over others). In terms of its content, it also does not allow for resisting the tyranny and despotism of rulers because they are chosen according to divine will, and thus any resistance or opposition to them is considered resistance and opposition to God.

Therefore, if this theory agrees with the theory of the sacred divine

[44] See, Majid Ragheb Al-Haloo, The State in the Balance of Sharia, Political Systems, University Press Publications, Alexandria, Egypt, 1996, pp. 84 and 85.

right in the matter of delegation, it does not agree with it in the manner of granting the delegation. Its proponents believe that God did not grant authority to the ruler directly but rather made events unfold in a certain pattern, so that the person chosen by divine providence becomes the ruler above all others. God grants the sword of religious authority and the sword of temporal authority to the Pope, and the latter grants the sword of temporal authority to the ruler[45]. Divine providence is what directs the will of humans toward the process of selection, as humans are guided and not free in their choice of rulers, whom everyone must obey and comply with their orders, considering him the divine envoy.

This theory emerged "as a result of the weakness that afflicted the Roman state, and it was no longer acceptable to accept weak rulers who derive their authority directly from God." Its emergence in Europe coincided with the beginning of the spread of the principles of freedom and equality, and the appearance of economic transformations under the free economy in Europe.

Although the proponents of this theory believe that the choice of ruler is made by humans and that divine authority did not impose a specific type of government on them, they still insisted that authority fundamentally returns to a divine origin.

The theocratic theories have faced numerous criticisms for their detachment from human rational acceptance, for being artificial

[45] Ahmed Helmy Khalil Hindi, The State in Political and Constitutional Systems, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2015, p. 106.

theories that serve certain interests, and for justifying the tyranny of the ruling authority, especially during the conflict between temporal and religious authority in the Middle Ages. Some scholars have also called for these theories not to be labeled as religious on the basis that they do not fundamentally and substantively rely on religion.

Accordingly, there is no doubt that these theories stem from a theocratic religious foundation that links the origin of the state to divine will. This perspective is nothing more than classical thinking that connects most phenomena to supernatural explanations rejected by modern science. Moreover, they all agree that the ruler is not accountable to the people. Accordingly, it is likely that the aim of these theories is to make rulers evade their responsibilities, which contradicts the nature of modern systems based on democracy, where representatives of the people bear the consequences of their actions.

Secondly: Theories of Power and Domination

This theory sees that the primary source of authority in the state is power. Authority, in this sense, is nothing more than a system imposed by one or more individuals through violence on the rest of the community to force them to submit to and respect them. Thus, the general will in this case is the will of this person or these individuals[46].

Among the proponents of this theory is the Italian Machiavelli, who addressed it in his book "The Prince" in 1512, where he dismantled

[46] Faisal Kalthoum, Studies in Constitutional Law and Political Systems, Damascus University Press, Syria, 2005, p. 274.

the idea of divine right and divine mandate. Among the scholars who also support this theory is the jurist Plutarch, who argues that the oldest laws governing the world are the law of the strongest ruling and dominating the weak. And also the German jurist Oppenheim, who believes that authority in the state is based solely on power, and it is a social organization imposed by its owner.

The greater power with the intention of economically exploiting the weak. And also the Frenchman Charles de Secondat, Baron de La Brède et de Montesquieu, who argues that power is the primary source of the formation of states based on the ancients' abandonment of virtue and their reliance on violence.

Therefore, there is a group of jurists who relied on the criterion of power and dominance as the basis for the emergence of the state, but they differ on the nature of this power—whether it is physical power, economic power, or intellectual power. Among these theories are the following:[47]

1- Ibn Khaldun's Theory (Theory of Leadership):

The scholar Ibn Khaldun is considered a proponent of the theory of power and dominance. According to him, leadership is achieved through dominance, and that group must be stronger than the other factions for dominance to occur and leadership to be established among its members. Each faction, upon sensing the dominance of

[47] Ahmed Helmy Khalil Hindi, the previous reference, p. 100; Abdel Hamid Metwally, the previous reference, p. 254.

their leader's faction, submits and follows.[48]

Therefore, Ibn Khaldun believes that a state can only be established on necessary foundations, factors, and certain characteristics. In his view, the foundations of state formation are represented in the human need to satisfy their nutritional and security needs, in addition to the community's need to secure the necessary power to repel the injustice and aggression that accompany humanity. The lack of restraint on aggressive tendencies inevitably leads to a state of chaos and disorder that could lead to the extinction of the human race. This can only be achieved if a strong system imposes itself by force. As for the factors that help in the establishment of a state according to Ibn Khaldun, he explains them in three factors:

- The factor of leadership: This factor is represented by the emergence of a person who possesses authority, declares himself a king, and imposes his rule through force and dominance, provided that he possesses a set of commendable qualities.

- The factor of tribal solidarity: Solidarity is the feeling of shared belonging among the members of the group, which is considered its spirit. According to Ibn Khaldun, solidarity is divided into two types: specific solidarity, which exists among close relatives and is considered narrow by Ibn Khaldun, and general solidarity, which is based on distant kinship and includes several specific solidarities within a single unifying solidarity. Solidarity sometimes passes

[48] Fawzi Ousdiq, the previous reference, pp. 21-26; Said Bouchaïr, the previous reference, pp. 29-36.

through several stages, starting from the noble house, which is a family from the tribe distinguished by honor, to tribal leadership. If it can impose its influence and authority over other tribes using force and dominance, it transforms into a state.[49]

- The factor of creed: It manifests in the necessity of having a creed (religion), which was the fundamental factor in uniting tribes and peoples into one group. According to Ibn Khaldun, Islam enabled Muslims to establish a strong state (the Almohads and Almoravids).

2- The Marxist theory (the theory of class struggle):

Marxism asserts that the state is not an idea existing outside of society, but rather a product of its development at a certain stage to maintain the existing system characterized by the dominance of one class over another. According to Marxism, primitive humans lived under a communist system where the concept of ownership did not exist. This state continued until the discovery of agriculture, which led to the emergence of ownership, in turn giving rise to class distinctions for the first time. Thus, human society became divided into two classes: one owning and the other non-owning. The former was able to enslave the latter, leading to the emergence of the slave system, which replaced the communist system.

With the development of human thought, slaves began to reject the state of servitude they lived in. They revolted against their masters, which led to the slaves gaining theoretical freedom and the emergence of the feudal system, which also consisted of two classes: the feudal

[49] André Horiot, the previous reference, p. 95; Fouzi Oussadiq, the previous reference, p. 23.

lords and the serfs. Over time, the serfs revolted against the feudal lords, freeing themselves from the feudal system, which was replaced by the capitalist system. This system consists of two classes as well: the proletariat (workers) and the bourgeoisie. The latter feared that the workers would revolt and eliminate them, so they created an apparatus called the state to protect their interests. The state, therefore, is ultimately the product of class struggle, merely a reflection of the relations of production in society.

There is no doubt that the theory of power and dominance is highly accurate, especially since historical experiences testify that the element of power is fundamental in the establishment of ancient empires, and the same applies to the State of Israel, which was founded on military superiority. However, this theory cannot be accepted unconditionally, as authority, regardless of its status, cannot ensure its stability and permanence through force alone. Rather, it requires the satisfaction of the governed and their voluntary acceptance of its commands. Material power alone is insufficient for the survival of authority unless that authority is based on the consent of the members of the community, that is, the desire of the governed.

Moreover, the theory of force and dominance contains an element of truth when considering the impact of economic factors on the political system. However, its effects are considered less significant than other factors on the political system of the state, such as religious, geographical, and cultural factors, which have a greater influence than the economic factor on the political system of many countries, both

ancient and modern.[50]

Thirdly: Contractual theories (popular or democratic)

Democratic theories regarding the origin of the state are based on the idea that power comes from the people, in contrast to religious theories that attribute power solely to God. Thus, this theory assumes that individuals lived in the original state of nature instinctively, without any specific regulations, except for the rules of natural law, and that the emergence of the state with its sovereign power is due to To a contract or agreement made by these individuals, thereby replacing the natural law that governed their natural state with a positive law that resulted in civil and political rights.

These theories emerged as a reaction to the tyranny practiced by the existing regimes in Europe with the church's blessing, which justified their tyranny by the theory of divine right of kings. These theories spread during the 18th and 19th centuries, as they worked to refute the theories of the religious basis of governance by asserting that the origin of rule and authority does not stem from divine will, as some rulers and their supporters claim. The theorists of these theories start from the hypothesis that the foundation of governance is the result of a social contract made among individuals who lived in a "state of nature" society, who agreed to choose a ruler among themselves to manage their affairs. The credit for formulating this organized concept of the state goes to the English philosophers Thomas Hobbes

[50] Al-Amin Sharit, the previous reference, p. 34; Abdul Hamid Metwally, the previous reference, p. 255.

and John Locke, and the French philosopher Jean-Jacques Rousseau.

1- The Social Contract Theory of Thomas Hobbes (1588-1679):

Thomas Hobbes starts his theory from the state of nature, which he depicts as characterized by chaos and perpetual war for several reasons, the most important of which is humanity's inclination toward evil. Then Hobbes says that this stage, the "state of nature," was characterized by a war of all against all, and by the dominance of the "law of the jungle and survival of the fittest[51]." To escape this state, to end the state of war, and to establish peace and security, Thomas Hobbes employed the idea of the "Leviathan" to symbolize the state or the powerful authority capable of ending war and violence and spreading security and stability, due to its means of control and capabilities of coercion and oppression.[52]

Then, Thomas Hobbes arrived at the idea of the social contract, by which individuals relinquish all their natural rights, including the right to property, to a person who becomes the ruler, a non-party to the contract, whom they choose from among themselves without any conditions. And in order for this person to exercise their powers and ensure security and stability, they must possess absolute authority. Therefore, the people have no right to revolt against this ruler because granting him absolute power is more merciful to the people than returning to a life of chaos, terrorism, and fear. Thus, through this

[51] See, Mahdi Mahfouz, Trends in Modern Political Thought, University Foundation for Studies, Publishing, and Distribution, Beirut, Lebanon, 1991, p. 63; Fawzi Ousdiq, the previous reference, pp. 31-37.

[52] CF. HOBBES. TH, Le Léviathan, Editions Sirey, Paris, 1971, p. 197 ;

agreement, political authority and subsequently the state were established.

This opinion has been criticized for leading to the absolute power of kings, for mixing the state and the government, and for demanding the grant of sovereignty to the ruler rather than to the state he governs, which would ultimately lead to the state's demise and disappearance with the change of the ruler's personality. So this theory is based on granting absolute power to the ruler, allowing them to be tyrannical and oppressive, thus the ruler, by virtue of this contract made among individuals, is not bound by any law.

2- The Political Contract Theory of John Locke (1632-1704):

Unlike Thomas Hobbes, John Locke argues that the primitive life humans lived was characterized by freedom, justice, peace, and equality under a natural law that does not differentiate between people. However, they thought about transitioning to a better life by establishing a political society distinguished by good organization and the definition of freedoms and rights by an authority that implements and protects the natural law. This led them to decide to enter into a contract that resulted in the emergence of an authority committed to achieving justice. Thus, consent is the foundation of the state according to John Locke.[53]

The justification and foundation of the state according to Locke is

[53] See, Jean-Jacques Chevalier, History of Political Thought, From City to State (Translated by Mohamed Arab Sassi), University Foundation for Studies, Publishing, and Distribution, Beirut, Lebanon, 1985, p. 380.

consent, and the parties to the contract are the individuals and the chosen ruler whose authority is limited by what was agreed upon at the conclusion of the contract. Additionally, individuals, when entering into this agreement, did not relinquish all their rights but only to the extent necessary to establish the state and authority that ensures the protection of individual rights and freedoms. In return for their partial relinquishment of their freedoms and rights, the ruler is required to exert efforts to achieve the common good and respect private rights. In case of his breach of these obligations, the other party to the contract has the right to dismiss him, and if he resists, the use of force against him becomes a legitimate right. The political contract is a collective contract through which society transforms from a group of individuals into a political community to establish a government that derives its authority from the consent of the majority. Therefore, Locke granted individuals in society the right to oppose the ruler whenever he exceeds the limits of the contract and goes beyond it. On this basis, Locke was one of the first to propose the concept of "opposition" as a mechanism to resist the tyranny and despotism of rulers, considering that the authority of rulers, according to the contract proposed by Locke, is not absolute but rather constrained by what was agreed upon in the contract concluded between the governed and the ruler.

3- The Social Contract Theory of Jean-Jacques Rousseau 1712-1778:

Jean-Jacques Rousseau, in his book "The Origin of Inequality Among

Men," argues that man is inherently good, and the primitive natural life of individuals was characterized by natural justice, equality, freedom, a life of abundance, and peace of mind. However, this natural state soon changed and transformed due to the discovery of agriculture and inventions, and the emergence of private property, which resulted in differences among individuals. The natural equality they enjoyed in their primitive life collapsed, and their lives turned into tragedy and misery, with wars and conflicts increasing due to competition for wealth.

This drove the wealthy to seek a means to satisfy the poor in order to establish a society based on a contract between them to preserve their wealth, eliminate wars, and obtain civil rights. Under this contract, each individual relinquishes all their natural rights to the community to establish the social and political order. According to Rousseau, this transition did not occur through force or conquest, as force cannot establish a lasting society; the ruler needs the continued consent and approval of the people to remain in power.[54]

This conception leads to important political consequences, including:

- The people are the source of political authority.
- Sovereignty is the right of the people alone, and it cannot be a personal right of the rulers; rather, they only exercise the manifestations of sovereignty.

[54] CF. DUVERGER. M, Op.cit, p. 07.

- The state is nothing but a contractual apparatus.[55]

Accordingly, the authority of the state, according to Rousseau's conception, remains an authority constrained by the general will of the following axes:

Section Two: The Pillars of the State

Scholars have unanimously agreed that the establishment of a state can only occur if three pillars are present: a population, a territory, and an organised political authority. Therefore, the state is defined as a human group that permanently resides over a specific territory under the rule of a particular political authority.

Branch One: The People

The existence of a human group is considered a fundamental condition for the establishment of a state. This group must possess certain characteristics, including its permanent settlement on the state's territory and its legal connection to it through citizenship and its agreement to live together.

The components that constitute a nation may be present in the people of a state, making them a single nation. In this case, the people and the nation coincide, as is the case in several countries around the world, especially in Western European countries like France, Italy, and Germany, which have recently achieved unity. And if we consider that the nation is a social phenomenon summarised in the existence of a group of individuals who are united by a spirit of

[55] Mohamed Maliki, The Concise Guide to Constitutional Law and Political Institutions, First Edition, National Printing and Publishing House, Marrakech, Morocco, 2001, p. 46.

cohesion and solidarity, and who are brought together by the desire to live together in a specific territory, as a result of the convergence of several factors such as religion, language, shared history, customs, culture, common destiny, and origin, then the nature of these bonds has led to the emergence of several theories that have conflicted over the interpretation of the origin of this socio-historical phenomenon the nation and the most important of these are the liberal theory and the socialist theory.

The liberal theory:

The liberal theory of the nation consists of two concepts: the subjective concept (CONCEPTION SUBJECTIVE). Objective concept (CONCEPTION OBJECTIVE).

A- The subjective concept:

This self-concept was built by the French school, which attributed the decisive factor in the formation of the nation to the will to live together; hence, it was called the voluntarist theory. Among the theorists of this school, we mention MICHELET[56], who likened the nation to a moral person with a soul (une âme). This concept was later adopted by ERNEST RENAN. who also considered that the common will to live is the spiritual principle of the nation, and thus it encompasses past, present, and future generations.

"It is noteworthy that these definitions are not legal definitions, but rather literary definitions that sometimes lean toward the poetic."

B- The objective concept:

[56] CF. DUGUIT. L, Traité de droit constitutionnel, tome 2, 3ème édition, Paris, 1928, p.202.

The objective concept of the nation is the concept adopted and defended by the German historical school, which relies in its definition of the nation on objective elements such as geography, language, religion, and particularly race. According to this conception, humanity is composed according to a racial hierarchy, with the pure Aryan race, which has preserved its purity, at the top of this hierarchy, namely the German race, or the German nation. This nation is composed of all the people who belong to this race thru blood and language. This perception is what justified the Nazi atrocities during World War II.

And regardless of the differing concepts of the nation, most countries today are formed by a people with a legal political connection rather than a nation in the sense of a human group united by language[57], religion, culture, and history.

And if some countries are formed from a single nation, then other countries are composed of several nationalities, as was the case in the former Soviet Union and is currently the case in the Swiss Confederation. Additionally, some of the Arab nation is distributed across several countries, such as the Arab nation spread over twenty-two countries in the Arab League for example, the Kurds are also distributed across several countries: Iraq, Iran, Turkey,…….)

II- The Socialist Theory:

Unlike the liberal theory, which considered the nation to be a group of

[57] In this example, see Article 91, Paragraph 12 of the Algerian constitutional amendment of 2020.

people bound by objective ties (such as blood, race, language, and religion according to the German school) or spiritual ties (the desire for communal living according to the French school), the Marxist theory considers the nation to be the product of historical development linked to the emergence of capitalism.

The Marxist perspective concludes that the economic factor is the strongest and most important in the formation of the nation. The economic life within the state's territory plays a crucial role in the cohesion of the members of the commercial human group and exchanges.

According to this theory, the nation did not emerge until the late Middle Ages, coinciding with the rise of a new class, the bourgeoisie. The latter aspired to find vast markets, which would be achieved after dismantling the small feudal entities and forming nations that spoke a unified language under a central authority led by a strong king, instead of the fragmented small feudal systems that governed by distributing the country into provinces and emirates ruled by princes and feudal lords[58].

And if the capitalist development since the 17th century has created a nation-state (état-nation) within territorial boundaries wider than the feudal domains, capitalism has evolved into global capitalism characterized by the emergence of multinational corporations, economic globalization, and the rise of international economic blocs.

[58] CF. BURDEAU.G,Droit constitutionnel et institutions politiques, L.G.D.J, Paris, 1969, p. 11

All these factors have led to the late 20th century witnessing a retreat of global capitalism from the concept of the nation-state due to its inadequacy in accommodating its economic expansion, which has begun to exceed the classical boundaries of the nation-state.

It is agreed that a state cannot exist without a human community living in stability and permanence within its territorial boundaries, so it is inconceivable to have a state without a people.

By "people," we mean a group of individuals settled over a specific territory, who are legally bound to this territory by nationality. With this definition, the population includes all individuals born in that territory, or foreigners who have obtained citizenship.[59]

The human element represents the first component in the establishment of the state, considering that the state is ultimately a means to organize the interests of the human group. In this regard, the following observations can be made:

- A specific and fixed number of people (the population) is not required to form and establish a state; there is no minimum or maximum number of individuals, as this number can be small or large[60]. However, it is worth noting that a large population can be a point of strength for a state on the international stage, especially if demographic growth is balanced with economic growth, as is currently the case in China. On the other hand, if a state's population

[59] Fouzi Oussidik, the previous reference, p. 63; Al-Amin Sharit, the previous reference, p. 54

[60] It may decrease to just a few thousand, as is the case in Seychelles with a population of 87,000, Monaco with 33,500, and Nauru with 13,000. It may also increase to over a billion, as in China and India. See, Hamdi Atiyah Mustafa Amer, "The Concise Guide to Political Systems," Al-Wafa Legal Library, Alexandria, Egypt, 2016, p. 22.

is small, it may need to import labor and many essential materials, and it may be vulnerable to foreign ambitions.

- It is not also a requirement for a state's people to be united by certain elements such as language, religion, ethnicity, shared history, or nationality. There are many countries where their populations speak multiple languages, such as India, Switzerland, Canada, and Sudan... There are other countries where the members of the population adhere to different religions, such as Egypt, Lebanon, Sudan, India, the United States of America, and Russia... There are also other countries that do not belong to a single ethnic origin and do not share any common history among their people, such as the United States of America and Russia.[61]

- Therefore, it is not necessary for a people to be a single nation; it may consist of part of a nation, as is the case with the Arab peoples or the two German peoples before reunification in 1990, or it may consist of several nations like the Indian people, or it may consist of a single nation like the Islamic nation.

- In the previous sense of the people, the latter differs in its social concept from its political concept, as it also differs from the state, and from another term, which is the population. And it is as follows:

• Distinction between the social people and the political people: The first type refers to a group of individuals who are subject to the authority of the state and enjoy its nationality without considering their age, origin, gender, financial and cultural level, mental state, and

[61] Mohammad Anas Qassem Jafar, the previous reference, p. 13

their ability to perform legal actions and engage in political activities. While the second type refers to the group of individuals who enjoy political rights and are entitled to exercise them, meaning it is the group of individuals who have the right to exercise political rights, such as the right to run for political office, the right to vote, or the right to hold public positions in the state. More specifically, it is the group of voters whose names are listed on the electoral rolls.

Accordingly, children and those deprived of political rights due to mental incapacity, such as the insane, or due to moral reasons, such as those who have committed crimes against honor, are excluded from this political definition of the people. Therefore, the political definition of the people is narrower in scope than its social definition.

• Distinction between the people and the nation: Jurisprudential opinions on defining the components of the nation have varied, leading to the emergence of several theories on this subject, each focusing on specific elements that it considers fundamental to the formation of the nation:

The German theory: This theory considers the nation to be the necessary result of objective elements such as geography, language, and especially race or ethnicity.

It has been criticized that this approach, although language is one of the factors that contribute to the formation and unification of nations, is not sufficient on its own to form them. This is evidenced by the fact that there are peoples who use more than one language and still form a nation, such as Switzerland and Canada. Additionally, some others,

despite using one language, do not form a single nation. Moreover, in today's world, there is no nation that can claim to be composed of a single race, except for some primitive peoples. Additionally, the strongest nations today are considered a mixture of different human races.[62]

The French Theory: Proponents of this theory believe that the element that distinguishes a nation from a people is not race, language, the will of kings, religion, or economic interests, but rather the desire and shared will of individuals to live together within pre-defined natural boundaries. This theory emerged as a response to the German theory and relies on two factors that contribute to the formation of a nation. A nation is a spirit, and the principle of the spirit consists of two elements: the shared past heritage rich in common memories as the first factor, and the individuals' satisfaction in living together. A nation is a will connected to the past, related to the present, and looking forward to the future, which generates solidarity among its members.[63]

The flaw of this theory is that the desire for a shared life is a personal and unstable idea because it is influenced by the interests and circumstances of individuals, which are subject to various directions. The idea of a shared spirit is not only present in the nation but can also be found in all human societies such as villages and cities, which

[62] Said Bouchaïr, the previous reference, p. 57; Fouzi Oussadiq, the previous reference, pp. 65-66.

[63] André Horio, the previous reference, p. 100; see, Jean-William Lapierre, Political Authority (translated by Elias Hanna Elias), 2nd edition, Oueidat Publications, Beirut, Lebanon, 1977, p. 56;

confirms its unsuitability as a foundation that can be relied upon in the formation of a nation.[64]

The Marxist theory: Its essence is that the foundation of nation formation and the driving force of social and political life lies in the unity of economic interests. Karl Marx believes that the development of every society has been nothing but a history of the struggle between classes, and that this struggle will lead to the dictatorship of the working class, which is considered a passage to a classless society[65].

The criticism directed at this theory is that, although the idea of economic interests plays a significant role in the lives of individuals and their unity, human life is not based solely on materialism; rather, it is influenced by moral factors such as language, religion, emotions, and shared history. Moreover, many historical events were not created by class struggle but were the result of conflicts between beliefs and religions.

We conclude from the above that the distinction between the state and the nation seems clear, as the term "political people".

Section Two: The Region

The territory constitutes the second essential pillar for the existence of the state, as it is necessary to have a defined land area for the people to settle on and to carry out their activities on it permanently.

This territory consists of the land, sea, and air domains over which the

[64] CF. BURDEAU. G, Droit Constitutionnel et Institutions Politiques, Op.cit. p. 19.
[65] CF. GHOZALI. S-A, Cours de théorie générale de l'état, O.P.U, Alger, 1983, p.84

state exercises its sovereignty, establishes its system, and enforces its laws. The state's territory is defined by natural borders or thru an agreement. The area of its territory is in millions of square kilometers (the United States, Russia, Canada), while other countries have areas that do not exceed a few dozen kilometers, such as the Republic of San Marino (located within Italy) (enclosed state) with an area of 21 km², and the Vatican City, which has an area of less than half a square kilometer.[66]

Despite these variations in the size of countries' territories, this does not affect the legal personality of the state. However, a small area can sometimes negatively impact its status among the countries of the world it is worth noting that the territory can be contiguous, meaning it consists of a single land area, or fragmented, meaning it consists of several land areas[67]. This is the case for countries made up of several islands such as Indonesia, Japan, Greece, etc. (the case of the Palestinian state as well)..

The territory is not limited to land only, but extends horizontally to include part of the maritime waters, and vertically to include the atmosphere and the subsoil. Thus, the concept of a state's territory extends beyond the land area or the geographical region where the people reside, to also include the maritime area, known as the

[66] CF. BURDEAU. G, Traité de Science Politique, Tome II, L.G.D.J, Paris, 1980, p 33

[67] The territory may expand, like Russia with 17 million km², the United States, Canada, and China with more than 9 million km², or it may shrink, like the Principality of Monaco with 2 km², San Marino with 61 km², and Malta with 316 km². The expansion or contraction of territory does not affect the establishment of a state from a legal perspective, but it may impact its existence from a political standpoint. Mohamed Rifaat Abdel Wahab, the previous reference, p. 19.

territorial sea, as well as the airspace that covers both the land and the territorial sea. Therefore, the territory of the state consists of three elements: land territory, maritime territory, and aerial territory.

1- **The land territory**: It is a specific area of land, bordered by natural boundaries such as mountains, seas, and rivers, or imaginary but regulated lines that are easy to refer to geographically, such as lines of longitude and latitude, or artificial boundaries like built walls and barbed wire.

The land territory does not only include the surface of the earth and the natural features above it, but it also extends to the underground. It is not a requirement for a state's territory to be a single connected land piece like Algeria; it can consist of numerous islands like archipelagic countries such as Japan or the Philippines. It can also be made up of distant land parts like the Palestinian, American, or Omani territories.

It is also not a requirement for a state's territory to cover a certain area; it can be large or small. Therefore, the connectivity, fragmentation, narrowness, or expansiveness of a state's territory has no legal effect on the establishment of the state. However, it is of great importance that the territory is stable and has defined borders.

2- **The maritime territory**: It refers to the waters located either within the state (internal waters) or the waters surrounding the land territory (external waters).

Therefore, the maritime territory includes both internal waters and external waters, which according to the Montego Bay Convention on the Law of the Sea of 1982, encompass the territorial sea, the

contiguous zone, the exclusive economic zone, as well as the continental shelf, in addition to the high seas, which are considered a common heritage of mankind.

3- **The airspace**: It is the totality of the aerial layers that rise above the land and water territories of the state, and the state has the authority to exercise full control over it without being bound by a specific altitude. Unlike the maritime domain, all countries are equal in possessing this aerial element of the territory without a fixed limit. Therefore, we find that countries do not allow foreign aircraft to pass over their territory without permission, otherwise it is considered an infringement on their territory, and they have the right to stop or shoot it down.

Interest in the airspace began at the start of the 20th century, marking the beginning of the aviation era. In 1919, the International Convention on the Regulation of Aerial Navigation was concluded in Paris. Then came the Havana Convention in 1928, which supported the first convention. In 1944, the Chicago Convention was established, affirming the sovereignty of states over their airspace and recognizing that "air is an element belonging to the territory of each state and subject to its full sovereignty, with the acknowledgment of five freedoms of the air that facilitate flight, landing, refueling, carrying and deboarding passengers, and loading and unloading cargo." Then, in January 1967, an agreement was concluded regarding the activities of states in exploring and using outer space, including the moon and other celestial bodies. Article One of the agreement

stated that "the exploration and use of outer space, including the moon and other celestial bodies, is for the benefit and interest of all countries." Article Two of the agreement also stated that "outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use, or by any other means."

In the same context, several trends have emerged attempting to explain the nature of the relationship between the state and its territory in general, with all its elements (land, sea, and air), which are as follows:

- The first approach: It goes toward establishing the state's right over its territory based on the idea of sovereignty, as the state's right over its territory is a right of sovereignty. However, this approach is criticized on the basis that the concept of sovereignty is only applied in relation to persons and not to things, and thus this sovereignty is extended to the individuals subject to the state and not to the territory.
- The second approach: It asserts that the state's right over its territory is a private property right governed by the provisions of civil law. However, this approach is also criticized because the idea of state private ownership of the territory, which necessarily includes absolute control, contradicts the recognition of individuals, whether nationals or foreigners, of private ownership rights over land and real estate, and the unlimited powers in exploitation and disposal that this ownership grants them.

The third approach: The prevailing opinion in jurisprudence is that the

state has a special type of ownership over its territory, whereby the state has dominance and supervision over the territory. Within this public ownership, individual properties are established, which the state recognizes and guaranties their protection according to the applicable legal system.

Section Three: Political Authority

Political authority arises when a group or body, or both, emerges from among the human community and is able to impose its will on the other members of the community, obliging them to obey and comply with it. Thus, the existence of political authority is what gives the state its final form and distinguishes it from other human groups.

The element of political authority is considered one of the essential sociological pillars and elements necessary for the establishment of the state. For the latter to exist, it is not enough for a human group (people) to settle and reside over a geographical area (territory); rather, there must be a political authority that organizes the relationships within this human group over its territory and its relations with other human groups located in other territories.

Political authority is defined as a rational and coercive power to which all members of the people are subject. It is the ability of the ruling class to impose their will on all members of the people, such that there are reasons that make everyone owe them loyalty and obedience.

It also refers to the ruling body or governing apparatus, which is the organization that makes decisions on behalf of all the individuals

constituting the community, implementing them as binding for all its members. These decisions regulate the behavior of the community and allow this authority to take any action required to manage the community's affairs and express their interests. In order to do so, it must be legal, meaning accepted by the governed through their consent. If force is its only support, it is considered actual authority.

Accordingly, the element of political authority is considered the fundamental pillar of any political organization, to the extent that some define the state by authority, saying it is an organization of coercive power. They believe that the element of submission to a political system or political authority almost surpasses other elements necessary for the existence of the state, because the state cannot function without the presence of authority to lead it.

However, there is no conflict whatsoever between the existence of political authority and individual freedom, because freedom can only be exercised properly in an organized society, so that the exercise of freedom does not exceed its limits and prevent other members of society from exercising their freedoms. Therefore, political authority is necessary to organize society because it establishes the law that regulates the behavior of individuals within the community, and it seeks to implement and protect it from any violation or deviation from its provisions, using its material and legal resources. Thus, there is a correlation between the concepts of authority and law.

The element of authority appears within the framework of the state, as it alone possesses the right to use the armed forces, unlike any other

groups, and it is also the only one that can impose its will on the other components of society through coercion if necessary. There is no authority greater than that of the state. The element of sovereignty is also manifested outside the framework of the state through its exercise of this sovereignty over its territory without any other state contesting it. It alone has the right to protect the state's borders from any external threat and to ensure the safety of its citizens both internally and externally.

The political authority is characterized by numerous features and characteristics that distinguish it from other forces present within the state's territory, including:

- Political authority is a supreme authority: Political authority is characterized as a supreme authority that supersedes all other authorities within the state, and no other authority in society, whether internal or external, is above it. Additionally, there is no intermediary authority between it and society.
- Authority with General Jurisdiction: The state's activities encompass all aspects of human life within the state. In addition to its traditional activities related to public order and external defense (the guardian state), it works to resolve disputes between natural and legal persons through the legislation it enacts and the legal means it possesses.
- The political authority is a central authority: it outlines the principles that govern the state and all its affiliated institutions. The authority of local or regional groups or the authority of the states within the union is subordinate to the central authority, and thus no other authority

participates in decision-making. In other words, unity of political performance. However, this political authority interacts abroad on an equal footing with similar authorities, considering that there is no authority above the state's authority, including the authority of international organizations.

- The political authority is a civil authority: The supremacy of civil authority over military authority is considered a firmly established principle in the traditions of modern states, because the state's authority in these circumstances is exercised properly and organized by civilian users, while military authority is created to face wartime conditions or at least national defense duties, remaining independent of civil authority but subordinate to it.

- Political authority is an authority that monopolizes physical coercion: The monopoly of political authority over military power means that the former is the one that establishes the latter, meaning that military power should always remain subordinate to political authority and at its service to maintain the security of the community both internally and externally. Its intervention to protect public order should only be by order of the civil political authority, and political authority should always remain in the position of leadership and policy. And in the event that the military takes over, it should be temporary, and it should end either by the military relinquishing power and handing it over to civilians, or by the military themselves being transformed into civilians.

Thus, the state monopolizes means of physical coercion such as the

army, gendarmerie, police, public force, judiciary, and intelligence services. It possesses the greatest material power that enables it to execute its orders with general jurisdiction, taking on the responsibility of protecting the territory from any external aggression or internal rebellion and providing security for individuals.

- Political authority is a permanent authority: it is independent of the individuals who hold it, because establishing the state as an institution that enjoys permanence requires its separation from the individuals of the rulers, and this separation can only be achieved by the state possessing an independent legal personality. And in order for the legal personality of the state to be distinguished from other legal personalities, it must be subject to an organized political authority.

The second requirement: The legal characteristics of the state

We aim, thru the study of the legal characteristics of the state, to provide a legal definition of it after we have sociologically defined it based on the material conditions for its existence (i.e., the people, the territory, and the political authority). According to the legal perspective, the state is considered a legal person of public law enjoying sovereignty. As we observe, this definition includes two essential points: the first relates to the concept of legal personality (first branch) and the second to the concept of sovereignty (second branch).

Section One: Legal Personality

The law applies to two types of persons: natural persons (i.e., individuals) and legal persons (i.e., institutions). Natural persons and legal persons are both considered legal entities.

And legal personality is a technique that allows for the protection of the rights of the individual or the group. Therefore, "Michaud" defined legal personality as "a center of socially protected interests or "organized legitimate interests." [68]Accordingly, legal personality is a tool that allows a group of natural or legal persons, who have common interests, to act in the legal sphere as if they were a single natural person. Thus, they become a legal entity with a name, properties, and assets (financial estate).

It has the right to litigate, the right to acquire rights and enjoy (Patrimoine) them in exchange for fulfilling obligations.

And among the examples of legal persons in public law, we mention: the state, the region, the district, the municipality, the hospital, the university, etc. etc. And among the examples of legal entities in private law, we mention companies, associations, clubs, etc. etc. In general, legal personality can be defined as the ability to possess the capacity to acquire rights and bear obligations.

Based on all this, legal scholars-especially Professor Maurice Hauriou-consider the state to be a legal person of public law. Just as there are natural persons (individuals) and legal persons of private law (companies) that manage capital and shares, the state, as a legal

[68] CF. ARDANT. PH, Institutions politiques et droit constitutionnel, 13 édition, L.G.D.J, Paris, 2001, p. 18 ; PRELOT. M et BOULOUIS. J, Op.cit, p.189.

person of public law, manages political authority. By virtue of this legal technique (i.e., legal personality), the state acquires the ability to act and perform actions with legal consequences and effects, similar to other natural and legal persons, such as individuals, joint-stock companies, and associations...

It means recognizing the legal personality of the state (that it is an independent legal entity from the individuals who exercise power), meaning that the state, by virtue of this legal technique, becomes the entity that holds political power. It also enjoys permanence and continuity so that those who exercise power do not disappear. And this is what the fundamental principle of public law means: the principle of state continuity: (governments come and go, but the state remains).

The permanent existence of the state results in several outcomes, including:

First: The treaties concluded by the state with other countries remain in effect, regardless of any changes in the state's form, its system of governance, or its representatives.

Secondly: The continuation of the laws issued by the state remains in effect despite any changes that may occur in the ranks of the rulers.

One of the most important consequences of recognizing a state as a legal person is its subjection, like individuals, to all applicable laws.

Section Two: Sovereignty

The statement that the state is a sovereign person refers to two different meanings: on one hand, it pertains to sovereignty within the

state, which is the issue of identifying who holds power within the state. In other words, knowing who the individuals designated by the constitution to exercise power are (the head of state, the government, the parliament) - and this is what we will address later.

On the other hand, it concerns the sovereignty of the state[69], which is the only thing that matters to us here. To fully understand the issue of state sovereignty, we must first study the concept of sovereignty, then its manifestations, and finally its limits.

-The concept of sovereignty:

According to J. Laferriere's definition (sovereignty means "original and supreme legal authority"), it becomes clear from this definition that sovereignty possesses three characteristics that manifest in the legal, original, and supreme nature of political authority.

A- **Sovereignty is a legal authority**. This means that the state is not merely a phenomenon of power, but that authority is based on a "legal idea" (Une Idée de droit) (i.e., on the idea of a certain type of social organization) according to rules established in advance and accepted by the members of the state.[70]

B- **Sovereignty is an original authority**: In addition to being a legal authority, sovereignty is characterized by being original (originaire), meaning it derives its authority from itself and not from any other authority.

[69] Ibrahim Abdel Aziz Cheha, the previous reference, p. 82; Fouzi Oussadek, Al-Wafi in Explaining Algerian Constitutional Law, Volume One: Theory of the State, Third Edition, University Publications Bureau, Algeria, 2009, pp. 18-21.

[70] Yves guichet, droit constitution, p,123

C- Sovereignty is a supreme authority: This means that (the authority of the state is superior to all other authorities)

As the supreme authority that imposes its will on everyone within the state's borders. It does not recognize, on the internal level, the existence of any force higher than it, equal to it, or even competing with it. In this sense, sovereignty is defined as the power that is not subject to any other power.

II Aspects of Sovereignty:

The concept of sovereignty manifests in two aspects: internal sovereignty and external sovereignty.

*The internal sovereignty of the state means the state's ability to self-organize (un pouvoir d'auto-organisation) by determining its political system itself, controlling its resources and population, and monopolizing the authority of coercion and armed force.

The essence of state sovereignty is embodied in the saying of German legal scholars: "The state is the authority of authority." By virtue of this comprehensive authority, the state establishes its constitution, enacts its laws, determines its system of governance, organizes its administration, and manages other internal state affairs.

* As for external sovereignty, it is manifested in the state's independence and complete freedom in organizing its relations with other countries. And from the principle of state independence arises another principle considered one of the fundamental principles in public international law, which is the principle of legal equality among different states.

But in practice, most countries experience a legal or actual limitation on their sovereignty. And if the legal restriction is achieved by the will of states thru the conclusion of treaties in which the contracting parties accept mutual concessions of sovereignty, the actual restriction is imposed by external pressures and unequal treaties. Moreover, the dominant powers in today's world seek to institutionalize this actual restriction by introducing what is called the right of intervention (le droit d'ingérence): the right of humanitarian assistance (d'assistance humanitaire) enshrined in the United Nations General Assembly resolution dated December 8, 1988.[71]

It is also worth noting that in the last decade of the twentieth century – which is witnessing significant transformations, most notably the shift from an industrial civilization to an information and media civilization, the globalization of the economy, and the emergence of media and technological wealth and economic blocs – the traditional concept of sovereignty is declining. Sovereignty is no longer linked to possessing natural economic resources (as in third-world countries) but rather to controlling knowledge and technology, and the high level of education and scientific research in the state (as in the case of Japan). Additionally, the traditional sovereignty – which meant the state's control over its media space – has fallen due to the media revolution and the use of satellites, which have restricted sovereignty in the airspace and made most countries of the world subject to

[71] See, Ahmed Mufid, The General Theory of Constitutional Law and Political Institutions, A Study in the State, Constitution, Democratic Governance Systems, and Political Participation Mechanisms, Second Edition, Anfa Print, Fez, Morocco, 2015, p. 24.

foreign powers controlling media technology and, consequently, the audiovisual space of the states.

Among the indicators of the decline of the traditional concept of sovereignty is the voluntary and collective abandonment by a group of countries of some of their sovereignty components to establish a regional bloc that serves the higher interest of that very sovereignty. An example of this is the Maastricht Treaty, which established European unity in 1993 and included the creation of a unified European process. In this context, countries relinquished one of the most prominent aspects of narrow sovereignty, which is the issuance of currency, the freedom of movement of people, money, and property, and granting the citizens of the member states the right to vote and elect local councils.

III Limits of State Sovereignty:

If state sovereignty whether domestically or internationally is described as absolute, meaning it is not subject to any constraints other than its own will, the question remains: how can the state then be subject to the law?

This question received two different answers from the philosophical-legal doctrine[72].

The first answer: It was provided by the theory of "self-limitation (théorie de l'autolimitation)" endorsed by German jurisprudence led by Ihering, Laban, and Jellinek. This theory holds that the state is the

[72] Said Bouchaïr, previous reference, p. 106; Abdel Hamid Metwally, Saad Asfour, and Mohsen Khalil, previous reference, p. 33; Tharwat Badawi, previous reference, p. 37; André Horiot, previous reference, p. 315.

sole source of law (Ihering) since it is the only entity that possesses the authority of coercion, meaning the power to issue commands. This authority constitutes a self-right of the state, which distinguishes it as a power. And since the state is the source of the law. The law cannot constitute an external pressure for it, meaning an objective limitation, because it is the one that creates the laws regulating its activities and excels in organizing its internal affairs.

But this does not mean that the state's authority is absolute; rather, it is the state that, of its own volition, imposes the legal restrictions it deems appropriate for its actions. This is because its special status—as a controlling force—does not allow it to be subject to the same rules that apply to all individuals. Therefore, the state is subject to its own special law: administrative law, for example, which is fundamentally based on the idea of self-restraint.[73]

In addition to this, the state cannot, without undermining the foundations of its institutions, remove the legal system that constitutes its essential pillar. Moreover, it is spontaneously induced to respect the law. Proponents of the self-restraint theory attribute this respect to two reasons: the first reason is that the state finds its "interest" in it, as the existing law will be more respected if the state is the first to adhere to it. And the second reason is related to social pressure, or as Ihering calls it, "the national sentiment for the law," which compels the state to respect the law.

*The second answer is the one provided by the theories of self-

[73] Said Bouchaïr, the previous reference, p. 95

limitation outside the will of the state (les théories de l'autolimitation). According to the scholars of this school of thought, the legal rule does not originate from the state but is a principle that precedes its existence and is superior to it: God, nature, society. The state, therefore, is considered merely a technical means to express legal rules whose origin lies either in religious or social principles. Based on this premise, these theories (the theory of natural law and the theory of social solidarity) see that the state is compelled to adhere to the law because its role is limited to observing it and bringing it into existence. In this context, for example, the theory of individual rights (which forms the main intellectual current of the natural law theory) sees that "the rights and freedoms of individuals precede the existence of the state." Therefore, the laws enacted by the state should not supersede or contradict them.

In reality, all these intellectual attempts aimed at finding a conciliatory solution to the equation of sovereignty and freedom remain relative. In fact, the subjection of the state to the law fundamentally concerns the will of the state and its convictions regarding it The third requirement: Functions of the state[74]

The role of the state, according to the philosopher "Thomas Aquinas" (d'Aquin saint Thomas), is to seek the achievement of the "common good" (le bien commun). This concept is currently known as the public interest (L'intérêt général). And to achieve that, the state

[74] Sharqawi, Souad, Political Systems and the Contemporary World (State, Institutions, Freedoms), Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2007.

undertakes several functions that can be classified into political functions and legal functions.

Section One: The Political Functions of the State

These functions are characterized by their change according to the evolving concept of the state's role. Capitalist states have undergone three phases since their establishment in the 18th century to the present day: the phase of the "night-watchman state" (from the 18th century to the early 20th century), the phase of the "welfare state" (from the 1930s to the 1970s), and the phase of the "functional state" (from the 1970s to today).

I-The Gendarme State (L'Etat – gendarme):

It is the state that existed until the end of World War I. The role of the night-watchman state, as its name suggests, is limited to maintaining internal and external security without intervening in economic and social fields. The neutral role of the night-watchman state is encapsulated in the famous saying "Let it be, let it pass," and it also takes on the function of overseeing the judiciary and protecting private property.[75]

II-The Welfare State (L'Etat providence):

The crisis situation resulting from the 1929 economic crisis and the two world wars led to strengthening the role of the state in order to rebuild, restructure the economy, and reform social balances.

This new approach will lead to the replacement of the night-watchman state with the welfare state, which is expected to intervene

[75] André Horiot, op. cit., p. 106.

in the economic field by establishing a public sector composed of economic and commercial public institutions that manage economic activity alongside the private sector. It was also expected to provide various social services such as health and education, and to create a social safety net to protect individuals and reduce class disparities.

The transformation of the night-watchman state into a welfare state is not only due to economic and social reasons, but also due to political reasons that complement the confrontation with the rising socialist thot and respond to the labor struggles that threatened the reproduction of the capitalist system.

-IIIThe Functional State (L'Etat Fonctionnel):

The jurist "Georges Burdeau," the proponent of the concept of the "functional state," believes that industrial societies witnessed a qualitative transformation in the early 1970s regarding the nature of their systems and the subject of politics.

This transformation, particularly regarding the state, manifested itself in the fading of conflicting ideologies vying for power and control over the state. One of the most prominent signs of this fading is the emergence of a new type of governance, the "pragmatic managers" (practical ones), who have replaced the traditional politicians in managing state affairs.

Which replaced the political art in managing state affairs. The pragmatic managers and accordingly, the state has become an efficient bureaucratic and technocratic machine tasked with the fundamental function of better governance for the benefit of all.

With this new approach, the role of the state is no longer to impose a set of values on society, but rather to work on forming a society based on homogeneous consensus to overcome the concept of a society based on conflicts.

For all these considerations, the state is referred to as "the function" in light of its new role, which primarily consists of securing society against the material and moral damages resulting from the capitalist system.[76]

Section Two: The Legal Functions of the State

The legal functions of the state include the functions of legislation, execution, and judiciary. These constitutional functions collectively represent the material expression of state sovereignty.

I-The legislative function:

From a formal perspective, the legislative function is the function performed by the body that constitutional law recognizes as the legislative body tasked with enacting general laws. In this sense, all actions taken by the legislative body fall under the legislative function. From this formal perspective, the law is defined.

That is, by referring to the body that enacted it (organic criterion) according to the organic criterion (the law) (the parliament).

But if the formal definition of the legislative function is correct, it remains an incomplete definition because it does not reflect reality. In reality, the legislative function is a task that involves both Parliament and the government, so this function is no longer defined solely by the

[76] CF. HAMON. F, TROPER. M, Op.cit, p. 72.

organic criterion. But also by referring to the material criterion, that is, according to the nature of the content of the rules as a general and abstract rule, regardless of the legal body (La loi) that enacted it, and accordingly, the law is defined.

Enacted by Parliament or the government.

II.The executive function:

It is the function performed by the government, which consists of implementing laws thru legal acts (Actes juridiques) that are either of a general nature, referred to as regulatory acts (Actes réglementaires) (in Morocco, these regulatory acts are called decrees or decisions); or thru personal (or individual) acts (Actes individuels) such as a requisition decision (Réquisition), an expropriation decision, or an employe appointment decision...

-III The judicial function:

This function is entrusted to a judicial body independent of the government and the parliament, which resolves disputes in accordance with the law.

Section Three: The State's Subjection to the Law

The actions of the state in the modern era are subject to the constraints imposed by the law, which has become a constitutional principle. By this, we mean the subjection of rulers and all state apparatus exercising authority to the constraints imposed by the law, just like any other individuals, until it is amended or repealed according to pre-defined procedures. This is in accordance with the rules set by the constitution that restrict the actions of public authorities, define their

competencies, and clarify the rights and freedoms of individuals.[77]

Given the significant role the state plays in the creation and application of law, its adherence to and compliance with the law was not an easy matter. The state is fundamentally an authority, and it is the nature of every authority to resist any constraints. However, the gradual establishment of the constitutional system ultimately led to the eradication of these practices, considering that this development did not happen in an instant and did not stabilize definitively except with the state's own consent and approval.

Therefore, in order for a state to be called a legal state, all governing bodies within it must adhere to and comply with the prevailing legal rules, just like the governed. This means that all aspects of the state's activities must be subject to the law, whether in legislation, execution, or judiciary. However, if the state deviates from the requirements of the law or works to circumvent it, it is considered an illegal state, and consequently, an undemocratic state.

To explain and justify the subjection of the state to the law, a set of theories emerged. A set of elements and components that distinguish

[77] The principle of the state being subject to the law has evolved through the different stages that the state has gone through. In the era of the ancient state, it was not subject to the law, and the supreme authority was not bound by any constraints, as in religious theories where rulers were considered gods with absolute power. This situation did not change until the emergence of Christianity and the values and ideas it brought, which recognized certain rights for individuals and emphasized the necessity of respecting them and ensuring equality among them. With the advent of Islam, the Islamic state was the first to be governed by law, making people free and equal among themselves. Islam also recognized the rights and freedoms of individuals that the state could not infringe upon. Therefore, the Islamic state was the first legal state in history, as it was based on clear laws to which both rulers and the ruled were subject. Refer to: Ma'ifi La'aziz, the previous reference, p. 22.

the rule of law state from others has also emerged, which are the guaranties of the principle of the state's subjection to the law.

1- Theories explaining the principle of the state's subjection to the law: The prevailing opinion in modern constitutional jurisprudence is to restrict state sovereignty and to require its subjection to the law in general and the constitution in particular, because although state authority is sovereign, meaning that the will of the state is supreme and its power is the strongest, it must still be subject to the authority of the law in its broadest sense so that individual rights are not lost. But the jurisprudence differed regarding the justification for the basis of that subjection, so several philosophical and legal theories emerged attempting to explain the principle of the state's subjection to the law, the most important of which are:[78]

A- The Theory of Natural Law: Proponents of the theory of natural law argue that there are higher legal rules that transcend positive law. These legal rules predate the existence of the state and are an objective result of the use of reason and sound logic. They are an expression of absolute justice. Since the positive legislator must adhere to the provisions of natural laws when enacting legislation, considering that these laws are eternal rules applicable at all times and places, the state must act in all its affairs according to the dictates of natural law.

Despite the historical role that this theory has played in enshrining

[78] CF. DUGUIT. L, Op.cit., pp. 200 et S.

individual rights and freedoms. It has faced several criticisms summarized in the fact that it does not constitute a legal constraint on the will of the state, but rather amounts to a moral or political constraint. This is because a rule does not become legal unless a specific material penalty is determined to ensure its enforcement, and the state alone possesses the authority to impose and confer executive power on the rules governing individual behavior and their relationships with one another.

B- Theory of Individual Rights (Natural Rights): This theory holds that there is a set of rights and freedoms enjoyed by individuals, which are eternal and fundamental principles that were born with humanity and stem from it as a social being entering into social relationships with others. They precede the existence of the state and transcend it, which cannot infringe upon them. The emergence of the state is only to protect these rights. Since these rights precede any political organization, they fall outside the state's authority. Consequently, the state is bound by these rights, and any infringement upon them is prohibited. Rulers must respect them, especially when enacting laws regulating individual conduct, and these laws must not contradict the principles of natural law.

However, this theory has also faced several criticisms, as they deny the existence of what is called natural rights for a simple reason: humans have never lived in isolation, but have always lived within the framework of a community. Therefore, it is illogical to claim the existence of rights within the framework of the community, and

consequently, it is illogical to claim the existence of natural rights for the individual prior to their joining the organized political community. It is also impossible for an individual to have rights if they have indeed lived in complete isolation from the community, because the existence of rights can only be conceived in relation to other individuals. Moreover, these ideas were the reason for unleashing economic freedom and limiting the role of the state, which resulted in blatant exploitation of the poor classes by the rich.

C- The Theory of Self-Determination: The essence of this theory is that the law is enacted by the state and binds it at the same time as it binds the members of society. The state must act in accordance with the law, respect it, and not exceed it. This means that the state must submit to and adhere to the provisions of the law it enacts in all its actions and deeds. There is no contradiction in this submission with the principle of state sovereignty, considering that the concept of sovereignty does not mean that the state's authority is absolute and without constraints or limits. It is also unacceptable and illogical for the state, which enacts the laws, not to adhere to the provisions of these laws while obliging individuals to comply with all their stipulations.

Despite the sound logic that this theory relies on, it has been criticized for granting the state the right to deviate from the law it enacts, thereby acknowledging its authority to amend and repeal the law at its discretion. Some others have doubted the possibility of the state being subject to the law it enacts of its own free will, considering that the

constraint left to a person to bind themselves by their own will and choice is not, in reality, a true constraint, and this applies to the state as well. Moreover, the state does not bind itself by its will because the law precedes its existence and is created by a force greater than itself, and it is based on legal foundations.

2- **Guaranties of the Principle of the State's Subjection to the Law (Components and Elements of the Legal State)**: If the system of the legal state, or the system of the state of law and justice, requires the necessity of the state's subjection in all its actions, decisions, and activities to the law, meaning the necessity of the commitment and subjection of all state authorities-legislative, executive, and judicial-to the provisions of the law, then describing a certain state as a legal state or vise versa requires the availability of a set of elements or components.

The provision of all these components and elements makes the system of the legal state an ideal system. However, the omission of one of these components does not negate the state's subjection to the law, nor does it strip the state of its legal character. It only means that the system of the legal state in its ideal or model form is not yet complete. Therefore, legal scholars agree on a set of guaranties represented in:[79]

A- The Constitution: There must be a written constitutional document that defines the rules for exercising power in the state, and all authorities must respect the principles contained in this document;

[79] Tharwat Badawi, the aforementioned reference, p. 134 and following; Ibrahim Abdel Aziz Sheha, Political Systems and Constitutional Law.

otherwise, their actions will be considered unlawful. It specifies the jurisdiction of each authority and establishes rules that guaranty the rights and freedoms of individuals. The constitution forms the pinnacle of the legal system and hierarchy in the state; it supersedes all other legal rules, and these latter rules, regardless of their source, must not contain anything that contradicts the provisions of the constitution, otherwise, they will be deemed unconstitutional.

However, the constitution, which is a true guaranty of the rule of law and the state of law, should be drafted in a democratic manner, and it must be adopted in the same way.

B- The principle of separation of powers: The principle of separation of powers necessitates the independence of each of the three branches of government in their respective jurisdictions, as the convergence of these powers into a single entity leads to tyranny. The legislative authority must be independent in enacting and drafting laws, while the executive authority must be independent in implementing the laws enacted by the legislative authority. The judicial authority is responsible for applying the law in the disputes brought before it, protecting rights and freedoms, and ensuring judicial security. However, this organic and formal separation between the authorities does not negate the possibility of cooperation between them, especially between the legislative and executive branches. As for the judiciary, it must remain independent in all cases to uphold the principle of justice.

And if the separation of powers is achieved in this manner, each

authority will stop the other if it attempts to encroach on its competencies or exceed its limits, as the famous philosopher Montesquieu expressed in his book "The Spirit of the Laws" by saying, "Power checks power." He also said that "absolute power is an absolute corruption, and therefore it must be organized, separated, and distributed among different bodies to ensure the establishment of a legal state."[80]

C- Principle of the Hierarchy of Laws: Legal rules within the framework of the state's legal system are subject to a hierarchical order, arranged according to the strength and legal value they possess. The lower rule may not contradict the higher rule. Constitutional rules come at the top, followed by legal rules issued by the legislative authority, then decrees and regulatory decisions issued by the executive authority, and at the bottom of the hierarchy are individual administrative decisions.

Therefore, the principle of the hierarchy and sequence of legal rules from top to bottom is one of the most important elements and components of the rule of law state.

D- Rule of Law: The rule of law means that the executive authority is subject in all its legal actions or material acts to the provisions and rules of the law established by the legislative authority. This matter is considered one of the most important guaranties for the establishment of the rule of law, and the reason for this is that the law is issued by the parliament, which represents the general will. All individual

[80] Basyuni Abdel Ghani Abdullah, the previous reference, p. 165.

actions issued by the executive authority must be based on general and abstract rules established by the parliament. This serves as a guaranty to achieve the principle of equality among individuals and to protect their rights and freedoms on one hand, and as a guaranty to establish the rule of law on the other hand.

E- Judicial oversight: The exercise of effective judicial oversight by the judiciary over administrative actions is a fundamental guaranty for the establishment of the rule of law. This is because it provides a real guaranty and legal protection for individual rights and freedoms against any abuse by the administration, whether by annulling administrative decisions or compensating for the damages caused to the litigants.

Judicial control over administrative actions is exercised solely by ordinary courts in countries that adopt a unitary judiciary system, as is the case in Anglo-Saxon countries. It is exercised by a specialized judicial authority, which is the administrative judiciary, as is the case in France, where the administration, being part of the executive authority, expresses its will, and the specialized judiciary—the administrative judiciary—examines the legality of its actions. However, in these countries, the ordinary judiciary also monitors the administration's activities when they pose a threat to the rights and freedoms of individuals.

The actions of the legislative authority are also subject to oversight, which may be carried out by a judicial body as in the United States, or by a political body as practiced in France. This oversight is called the

review of the constitutionality of laws, and it is considered one of the most important principles on which the rule of law and state is based.

H- Individual and collective rights and freedoms: The legal state system requires the recognition of individual rights and freedoms, the protection of these rights and freedoms, their guaranty, and the prohibition of their violation or infringement. Human rights and public freedoms constitute a constraint on the authority of the state, which must work to respect them, not to override them.

Accordingly, a state that does not recognize human rights and freedoms, nor works to respect and guaranty them in order to achieve human dignity, cannot be described as a state of law and cannot be recognized as a legal state, because the latter only exists to ensure and protect human rights and public freedoms.

And political opposition: Political party pluralism in the state is against public opinion.

Section Two: Forms of the State

Countries are generally divided, in terms of the form of their political structure, into two main types: unified or simple states, and composite states.

The first requirement: The unitary or simple state: (L'Etat unitaire ou simple)

Section One: Characteristics of the Unitary State

The unified or simple state – as its name suggests – is characterized by the simplicity of its constitutional structure, where there is a single authority represented by a single legislative body that enacts laws

applicable throughout all regions, a single executive authority, and a single judicial authority. Despite the current global trend toward the consolidation of states and international unions for economic and "geo-strategic" reasons, the vast majority of countries in the world are unified states like Morocco, Egypt, Tunisia, Algeria, France, Spain, etc. etc.

It is worth noting that the character of unity and simplicity in states does not contradict the possibility of dividing the country into administrative districts or regions, where elected local bodies assume certain specific authorities of an administrative, economic, social, or cultural nature. The unified state may adopt the method of "centralization," "decentralization," or "regionalization" without these methods conflicting with the principle of state sovereignty, as they do not pertain to the political system of governance, but rather to the manner of exercising the administrative function.

Section Two: Methods of Organizing the United State

The vastness of the region, the increase in population, and the requirements of local democracy for direct management of local affairs have led the unified state to transition, in managing its internal affairs, from a centralized system to decentralization and then to regionalization.[81]

1- The centralized unitary state (L'Etat unitaire centralisé)

[81] Mouloud Didan, the previous reference, p. 54; Said Bouchaïr, the previous reference, p. 121; Mohamed Rifaat Abdel Wahab, the previous reference, p. 42; Mohsen Khalil, Political Systems and Constitutional Law, the previous reference, pp. 71-72; Fouad Al-Attar, the previous reference, pp. 143-144; Tharwat Badawi, the previous reference, pp. 74-76; Taima Al-Jarf, the previous reference, p. 151; Mohamed Kamel Leila, Constitutional Law, the previous reference, p. 109.

The unitary state is considered centralized (when the administrative function is concentrated in the hands of the central authority in the capital).[82]

Thus, the capital becomes the source of all political and administrative decisions, whether national or local, such that there are no local administrative authorities (governor, pasha, or leader) or elected authorities like local councils to manage local affairs. And this administrative model forms the first image of the system of administrative centralization.

(Administrative centralization). It is called "administrative centralization" (La concentration administrative), but this form of centralization remains theoretical due to its difficulty in implementation and its numerous flaws, particularly the excessive concentration of power and the state's congestion with the numerous files that need to be processed.

As for the second form of administrative centralization, it is "administrative deconcentration" (La déconcentration administrative), which means recognizing some ministry employes with the authority to make certain decisions at the local level in order to manage local And if the decentralization approach somewhat alleviates the burden of central governance, it does not reduce the centralized nature of the

[82] It is worth noting that, regarding the form of the state, we can look at it from two perspectives: a political perspective and a legal perspective. From a political perspective, countries differ in terms of the form of governance and the structure of political institutions (monarchical, republican...), in terms of the relationships between authorities (parliamentary, presidential...), and in terms of the socio-economic system of the state (liberal state, socialist...). From a legal perspective, there are several differences and legal forms of states that public law scholars have traditionally divided into simple and compound states.

unified state, nor does it involve citizens in managing their local affairs. Therefore, the unified state adopted a decentralization system, which is considered the first building block in the construction of democracy.

(L'état unitaire décentralisé) -

The state becomes decentralized when it decides to grant part of its administrative authority to public institutions or locally elected bodies with legal personality, under the administrative supervision of central authorities administrative decentralization (la décentralisation administrative) takes two forms: service-based decentralization (décentralisation par services) and territorial decentralization (décentralisation territoriale).

Administrative decentralization enriches (the recognition of a public service with a type of autonomy) so that it has a kind of flexibility in managing its affairs, making it efficient and effective. As for territorial decentralization, it also requires the recognition of self-governance in the administrative and financial domains of the state's administrative circles, so that local territorial (or regional)[83] communities make local decisions thru authorities and bodies elected by the residents. In this context, territorial decentralization is considered a protective barrier against the concentration of power, which often leads to an authoritarian regime it is worth noting that the autonomy enjoyed by local communities and public institutions is merely administrative independence, subject to state oversight within

[83] CF. FAVOREU. L, et autres, Droit constitutionnel, Dalloz, Paris, 1998, p 472

what is known as tutelle, meaning prior or subsequent state control over the actions of communities and elected individuals. The goal of this oversight or functional decentralization or education is complete independence, freeing itself from the central authority's guardianship, transforming administrative decentralization into political decentralization, meaning a complete separation.

To deepen administrative decentralization, some countries adopted the principle of regionalism[84].

1-The unified state adopting regionalization (la régionalisation)

The region (la région) is considered a form of local organization that is more advanced than decentralization in terms of the degree of "autonomy" in managing local public affairs. This is because the state adopting regionalism allows its regions, in addition to administrative independence, a degree of political independence.

Despite recognizing the region's type of political independence, the region is not considered a separation from the unified state; rather, it is a special framework imposed by economic and "socio-political" conditions.

Economic considerations are represented in the limited capabilities of small local communities and the necessity to create larger territorial groups that encompass a homogeneous area. As for the political reasons, they are summarized in (the unified state’s effort to contain cultural or political demands of minorities or regions with specific

[84] See, Massoud Chihoub, Foundations of Local Administration and Its Application to the Municipality and Wilaya System in Algeria, University Publications Bureau, Algeria, 1986, p. 91.

characteristics) before they turn into separatist movements that threaten the unity of the simple state (like "Euskadi" in Spain, for example).

Several European countries adopted the concept of regionalism since the 1970s, such as France, Italy, Spain, and England. In Morocco, the principle of regionalism was adopted following the constitutional revision of 1992 and is currently affirmed in the 1996 Constitution.

The second requirement: the composite state (or federal state): (Composite State)

Composite states refer to those that are linked by a type of union, under which the whole is subject to a common political authority.

This connection (or union) takes several forms, including the ancient forms, which are of historical significance only due to their extinction, namely the personal union and the real union.

The personal union is (a union between two or more states under a single presidency while each state retains its internal and external sovereignty). The appearance of unity is only seen in the unity of the head of state, where there is one head for all the states in the union.

As for the actual union, it is (a union around one president who has the right to preside over all member states concerning the management of foreign affairs and defense).

Thru this definition, it becomes clear that the actual union resembles the personal union in the characteristic of having a single presidency for the member states, but it differs in that the member states of the actual union retain only their internal sovereignty.

As for the modern forms of composite states, they are represented in two main forms: confederation and federation.

Confederation of States: (la confédération d'États)

The confederation refers to a union between two or more states based on a treaty concluded by the member states and ratified by consensus, with each state retaining its independence, both externally and internally.

According to the treaty establishing the confederation, the countries forming this union commit to achieving common goals such as ensuring their security and protecting their safety, or achieving economic interests among themselves. To achieve these goals, the confederation creates joint bodies that include all parties and consist of a council of heads of state and parliamentary and governmental bodies that make their decisions by consensus, leaving the implementation to the goodwill of each member state. This is because the confederation is not a state above states, and what confirms this is that any state can withdraw from the confederation whenever it wishes, and each state has the authority to object to the decisions resulting from the union's institutions. Examples of countries united in a confederation (or treaty) include the Arab Maghreb Union (Marrakech Treaty signed on February 17, 1989), the Arab League (1945 Charter), the European Coal and Steel Community, the Organization of African Unity, and to some extent, the European Economic Community, which represents a more advanced model than the confederation and is closer to a federation due to the development

it has undergone since its establishment by the Rome Treaty in 1957.

2-The Federal State:

Unlike a confederation, which is considered a "union of states," a federation is considered a "composed state." A federation is a union of two or more states that merge into a single federal state, which holds all external competencies in the name of all members and also manages part of the internal affairs of the member states. In contrast to a confederation, which is established by an international treaty, a federation is established by a constitution. Therefore, this type of union is one of the important subjects addressed by constitutional law. And to understand the aspects of the federal union, we will study the following points: the emergence of the federal union, its organization, the distribution of its powers, and how it comes to an end.

A-Formation of the federal state:

The establishment of a federal state is limited to two main methods. The first method involves the merger of several independent states to form a federal state. This method is known as the joining method and is the supporting method in the emergence of the federal form. The case of the American and Swiss federal unions.

As for the second method, it occurs when a unified state disintegrates into small states that decide to obtain their self-independence while affirming their desire to maintain links between them and the separated states, leading to the transformation of the unified state into a federal state. This is the case in Brazil, which was a unified state and transformed into a federal state in 1857, as well as Russia, which

was a unified state and transformed into a federal state twice: the first time between 1924 and 1991 within the Soviet Union[85].

This method of establishing federalism is called the method of separation (fédération par ségrégation).

Federalism varies with the distribution of nearly twenty federal states in our time (Russia, the United States of America, Germany, Switzerland, Argentina, India, Australia, Canada, Nigeria, the United Arab Emirates), yet they share general structural characteristics thru the study of federal state organization and thru the study of methods of distributing competencies between the federal state and the member states involved.

B- Foundations of organizing the federal state:

The foundations of the federal state organization are summarized in two basic principles: the principle of self-governance and the principle of participation.

These principles aim to reconcile two conflicting objectives: granting the federal state the means of governance to perform its defensive, diplomatic, and economic tasks, without infringing upon the internal jurisdictions of the states.

1-Principle of Autonomy:

This principle means the freedom of the states (or provinces) under the federal state to establish their own constitutions and legislations,

[85] This union is thus established thru the joining of two or more states to merge into a single state that possesses international legal personality, and consequently, the international personality of the states entering the union ceases to exist. The actual union state uniquely undertakes the task of exercising all forms of external sovereignty that the member states of the union enjoyed, and it has a single president.

limited only by the powers specified in the federal constitution and recognized by the federal authorities, such as defense, foreign affairs, and currency... According to the principle of the states' autonomy, each state has its own government, parliament, and judiciary. In the event of any dispute regarding the distribution of powers between the federal state and the constituent states, recourse is made to a Supreme Federal Court to resolve disputes over the interpretation of the federal constitution.

2- Principle of Participation (principe de la participation):

This principle means the right of the constituent units of the federation to participate in directing the general policy of the federal state. This participation is manifested at the level of both the executive and legislative branches.

On the legislative authority level, all federal states adopt a bicameral parliamentary system, which entails the establishment of two parliamentary chambers. One of these represents the United States of America. The American Parliament (or Congress) consists of two chambers: the Senate, which represents the states equally with two members from each state regardless of its population, satisfying the smaller states that make up the union, and the House of Representatives, which represents the people of the federal state based on the population of each state[86].

[86] Said Bouchaïr, the previous reference, p. 127.
Examples of confederate or confederational unions include the Arab Maghreb Union, which was established in 1989, the American Confederation in 1781, and the German Confederation from 1815 to 1866. The Arab League, which was established under the charter signed in 1945

As for the executive authority, we find that the participation of the states in it varies according to the form of the federal state's constitution. If this system is presidential, as is the case in the United States of America, then participation is manifested in the election of the president of the federal state by the entire population of the federal state. However, if the federal system is parliamentary, as is the case in Germany, the executive authority emerges from the parliament and represents its majority. In the case of a federal state adopting a council system like the "Swiss" model, the executive authority is held by a Federal Executive Council that represents all the cantons (provinces in Switzerland) and is limited to executing the decisions of the federal parliament.

C-Methods of distributing powers in a federal state:

The powers are distributed between the federal state and the states according to one of the following three methods:

- The first method: The federal constitution explicitly enumerates the powers of the states, and anything not expressly granted to the states is considered under the jurisdiction of the federal authority. In this case, the latter becomes the holder of general jurisdiction, meaning that the jurisdiction of the federal state is the norm, and the jurisdiction of the states is the exception.

And this method was adopted by states transitioning from simple

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by a group of Arab countries, retains full independence and sovereignty for all member states at both the internal and external levels. The charter also stipulates a range of areas for cooperation and joint work for the benefit of the Arab nation. Ibrahim Abdel Aziz Sheha, Political Systems and Constitutional Law, the aforementioned reference, p. 171.

states to compound states (such as Canada and India, for example).

- The second method: It is the opposite of the previous method, where the federal constitution enumerates the powers of the federal authority exhaustively and leaves the remaining unspecified powers to the states. This method has been adopted by "Switzerland," "Germany," and "Australia," as well as the Tenth Amendment to the U.S. Constitution of 1791, which stipulated that powers not delegated to the federal government by the Constitution are reserved to the states[87].

- The third method: It consists of the federal constitution specifying the authorities of both the states and the federal government in detail, where their jurisdiction is limited to what is stated in the constitution. But the drawback of this method is that specifying the powers exhaustively for both the federal state and the states will lead to the constitution detailing these powers, which contradicts the nature of constitutions that are meant to outline the general principles and foundations upon which the state is based. Moreover, the federal constitution, no matter how detailed, will not specifically address all issues, nor will it be able to predict what new matters may arise in the future. This will lead to numerous constitutional amendments whenever a new issue not covered by the powers of the federal state or the state authorities emerges. It is also noted that this method is

[87] As an example of this, the Swiss Confederation was established in 1815 and transformed into a central federal union in 1848. The American colonies that gained independence from England by forming a confederate union in 1776, which transformed into a federal state in 1778. Mohamed Chafik Sarsar, the previous reference, p. 31; Ibrahim Abdel Aziz Sheha, Political Systems and Constitutional Law, the previous reference, p. 171.

rarely applied, and the choice remains between one of the two previous methods.

D-Ending of the Federal Union:

The federal union ends in one of two ways:

- Either the federal states transform into unified states, as happened with South Africa in 1960, Cameroon in 1972, and Colombia in 1963.
- Or the federal states may disintegrate into a group of independent countries, like the dissolution of the Soviet Union in 1991 into 15 independent republics, and also the end of the United Arab Republic established in 1958 and 1961 with the separation of Egypt and Syria from each other, each regaining its full internal and external sovereignty.

Chapter Two: The General Theory of the Constitution

The establishment of political authority within the state institution necessitates the existence of rules that define the organization of states and regulate the exercise of power within them. This set of legal rules constitutes what is called the constitution, which is the fundamental law that the state presents, concerning its organization and the conduct of its affairs.

To fully understand the meaning of the constitution, we will sequentially address the following attempts: the concept of the constitution (first section), types of constitutions (second section), the drafting and amendment of the constitution (third section), the content of the constitution (fourth section), and the respect for the constitution (fifth section).

Chapter One: The Concept of the Constitution

Every state has a material constitution because the authority exercised within it is organized by a set of rules to which it is subject. But the constitution can also be defined, in a narrow sense, as a set of rules related to the organization and functioning of the state, which are recorded in a specific text or in a number of specific texts, and established by a special authority: this is the formal constitution, which is not found in all countries.

According to this classification, the constitution can be defined from two perspectives: a material perspective and a formal perspective.

The first requirement: The material definition of the constitution (or the material constitution)

The constitution, in the material sense, refers to the set of rules related to the exercise and transfer of political power, regardless of whether these rules are codified in a legal text. The form in which these rules are presented does not matter, whether they are written or unwritten.

One of the advantages of this material definition is that it includes all the rules that constitute the constitutionality of the constitution. But one of its drawbacks is that it is a very broad and imprecise definition because it relies on the fundamental rules (les régles fondamentales) that govern states, while it is known that the boundaries distinguishing what is secondary are not clear[88].

The second requirement. The formal definition of the constitution (or the formal constitution)

The formal constitution refers to "a set of legal rules contained in the constitutional document, which are subject to a special procedure

[88] The word "constitution" is not of Arabic origin; rather, it is a Persian compound word made up of "dast," meaning rule, and "var," meaning owner. Thus, its meaning is "owner of the rule." It also means the rule by which one acts, or the book in which the laws and regulations of the king are collected. Its meaning is also "the basic law," and it is used to denote the fundamental rules upon which any organization or assembly is based, such as an association, a union, or a state.

The word "Constitution" in French means establishment or formation (Établissement) or system (Institution). The meaning intended by the word "دستور" (Constitution) in Arabic does not deviate from this, even tho the word is not of Arabic origin as mentioned earlier. It is of Persian origin and is believed to have entered the Arabic language thru Turkish. Al-Amin Sharit, the previous reference, p. 5; Lazhar Khashaimia, the previous reference, p. 60; Abdel Ghani Basyouni Abdullah, the previous reference, p. 378.

regarding their establishment, amendment, abrogation, and monitoring of compliance. "[89]

According to this definition, the constitution becomes a set of rules related to the rights, freedoms, and duties of individuals, as well as the organization and functioning of public authorities, as stipulated in a specific text (the constitution) by a special body (the constituent assembly) and according to a specific procedure (referendum or two-thirds majority, etc.).

In conclusion, in order for a formal constitution to exist, two elements must be provided: the existence of a written text, and on the other hand, this text must be drafted and amended according to a specific procedure by certain bodies.

- The formal definition of a constitution is the definition that determines the legal concept of the constitution as the supreme document within the state, on which the legal system is based according to a specific hierarchy.

- However, despite the importance of this definition and its legal soundness, it is not without flaws, particularly in the context of unwritten constitutions, leading to the non-recognition of long-established countries like "Great Britain" and "New Zealand" as having a constitution. One of its flaws is also its lack of attention to rules related to the exercise of governance, such as electoral law, while sometimes focusing on studying rules that are not

[89] CF. MAHIOU. A, Les principes généraux du droit et la constitution, R.A.S.J.E.P, N° 03, septembre 1978, Alger, p 433

constitutionally valid in the material sense (such as the rules related to the slaughter of animals included in the Swiss constitution), which are considered constitutional rules only because they are included in the constitutional document.

Section Two: Types of Constitutions

Types of constitutions are distinguished based on two criteria: the first is the "source" from which the constitution originates and is based upon. According to this criterion, constitutions are classified as written and unwritten (first section). The second is the "procedure" by which the constitution is reviewed and amended, and accordingly, a distinction is made between a rigid constitution and a flexible one (the second requirement). It is worth noting here that these classifications are, in fact, more complementary than contradictory, and they sometimes converge with each other.[90]

The first requirement: Distinguishing between constitutions in terms of source: written constitutions and customary constitutions

Constitutional jurisprudence distinguishes based on the element of source, between written (or codified) constitutions and unwritten (or customary) constitutions, such that constitutions may either take the form of a written document or customary practices.

Section One: The Written Constitution

We are dealing with a written constitution when the rules governing

[90] [90]- CF. MAHIOU. A, Les principes généraux du droit et la constitution, R.A.S.J.E.P, N° 03, septembre 1978, Alger, p 433 ;

the system of authorities within the state, and to some extent the guaranties granted to citizens, are recorded in a text considered fundamental. This form of constitutions is prevalent in most countries of the world for various reasons, the most important of which is that a written constitution allows the governed to directly access it and understand its provisions, which enhances legal awareness and helps in demanding respect for the rights and freedoms of individuals and groups.[91]

The United States of America was the first country to adopt a written constitution (Virginia Colony = Constitution of 1776, followed by the Federal Constitution of the United States of America = Constitution of 1787). France followed suit in 1791 before a wave of written constitutions spread across Europe during the period between the mid-19th century and the post-World War I era, and in the Third World after World War II.

It is worth noting here that the spread of written constitutions and the decline of customary constitutions do not mean the disappearance of constitutional customs as a complement to the written constitution and as a source of new constitutional rules.

In reality, the written constitution, no matter how detailed and clear it may be, remains a short document that must be subject to varying interpretations. Additionally, the inability to encompass and anticipate all the variables of political life leads to gaps or interpretations that

[91] CF. HAURIOU.A, Droit constitutionnel et institutions politiques, 6ème édition, éditions Montchrestien, Paris, 1975, p. 80

constitutional conventions fill, either by approving additions to the constitution (supplementary convention) or by approving amendments to its provisions (amending convention).

Among the examples of constitutional customs that complement the provisions of the constitution, we mention what the French Constitution of 1875 (the Constitution of the Third Republic) stipulated regarding the election of members of the National Assembly to be general (i.e., not restricted by a financial threshold or educational qualification), without specifying whether the general election was direct or indirect.

And since the electoral laws in France since 1848 have consistently mandated that elections be direct and conducted in a single stage, it has been said that there exists a complementary constitutional custom that necessitates that general elections be direct in all cases. This example shows us how the constitution addressed the issue of elections thru regulation, but it was not a comprehensive regulation, so custom completed it.

- As for examples related to constitutional conventions that amend the provisions of the constitution, we refer to the amended constitutional convention of the balance of power established by the Constitution of the French Republic of 1875. This constitution established a parliamentary system that grants the head of state extensive powers and does not provide for the existence of a head of government. However, the constitutional custom in the Third Republic had established since the presidency of "Jules Grevy" that the president

would not exercise the right to dissolve Parliament and would be content with a symbolic authority, while the Prime Minister would assume executive power (this occurred after the Republicans won the elections, giving them a parliamentary majority). Under the pressure and influence of this custom, President "Millerand" was later accused of violating the provisions of the constitution when he insisted on exercising his constitutional powers, which forced him to resign in 1924, even tho he had not actually violated the written constitution, but rather a constitutional custom.[92]

*It is worth noting that one should not confuse constitutional custom with customary constitution. Constitutional custom is a set of practices resulting from the application of the written constitution, characterized by repetition, stability, clarity, and the agreement of governing bodies to recognize its binding force. In contrast, customary constitution refers to traditions and rules of governance not codified in any text; thus, constitutional custom complements written constitutions, while customary constitution is a set of customs that form a constitution for a state without a written constitution.

Section Two: The Unwritten Constitution

Customary constitutions are defined as a set of unwritten principles and legal rules related to the organization of governance. These rules originally arise as customs and practices that continue to be followed until individuals become convinced of their binding nature, transforming them into constitutional conventions with legal force.

[92] CF. CHANTEBOUT. B, Op.cit, p.24.

This, and constitutional history shows us that until the last quarter of the 18th century, all the fundamental rules of state governance were customary practices, and this remained the case until the American and French revolutions ushered in the era of written constitutions.

Among the few countries where the most important rules of governance are still derived from unwritten customs, we mention the case of Britain, including, for example, the rules regarding the dissolution of Parliament, the requirement for the king to appoint the leader of the winning party in the elections as head of government, or the prohibition of the king from presiding over the council of ministers, etc.

And if the British constitution is usually presented as an example of an unwritten constitution, it should also be noted in this regard that while most of its provisions are customary, there are many written texts that currently constitute an important part of the sources of the English constitutional system, without this resulting in a change in its customary nature. And among the examples of these written documents in Britain, we mention the following:

1- The Magna Carta, which was wrested from King John by the barons in 1215.

"Jean sans Terre," which is considered the first manifestation of limiting the king's powers.

Among the most important provisions of this document, we mention the obligation of the king "not to interfere in the election of churchmen, and not to impose illegal taxes," and "the king's pledge to

refrain from imposing any tax without the consent of the Great Council (House of Commons)."

2- The Petition of Rights issued in 1628, which affirmed the traditional liberties of the English people against the crown and obligated the crown to respect them;

3- The Bill of Rights of 1688, which defined the conditions for ascending the throne and granted Parliament absolute authority in the field of financial oversight.

4- The Act of Settlement of 1701.

5- The Parliament Acts of 1911 and 1949, all of which relate to the reduction and then "stripping" of the House of Lords of its powers.

6- Finally, the 1958 law that allowed women to be members of the House of Lords.[93]

Finally, we conclude, based on all that has been presented, that the distinction between written constitutions and customary constitutions is based on the source of the constitutional rule. Whenever most of the texts related to the system of governance in the state originate from the constitutional project, the constitution is considered written (or codified), whether in a single document or in several documents. And

[93] All the constitutions of the states were customary until the end of the eighteenth century and before the issuance of the American Constitution in 1787. However, the situation has now turned upside down, and almost no countries with customary constitutions remain except for Britain. But this does not negate the existence of written constitutional rules in this country alongside the customary constitution, issued in official documents over the centuries granted by kings following the revolutions: the Magna Carta of 1215, the Petition of Right of 1628, and the Bill of Rights of 1689. In addition to these documents, the British constitution includes a number of legal rules voted on by Parliament, such as the Parliament Acts of 1911, 1949, and 1999, which limited the legislative powers previously held by the House of Lords (the nobility).

the fact that a certain state adopts a written constitution does not mean that its constitution includes all constitutional rules; rather, there are constitutional customs alongside the written constitutional document to remove ambiguity or vagueness, to fill gaps in the constitutional document, or to amend some of its provisions.

Conversely, if most constitutional provisions and rules are derived from custom, the constitution is customary.

The second requirement: Distinguishing constitutions in terms of the amendment process of rigid constitutions

And rigid constitutions and flexible constitutions

If constitutions are classified in terms of form into codified and uncodified, they are also classified in terms of their supremacy and amendment procedure into rigid (or unflexible) and flexible constitutions.[94]

A- The flexible constitution is the constitution that can be amended by an ordinary law issued by the legislative authority without the need to follow any procedure other than the one followed in enacting and amending ordinary laws. As a result, there is no difference in legal value between ordinary laws and constitutional rules, which has led some jurists, including "André Hauriou," to say that "flexible constitutions uphold the sovereignty of Parliament more than the sovereignty of the nation."

[94] Mohamed Kamel Leila, Constitutional Law, the previous reference, p. 111; Said Bouchaïr, the previous reference, p. 190.

Customary constitutions are almost flexible constitutions. Examples of flexible constitutions include the English Constitution, the Constitution of New Zealand, and the Constitution of Israel. All these constitutions can be amended in the same way that ordinary laws are amended.

But despite this similarity in most cases between customary constitutions and their flexible nature, not all customary constitutions are flexible, as there have been customary constitutions that were rigid nonetheless. An example of this is the "Basic Laws of the Kingdom" under the monarchical rule in France before the French Revolution of 1789. Although these laws had a constitutional nature derived from custom, they could not be amended by the legislative authority, which was the king alone, but rather required the approval of the general estates (Etats Généraux) for any amendment the king wished to make.

However, it should be noted that customary constitutions are not the only flexible constitutions; written constitutions can also be flexible.

Among the examples of flexible written constitutions are the French constitutions of 1814 and 1830, and the Italian constitution issued in 1848, which remained in effect until the end of World War II.

B- As for the rigid constitution (or inflexible), it is the constitution that can only be amended according to a specific procedure and certain conditions. This means that the rigid constitution cannot be amended by an ordinary law but rather by following procedures

predetermined by the constitution.

The procedures followed to amend a rigid constitution vary according to the differences in constitutions. Sometimes, it may require the meeting of both houses of parliament in a conference when the parliament is bicameral (i.e., composed of two houses), as was the case in France under the Third Republic. It may be required to assign the task of amendment to an assembly whose members are specifically chosen for this purpose, and it may be required that the review be entrusted to both the people and the parliament, as is the case in "Switzerland," etc.....(See the section related to constitutional amendment.[95]

It is worth noting that there is no inevitable correlation between rigid constitutions and written constitutions, nor between customary constitutions and flexible constitutions. A constitution can be written and flexible (as was the case with the charters of 1814 and 1830 in France), or it can be customary and rigid.

Section Three: The Process of Amending the Constitution

The drafting and amending of the constitution fall under the jurisdiction of what is known in constitutional terminology as the constituent power. This authority is divided into two types: the original constituent power (pouvoir constituant origine), whose task is to draft the constitution for the first time, and the derived constituent

[95] For example, Article 222 of the Algerian constitutional amendment of 2020 states that "three-quarters of the members of both chambers of Parliament, meeting together, can propose an amendment to the Constitution to the President of the Republic, who can submit it to a popular referendum." And it will be enacted if approved.

power (pouvoir constituant dérivé), whose task is to amend and review the constitution whenever necessary according to a procedure and conditions predetermined in the constitutional document.

The first requirement: Drafting the constitution

It is worth noting at the outset that the drafting of constitutions is a matter that pertains only to written constitutions that take the form of a specific constitutional document.

As for the methods of drafting constitutions (written, of course) – whether they are flexible or rigid – they vary from one country to another, and as a result, there is no specific pattern or method followed in all cases of constitution drafting.

Due to the diversity of methods for drafting constitutions, they have been classified by scholars into "authoritarian" methods and democratic methods.[96]

Section One: "Undemocratic" Methods of Drafting the Constitution

The term "non-democratic methods" for drafting the constitution refers to methods in which the people's participation in formulating the constitutional document is completely or partially absent. This approach represents a historical model that reflects a specific stage in the development of the political consciousness of peoples, aiming to transition from absolute systems to constitutionally constrained systems, that is, from absolute monarchies to constrained monarchies.

[96] CF. JACQUE. J-P, Droit constitutionnel et institutions politiques, 03ème édition, Dalloz, Paris, 1998, p. 10.

This method includes two approaches: the grant and the charter.

The grant: (La Charte octroyée)

The granted constitution, as its name indicates, is the constitution that the king drafts and establishes at his sole discretion and willingly, without the participation of the people. An example of this method is the constitution granted by King Louis XVIII after the restoration of the monarchy in France in 1814. What confirms the granted nature of this constitution are the phrases that preface it: "We, of our own free will and exercising our royal authority in full freedom, grant our subjects..." The following constitutional covenant..."

The Pact (Le pacte):

By this method, the constitution is established thru an agreement between the ruler and the representatives of the people, where the constitution in this case is not the result of the ruler's unilateral will, as is the case with a granted constitution, but rather the result of an agreement between the will of the ruler and the people's representatives. This method was followed in the establishment of the 1830 Charter in France, which was the result of an agreement between "Louis-Philippe" and the French Parliament. This method is considered semi-liberal due to the involvement of the people's representatives.[97]

Section Two: Democratic Methods for Drafting the Constitution

These methods are characterized by the participation of the people to

[97] CF. JACQUE. J-P, Droit constitutionnel et institutions politiques, 03ème édition, Dalloz, Paris, 1998, p. 10

varying degrees: either the people's participation reaches the point of contributing to the drafting of the constitutional text and approving it, or the people's role is limited to merely approving the proposed constitutional text. The following methods can be distinguished:

A – The Constituent Assembly: According to this method, the people elect an assembly on their behalf, whose primary task is to draft a constitution. In this case, the people indirectly create the constitution thru their representatives. Adopting this method is considered an application of the principle of popular sovereignty, which stipulates that the people are the source of political authority. The first historical application of this method dates back to the American Constitution of 1787 and the French Constitution of 1791.

What should be noted here regarding this method is that the constitution becomes effective as soon as it is enacted by the constituent assembly without the need to present it to the people for approval[98].

B- The constituent referendum:

If the previous method grants the constituent assembly the authority to draft and finalize a constitution without presenting it to the people, the method we are discussing (i.e., the constitutional referendum) gives the constituent assembly limited authority, which is reflected in drafting a draft constitution. The authority to approve it remains contingent upon the people's acceptance. Thus, the constitution does not come into effect until it is ratified by the people thru the

[98] CF. BURDEAU. G, Droit constitutionnel et institutions politiques, Op.cit, p. 80.

constitutional referendum. This method is considered more democratic because the people actually participate twice in the constitution-making process: once by electing an assembly to prepare a constitutional draft, and a second time by accepting or rejecting the draft thru a constitutional referendum.

Among the historical examples of this method, we mention the process of drafting the French Constitution of 1964.

C- Popular referendum: Le référendum populaire))

This method is characterized by the lack of public participation in drafting the constitution, as the latter is either prepared by the head of state or by a specific assembly or committee. Thus, the role of the people is limited to expressing their opinion on it with a yes or no thru a referendum, which gives the method a democratic character.

This method was adopted in drafting the French Constitution of 1958.

The second requirement: Amending the Constitution

It should be noted first that the issue of amending the constitution does not concern flexible constitutions, as they do not require special procedures for amendment. The authority that enacts ordinary legislation is the same authority that undertakes the amendment process.

As for rigid (or hard) constitutions[99], their provisions can only be

[99] And also the Algerian Constitution of 1963, which was approved by the Algerian people in the referendum of September 8, 1963, the Algerian Constitution of 1976, which was approved by the people in the referendum of November 19, 1976, the Algerian Constitution of 1989, which was approved by the people in the referendum of February 23, 1989, and the Algerian Constitution of 1996, which was approved by the people in the referendum of

amended according to specific procedures predetermined by the constitution itself...[100] The desired goal behind this complexity and rigidity is to ensure the stability of constitutional rules. So who is the amendment authority? And what are the restrictions on the amendment authority?

Section One: Amendment Authority

The issue of determining the competent authority for the review power has not been agreed upon or reached a consensus in the constitutions of the world, and it often reflects the nature of the balance between the legislative and executive branches. Therefore, the constitutions of the world include different solutions regarding the amendment authority.

Some assigned the task of amendment to the executive authority, others to the legislative authority, and some took a middle position by granting both the legislative and executive authorities the right to amend. Another category of constitutions granted this right to a constituent assembly or to the people to propose a constitutional amendment to the parliament.

Despite this difference in the methods used, it is noted that most

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November 28, 1996. Refer to: Boudehane Moussa, Algerian Constitutions, Click Publishing, Algeria, 2008, pp. 21, 35, 71, and 101.

[100] Examples of constitutions that were established through constitutional referendums include the Constitution of France in 1958 and the Constitution of Spain in 1978. Ahmed Mofid, the previous reference, p. 84.

And also the Algerian Constitution of 1963, which was approved by the Algerian people in the referendum of September 8, 1963, the Algerian Constitution of 1976, which was approved by the people in the referendum of November 19, 1976, the Algerian Constitution of 1989, which was approved by the people in the referendum of February 23, 1989, and the Algerian Constitution of 1996, which was approved by the people in the referendum of November 28, 1996.

contemporary constitutions tend to grant the power of amendment to both the government and the parliament, in order to maintain their balance.

Section Two: The Amendment Procedure

When drafting the constitution, the constitutional legislator always tries to balance two considerations regarding the amendment process: that this process should not be too simplified, as it could expose the system to constitutional instability and practically turn a rigid constitution into a flexible one, and that this process should not be too complicated, so that the impossibility of amending the constitution thru it does not lead to a coup against the system (as was the case with "Louis Napoleon," whose inability to amend the 1848 constitution led him to orchestrate a coup in 1851).

While some constitutions stipulate that they can be amended thru a referendum process (as in the case of Switzerland and France, for example), other constitutions require a specified parliamentary majority for amendments (the possibility of convening the French Parliament in a Congress to vote by majority on an amendment proposed by the President of the Republic upon the suggestion of the Prime Minister – the participation of two-thirds of the members of the American Congress and three-quarters of the states in amending the federal constitution – the Italian constitution stipulates that it can be amended by an absolute majority over three sessions...).[101]

Section Three: Limits of the Amendment Authority

[101] CF. BURDEAU. G, Droit constitutionnel et institutions politiques, Op.cit, p. 27.

Unlike the original constituent authority, which is considered an unrestricted authority in establishing the constitution without any legal or constitutional conditions, the secondary constituent authority- besides being limited to a specific body and bound by a special procedure is also restricted by conditions that vary according to the constitutions. In general, these conditions can be categorized into three: substantive conditions, temporal conditions, and circumstantial conditions.

- By virtue of the substantive restriction, the constitutional legislator (i.e., the original constituent authority) prohibits amending certain topics of the constitution because they constitute the essence of the constitutional political system. For example, French constitutions since 1848 have prohibited amending the texts related to the republican form of the system, and the U.S. Constitution of 1787 has prohibited amending the text related to equal representation of states in the Senate. Similarly, successive Moroccan constitutions have prohibited amending the texts related to Islam and the monarchy.
- As for the temporal restriction, some constitutions may prohibit their amendment until a certain period has passed since the implementation of the constitution. For example, the French Constitution of 1791 prohibited its amendment until four years had passed, and the Greek Constitution of 1975 set a five-year period between review periods, etc. The purpose of this time limitation is to give constitutional institutions a period of time before being judged to avoid hasty evaluations.

- Finally, some constitutions prohibit their amendment when the state is going thru critical circumstances in its life contextual specification such as being subjected to foreign occupation or having its territorial integrity compromised. As an example of this, the current French Constitution (Constitution of 1958) prohibits its amendment in the event of the French territory being occupied by a foreign power, so that the experience France went thru during the time of Marshal Pétain is not repeated. M. PETAIN during the Nazi occupation.

In addition to all these objective restrictions mentioned in the constitutional texts, there are implicit restrictions recognized by constitutional jurisprudence that also limit the amendment authority. Among these implicit restrictions is the inability of the subordinate constituent authority to carry out a complete and comprehensive amendment of the constitution. Additionally, according to legal doctrine, this authority cannot amend or change the amendment procedure stipulated in the constitution it self.[102]

Section Four: The Content of the Constitution

Constitutions usually contain two types of provisions: provisions related to defining the basic structure of political authority and provisions related to defining the basic structure of the governed.

The first requirement: The basic system of political authority

The main objective of constitutions is to define the methods of exercising political power. The organization of political power

[102] - Examples of these constitutions include: the French Constitution issued on June 14, 1814, which was granted by King Louis XVIII to the nation upon the fall of Napoleon I, the Japanese Constitution of 1889, and the Egyptian Constitution of 1923.

primarily concerns (the method of appointing rulers and the duration of their rule). It also involves (defining the bodies responsible for exercising power, namely the legislative, executive, and judicial branches). It also concerns (regulating the relationships between the three branches of government). And given that the constitution is a brief document, it refers to the organic laws for details. Such as the organic law related to the election of members of parliament or the organic law related to the determination of the system of the Constitutional Council...) And the internal regulations of the parliament, which the parliament adopts itself. All these laws are considered a material extension of the constitution, and to prevent the parliament from using them to expand its powers at the expense of the government, they are subject to mandatory review by the Constitutional Council before they come into effect (as in Algeries and France).

The second requirement: The basic system for the governed

Most constitutions, in addition to provisions legitimizing the system of governance, include provisions related to the rights and duties of citizens. The sum of these rights constitutes "human rights," and these rights form the limits imposed on the exercise of political power. This means that political power is obliged to stop at a certain limit in its exercise, and this limit is the realm of individual rights that the state cannot exceed.[103]

[103] Abdel Hamid Metwally, Constitutional Law and Political Systems, previous reference, p. 72

Since the first declarations of rights of the American and French revolutions at the end of the eighteenth century, the phenomenon of including declarations of rights in constitutions, either independently or within the preamble, has spread.

Given the legal controversy these declarations have raised regarding their legal value, jurisprudence and the judiciary have settled on the necessity of three conditions to confer a binding legal character to the declarations of rights: their incorporation into the core of the constitution and the stipulation of their binding nature, the clear and precise articulation of their content, and the existence of a judicial body to ensure their respect.

Human rights have now become an international agreement and are no longer merely an internal constitutional matter: most constitutions have begun to incorporate international human rights charters within their chapters, with the "Universal Declaration of Human Rights" adopted by the United Nations General Assembly on December 10, 1948, at the forefront. This declaration has led to the ratification of several treaties dedicated to human rights, including the "International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights" issued in 1976, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, and other agreements on the prevention of torture, children's rights, and the elimination of all forms of discrimination against women, among others. Etc.

In line with this new global trend, Morocco has ratified most

international agreements in the field of human rights and has added a new paragraph to the preambles of the 1992 and 1996 constitutions stating, "Morocco is committed to human rights as they are universally recognized."

Section Three: The End of Constitutions

It means the end of the constitution's operation, the comprehensive amendment and abrogation of its provisions, in a desire to overcome the constitution's inability to keep pace with the march of political, economic, and social development, or on the occasion of replacing the state's political philosophy with another one through the overthrow of the constitution, for example, by revolution. So, the end of the constitution means the complete amendment of its provisions, not just the amendment of some of its requirements.

Thus, just as constitutions are created in various ways, their life also ends in more than one manner. The constitution may be terminated either through its repeal, which is called the ordinary method, or it may end through revolution or coup, which is called the extraordinary method.[104]

1- The ordinary method of ending the constitution: Constitutional documents do not include provisions on how to completely abolish them; they do not specify the reasons for their abolition or the method of carrying out this abolition. While constitutions usually include provisions on how some of their articles can be amended, this does not mean that the authority that has the power to make partial

[104] Said Bouchaïr, the previous reference, pp. 179-183.

amendments also has the power to completely abolish the constitution at the same time. Thus, the right of abrogation is left to the people as the original constituent authority, and the task of ending it can be entrusted to another authority other than the constituent authority, provided that this is explicitly stated in the constitution. This usually occurs when the existing constitution does not keep pace with the prevailing developments in society, and therefore, it necessitates the abrogation of the existing constitution and the establishment of a new constitution that achieves its objectives and aligns with the new events.

Accordingly, the ordinary method of terminating constitutions refers to the abrogation of the existing constitution and the suspension of its provisions quietly, without violence or revolution, and the adoption of a new constitution in its place, because its provisions no longer align with the political, social, and economic developments of the state (the abrogation method) or as a result of a change in the state's situation.

A- Method of Abrogation: The abrogation of the constitution by the ordinary method occurs automatically as a result of changes in political, economic, and social conditions, where the people establish a new constitution, which means the abrogation or termination of the existing old constitution.[105]

The end of the constitution's life by abrogation differs depending on whether the constitution is customary or written. If it is customary, its

[105] Ibrahim Abdulaziz Sheha, Political Systems and Constitutional Law, the previous reference, p. 115.

validity ends either by a new customary constitution or by issuing a written constitution that replaces the customary constitution.

However, if the constitution is written, we must distinguish within its framework between rigid constitutions and flexible constitutions. Therefore, if the constitution is flexible, the enactment of a new constitution and the abrogation of the existing constitution are done in the same manner as the enactment of ordinary laws. However, if the constitution is rigid, the majority of legal scholars tend to agree that its abrogation belongs to the original constituent authority, which is the people. In this case, the adoption of a new constitution will follow the methods used in the creation of constitutions.

B- Change in the political status of the state: This occurs in the situation where a state enters into a central union with other states. In this case, the new state will draft a new constitution, and the constitutions of all the states entering the union will cease to exist, as their international legal personalities have ended. An example of this is the union that took place between Egypt and Syria in 1958, creating a new state called the United Arab Republic. Or the disintegration of a state into a group of states, where each state establishes a new constitution for itself after the constitution of the federal state ends, due to the extinction of its legal personality. An example of this is the disintegration of the Soviet Union in 1991.

2- The extraordinary method of constitutional termination: The extraordinary method is considered an unnatural means of ending constitutional rules. Therefore, constitutions do not usually provide

for this method as a legitimate means of constitutional termination, and this abrogation is typically carried out through the use of force and violence (revolution and coup).

In other words, the end of constitutions through revolution and coup is an end through actual means, not legal means. The end of the constitution in this context is linked to the end of the system associated with it. This situation constitutes the main reason for the end of constitutions, as the constitution, being a set of rules for governance and legitimacy, is tied to the political system that established it. If this system is eliminated following a revolution or coup, it is observed that the first announcement by the coup leaders or revolutionaries declares the abrogation of the constitution of the overthrown system. And if constitutions do not usually stipulate this method of termination, this method plays a major role in practical life, as most constitutions in many countries have ended through the revolutionary method.

Thus, when the people are dissatisfied with the existing system, whether due to its tyranny or its failure to respond to their aspirations and their will to express themselves, they may initiate a massive and comprehensive revolution to overthrow and change the system. In this sense, a revolution is a continuous popular movement carried out by the people or a segment of them, supported by the masses, with the aim of bringing about a radical change in the structure of the political, economic, social, and cultural system of the state. In the case of a coup, the masses do not intervene; rather, there is a conflict among

the members of the political elite themselves. A coup, in this sense, is a movement initiated by a faction within the ruling authority against another faction with the aim of ousting them from power through violence and force. Usually, the military orchestrates the coup, which is referred to as a military coup. This phenomenon is widespread in developing countries.

Among the examples of constitutions that ended through revolution, there is the 1923 Constitution of Egypt, which was abolished by the Revolution of July 23, 1952, and the 1951 Constitution of Libya, which was abolished by the September 1, 1969 Revolution. Among the recent examples of constitutions that were abolished through revolution, we mention Egypt's 1971 Constitution. After the January 25, 2011 revolution and the resignation of former President Hosni Mubarak, the Supreme Council of the Armed Forces issued a constitutional declaration. Following the presidential elections in Egypt in 2012, a new constitution was enacted in the same year. On June 30, 2013, a new revolution took place against the rule of President Mohamed Morsi, which led to the suspension of the 2012 Constitution. The "Fifty Committee" was formed and tasked with drafting a new constitution, which was presented to the Egyptian people for a referendum.

Chapter Five: Respect for the Supremacy of the Constitution and the Constitutional Review of Laws

We have previously seen that the constitution includes the rules related to the philosophical and ideological foundation on which the

state's system is based, as well as the rules related to the establishment and determination of the powers of the governing bodies.

All these rules constitute the main pillars upon which the system of governance in the state is based. On this basis, the constitution (in the material sense) serves as the legal reference for various authorities, as it is the origin and source of all legal activities in the state. And this is what makes it superior to other legal rules.

The principle of the supremacy of the constitution (Principe de la suprématie de la constitution) means the superiority of constitutional rules over all other legal rules in the state. This principle dictates that legislation is bound by legislation of a higher degree. Ordinary legislation cannot contradict constitutional provisions. Similarly, subordinate legislation (issued by the executive authority) cannot contradict ordinary legislation issued by the legislative authority. This means that there is a hierarchy (or gradation) among different types of legislation, where lower-level legislation is subject to higher-level legislation in the hierarchical scale of the legal system. In general, the principle of the supremacy of the constitution requires that everyone both rulers and the ruled be subject to its provisions. This achieves the principle of legality, which means that rulers are subject to the "rule of law" and must adhere to its provisions so that their actions are not rendered void.

However, it should be noted that the principle of the supremacy of the constitution is not sufficient in itself to bind the rulers to the provisions of the constitutional document unless the control of the

constitutionality of laws is organized to annul laws that are contrary to the constitution.

The term "control of the constitutionality of laws" (Le contrôle de la constitutionnalité des lois) refers to ensuring the conformity of laws with the spirit and provisions of the constitution. Thus, this oversight does not exist in countries with flexible constitutions due to the absence of a difference in value or degree between ordinary laws and constitutional rules. In terms of value or degree, constitutional rules of a flexible constitution occupy the same rank as legislative texts. Therefore, any parliamentary legislation that contradicts the flexible constitution means amending the constitution, which is a given. Consequently, the issue of constitutional oversight of laws only pertains to countries with rigid written constitutions. In these countries, legal rules are ranked in terms of strength, with constitutional rules at the top of the legal hierarchy, followed by organic laws, then ordinary laws (all of which fall under the jurisdiction of the legislative authority, i.e., the parliament). Finally, decrees and decisions issued by the executive authority come last.

And if the review of the constitutionality of laws is considered one of the most important guaranties for respecting the provisions of the constitution, the methods and approaches to practicing it differ according to the differences between countries. Some have entrusted this task to a political body, while others have made this review the responsibility of a judicial body. Accordingly, we will present a study of the two methods of constitutional review of laws in two

consecutive sections:

The first requirement: Control by a political apparatus

According to this method, the function of constitutional review of laws is undertaken by political bodies, due to their composition, which is primarily based on appointment and selection. This model represents a form of preventive control by preventing constitutional violations at their source.

Several considerations underpin this approach, some of which stem from avoiding the experience of the courts known as "parliaments" that existed before the French Revolution, which were characterized by obstructing the legislative body's activities and paralyzing its effectiveness. There are also legal considerations related to respecting the application of the principle of *separation of powers, which stipulates that the judiciary should not intervene in the domain of parliamentary jurisdiction. As for the political considerations, they stem from the acknowledgment that the law is an expression of the will of the nation, and that this will is superior to the judiciary. Therefore, the judiciary should not interfere with the constitutionality or unconstitutionality of a law that expresses the will of the nation.

French constitutional history presents several applications of the political oversight method from the 1799 Constitution to the current 1958 Constitution.

1- The first application known in France was the experience of the *Conservative Senate* under the 1799 Constitution. This council was entrusted with the task of constitutional review of laws and the

constitutionality of decisions and decrees of the executive authority. But the subordination and dependency

This council was under the emperor "Napoleon" because the power of appointment was in his hands, which prevented it from fulfilling its function, leading to the failure of this experiment.

2- Political oversight was also relied upon under the 1852 Constitution, by establishing a body similar to the previous one created by Napoleon Bonaparte. The 1852 Constitution granted the new council broader powers than the previous council, but they remained purely theoretical, as this council did not annul any law. Instead, the council became a tool in the hands of Emperor Napoleon III to amend the constitution according to his will—since the council also had the authority to amend under certain conditions. Thus, the second experiment of constitutional review of laws by a political body failed. And this is what led the constitutional legislator not to organize political oversight under the 1875 Constitution.

3 - The third French experience in this field was carried out under the 1964 Constitution, which established a "Constitutional Committee" tasked with overseeing the constitutionality of laws. This committee was composed of thirteen members: the President of the Republic, who served as the committee's chair by virtue of his position; the President of the National Assembly and the President of the Council of the Republic, who were members by virtue of their positions; and ten members chosen by the parliament from its two chambers, not from its members, based on the proportional representation of various

political bodies.

But this committee did not operate on its own initiative; rather, it was based on a joint request from the President of the Republic and the President of the Council of the Republic, after the Council of the Republic approved it by an absolute majority, and this was done before the law was issued.

The complexity of the procedure followed, and the subordination of the members to the parliament, are all factors that rendered this committee also regret its usefulness and led to its failure.

4- France experienced another experiment in the field of political oversight, which was established by the Constitution of the Fifth Republic in 1958. The current French Constitution has granted the Constitutional Council the power to oversee the constitutionality of laws, which is considered a political-judicial body. It derives its political character from its composition, which is controlled by the President of the Republic and the Presidents of the Parliament – the President of the National Assembly and the President of the Senate. Consequently, the French Constitutional Council consists of former Presidents of the Republic as members by law and for life, and nine other members, with three each from the President of the Republic, the President of the National Assembly, and the President of the Senate, serving for nine years with no possibility of renewal, until one-third are renewed every three years. The President of the Republic selects the President of the Constitutional Council from among its nine members.

The council also derives its judicial character from its basic structure, which grants it guaranties similar to those granted to judges, and from some of its functions that resemble those of a judicial body.

The council's responsibilities include monitoring the constitutionality of ordinary and organic laws, as well as the internal regulations of Parliament, which are subject to mandatory review before they come into force to ensure their constitutionality. The council's intervention in other cases, particularly in monitoring the constitutionality of ordinary laws, is contingent upon a request from the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, sixty (60) members of the National Assembly, or sixty (60) members of the Senate, after their final vote in Parliament and before their issuance.[106]

In all cases, the council is obliged to issue its decision regarding the laws referred to it within one month from the date of referral, with the possibility of reducing this period to eight days upon the government's request in case of urgency.

The French constitutional legislator has made the council's decisions final, meaning they are subject to appeal and binding on all public authorities.

*Among the most important decisions issued by the French Constitutional Council, especially in the field of protecting public freedoms, we mention:

-The decision issued on July 16, 1971, ruling the unconstitutionality

[106] -CF. BURDEAU. G, Droit constitutionnel et institutions politiques, Op.cit, p. 113

of provisions in a bill approved by the National Assembly due to its contradiction with the principle of freedom of association enshrined in the 1901 law and affirmed in the preamble of the French Constitution. The significance of this historic decision lies in its recognition of the full constitutional value of the preamble of the French Constitution, which in turn refers to the Declaration of the Rights of Man and of the Citizen of 1789.

- The decision issued on December 27, 1973, ruling on the equality of citizens before public burdens.

- The decision issued on January 12, 1977, ruling the unconstitutionality of the law that allows police officers to search private vehicles, as it constitutes a clear violation of the constitutionally guarantyd individual freedom.

In general, the importance of the effectiveness of the French Constitutional Council has manifested in its role as the guardian of individual freedoms, thus marking a break from previous French experiences.

Despite the occasional success of this method (i.e., monitoring by a political apparatus) in some countries, the optimal method in the field of monitoring remains judicial oversight.

The second requirement: oversight by a judicial body

Unlike political oversight, which is entrusted to a political body, judicial oversight is assigned to a court, that is, to a judicial body.

It is certain that assigning the task of monitoring the constitutionality of laws to the judiciary has several advantages compared to the

method of oversight by a political body. The judiciary is characterized by neutrality, objectivity, and independence in performing its function, in addition to the guaranties provided by the judicial procedure (freedom of defense, public sessions, etc.). For this reason, most countries adopted the method of judicial review of the constitutionality of laws. However, these countries did not agree on a single method in this regard; some adopted the method of judicial review thru litigation (first branch), while others adopted the method of judicial review thru objection (second branch).

Section One: Judicial Review.

According to this pattern, the constitution allows individuals and public authorities (the Head of State – the Prime Minister – the Parliament)

To file a lawsuit before a judge specialized in reviewing the constitutionality of laws, and if the constitutional judge finds the law unconstitutional, he will rule to annul it for everyone.

Given the importance and seriousness of this method in monitoring the constitutionality of laws, the countries adopting it have entrusted this task to a single court, rather than multiple courts.

However, the constitutions that adopted this method differ among themselves regarding the authority entrusted with this task. Some assigned this jurisdiction to the Supreme Court within the ordinary judicial system, while others assigned this task to a specialized Constitutional Court.

A- Model of the Supreme Court: In this case, the constitution entrusts

a supreme court (Une juridiction suprême) within the existing judicial system of the state with the task of overseeing the constitutionality of laws. Examples of constitutions that have assigned the review of the constitutionality of laws to the supreme court within the judicial system include the Swiss Constitution of 1874 (Federal Court) and the Moroccan constitutions of 1962, 1970, and 1972.

B- The Constitutional Court Model: Most countries that adopted the judicial review method to monitor the constitutionality of laws established a specialized constitutional court (une cour constitutionnelle) for this purpose. This type of court is distinguished by not being part of the ordinary judicial system (i.e., ordinary, administrative, and commercial courts), but rather it receives cases from it among the constitutions that adopted this model, the Austrian Constitution of 1920 (the Constitutional Court), the German Constitution (or Basic Law) of 1949 (the Federal Constitutional Court: the Karlsruhe Court), and the model of the Italian Constitutional Court are mentioned.

Section Two: Review by Plea.

This method is called the "plea method" because it allows any citizen defendant in a civil or ancillary case to raise before the court the unconstitutionality of the law intended to be applied to them.

As a result, the court must first consider this plea of unconstitutionality of the law before ruling on the substance of the dispute at hand. If it becomes clear, given the importance and seriousness of this method of monitoring the constitutionality of laws,

that the countries adopting it have entrusted this task to a single court, excluding the rest of the courts.[107]

However, the constitutions that adopted this method differ among themselves regarding the authority entrusted with this task. Some assigned this jurisdiction to the Supreme Court within the ordinary judicial system, while others entrusted this task to a specialized Constitutional Court.

A- Model of the Supreme Court: In this case, the constitution entrusts a supreme court within the existing judicial system of the state to oversee the constitutions that have made the review of the constitutionality of laws the responsibility of the supreme court in the judicial system, such as the Swiss Constitution of 1874 (Federal Court) and the Moroccan constitutions of 1962, 1970, and 1972.

B- Model of the Constitutional Court: Most countries that adopted the judicial review method to monitor the constitutionality of laws established a specialized Constitutional Court for this purpose. This type of court is characterized by not being part of the ordinary judicial system (i.e., ordinary, administrative, and commercial courts), but rather being independent from it.

Among the constitutions that adopted this model, we mention the Austrian Constitution of 1920 (the Supreme Constitutional Court), the German Constitution (or Basic Law) of 1949 (the Federal Constitutional Court: the Karlsruhe Court), and the model of the Italian Constitutional Court.

[107] Al-Amin Sharit, the previous reference, p. 139.

If the judge finds the plea valid, he refrains from applying it in the case, and his ruling does not constitute the annulment of the law but rather a refusal to apply it in a specific case. Therefore, this method is also called abstention review (as opposed to annulment review). This abstention from applying the law that contradicts the constitution does not benefit only the litigant who raised the plea. And in order for the law to be definitively annulled from the legal system by this method, a ruling must be issued by the Supreme Court affirming the ruling of the ordinary court.[108]

It is worth noting that, unlike the review by way of action, the review by way of exception does not require an explicit constitutional text to endorse it and regulate its procedure. It is sufficient that the state's legal system does not prohibit it, allowing all citizens to practice it before all courts.

And the most important form of applying the review of the constitutionality of laws thru the plea method is provided to us by the American model. In the United States of America, the American citizen has the right to plead the unconstitutionality of a law before all courts:

*Either before state courts to protect the constitution of each state and also to protect the federal constitution against state laws.

*Or before federal courts, especially the Supreme Court, to protect the federal constitution against federal laws and also state laws. The Supreme Court of the United States is considered. The highest court

[108] CF. DUVERGER. M, Op.cit, p. 223.

tasked with reviewing the judicial decisions of lower courts (whether federal or state).

- Although the U.S. Constitution did not explicitly grant federal (or national) courts the right to exercise judicial review of laws, the Supreme Court established the right to review the constitutionality of laws in its famous ruling in the case of "Marbury v. Madison," presided over by Chief Justice Marshall in 1803. The court based its ruling on the fact that the American Constitution is the supreme law of the land, and the distinction between the supreme law and ordinary laws would have no value unless the legislative authority is bound by the limits of that written supreme law, and that such a restriction would render any legislation void if it contradicts the Constitution (i.e., the supreme law).

Judicial review by way of objection is not the only method used to monitor the constitutionality of laws in America; there are also two complementary techniques: the injunction and the declaratory judgment, which are methods that approach the direct review method.

The injunction: It is a procedure that allows any citizen to request the judge, based on a lawsuit, to issue a restraining order that takes the form of an explicit prohibition and directs officials to refrain from applying a law that the citizen claims is unconstitutional.

In other words, any individual may resort to the competent court to request the suspension of the law's implementation on the grounds that it is unconstitutional, and that its enforcement would cause harm to them, which may be irreparable.

The declaratory judgment: It is a means that allows every citizen to request the judge (based on a lawsuit) to issue a ruling determining whether the law intended to be applied to them is constitutional or unconstitutional.

The third requirement: The review of the constitutionality of laws in light of the 2020 constitutional amendment

The oversight exercised by the Constitutional Court over legal texts, whether in the form of treaties, organic laws, ordinary laws, decrees, or regulations, varies between mandatory prior oversight for certain legal texts and discretionary oversight for others. This oversight is preventive, preceding the issuance of the legal text and preventing its issuance if it contradicts the constitution, and subsequent oversight concerning some effective legal texts, which is always discretionary[109]. Accordingly, the types of oversight exercised by the Constitutional Court can be classified into four types, namely:

• Conformity control, which is a mandatory prior control.

• Constitutional oversight, which is discretionary oversight exercised as prior oversight regarding treaties and laws, and as subsequent oversight regarding regulations and orders.

• Control of the conformity of laws and regulations with treaties, which is a discretionary prior control regarding laws and a

[109] See Article 219, Paragraph 1 of the Algerian constitutional amendment of 2020: "The President of the Republic has the right to initiate a constitutional amendment...". And see Article 222 of the Algerian constitutional amendment of 2020, which states that "three-quarters of the members of both chambers of Parliament, meeting together, can propose an amendment to the Constitution to the President of the Republic, who can submit it to a popular referendum...".

discretionary subsequent control regarding regulations.

• The plea of unconstitutionality, which is a subsequent discretionary review

1. Control of conformity Compliance Control

Compliance with the constitution means: "that the law is precisely in accordance with the constitution. In this case, the relationship of subordination between the constitutional and legislative rules is close compared to the situation where harmonization between these two rules is required. Therefore, the oversight here goes beyond the harmonization between the law and the constitution to a precise oversight with the constitutional text. Thus, the law must not contain any contradiction with the constitutional text." The Constitutional Court is responsible for enforcing compliance of organic laws with the constitution, as well as ensuring the compliance of the internal regulations of the two chambers of parliament with the constitution. This is done after being notified by the President of the Republic in accordance with Article 190, paragraphs 5 and 6 of the 2020 constitutional amendment, or being notified by the Head of State in the event of a vacancy in the position of President of the Republic. Additionally, Article 140, the last paragraph of the constitutional amendment, stipulates that the organic law must be subject to compliance review with the constitution by the Constitutional Court before the text is published in the official gazette.

2. **Constitutional control: Constitutional review**:

Constitutional oversight aims to preserve the constitution and protect

it against any violation of its provisions, as the supreme and fundamental law of the State, which establishes the principles and rules on which the State's system of government and the rights and freedoms are based. The constitutional court is competent to examine the constitutionality of treaties, laws, decrees, and regulations, and it rules on them by a decision, as follows:

A. Constitutional review of treaties:

The oversight of treaties is considered as optional prior oversight, as Article 190 of the constitutional revision of the year stipulates the possibility of notifying the constitutional court regarding the constitutionality of a treaty, agreement, or convention before their ratification, thru the phrase "it is possible to notify the constitutional court regarding the constitutionality of treaties before their ratification." Therefore, it is not possible to initiate constitutional oversight regarding a treaty or an agreement after their ratification, which means that the constituent has excluded subsequent oversight concerning treaties and agreements and has settled for optional prior oversight. Regarding ceasefire agreements and peace treaties, they are not subject to constitutional oversight.

the constitutional, but the President of the Republic seeks the opinion of the constitutional court on them, which does not fall under the constitutional review of treaties and agreements, as the constituent has classified them in the section related to powers, and more specifically in the first chapter concerning the President of the Republic.

B. Constitutional oversight of ordinary laws

Ordinary laws are subject to discretionary prior constitutional review, as the Constitutional Court is responsible for examining the constitutionality of a law before its publication in the official gazette, provided that the entities specified in Article 193 notify the Constitutional Court regarding the text of the law. Consequently, ordinary laws are not subject to subsequent discretionary or mandatory review, as laws are immune from constitutional review once they are enacted, unless the conditions for raising the unconstitutionality defense are met. In this case, the legislative text becomes subject to subsequent discretionary review[110].

A. Constitutional oversight of orders and regulations

Regulations and orders are subject to subsequent discretionary review, as the Constitutional Court is responsible for examining the constitutionality of regulations and orders issued by the President of the Republic during parliamentary recesses or the vacancy of the National People's Assembly, in accordance with Article 142 of the 2020 constitutional amendment. This is provided that the entities specified in Article 193 notify the Constitutional Court about the order or regulation within one month from the date of publication in the official gazette. If the one-month period specified in Article 190 of the constitutional amendment expires, the right of the notifying entities to initiate a review against the text is forfeited. However, the

[110] See, Amin Charef, Constitutional Law and Comparative Political Institutions, 2nd edition, University Publications Bureau, Algeria, 2002, p. 142; Massoud Chihoub, Judicial Review of the Constitutionality of Laws (The Algerian Model), Deputy Magazine, No. 5, 2005, p. 30.

review process remains open thru the mechanism of raising unconstitutionality if its conditions are met, or by resorting to the Council of State regarding the regulation before the expiration of the judicial appeal period, which is four months according to Article 829 of the Civil and Administrative Procedure Code.

Monitoring the compliance of laws and regulations with treaties. Control of the conformity of laws and regulations with treaties

This type of oversight combines prior discretionary oversight and subsequent discretionary oversight, as the constitutional maker in the 2020 constitutional amendment subjected regulations, excluding orders issued by the President of the Republic and ordinary laws excluding organic laws, to oversight for compliance with ratified treaties. The Constitutional Court examines the compliance of regulations and ordinary laws with ratified treaties, but it is necessary first to notify the Constitutional Court by the entities authorized to notify, and secondly, the Constitutional Court must be notified regarding the law before its issuance; otherwise, the right to resort to this oversight is forfeited. Additionally, the Constitutional Court must be notified regarding the compliance of the regulation with the treaty within one month from the date of publication of the regulation; otherwise, the right to resort to this oversight is forfeited.

Section One: The Constitutional Court as a Substitute for the Constitutional Council

The Constitutional Court is considered a substitute for the Constitutional Council in light of the 2020 constitutional amendment,

and it has been entrusted with overseeing the constitutionality of laws in Algeria to build a state of law. This is what was addressed in the first requirement: the nature of the Constitutional Court and the justifications for its adoption, and the composition and characteristics of the Constitutional Court in the second requirement.

The constitutional amendment of 2020 included the establishment of a constitutional institution that replaced the Constitutional Council, referred to as the Constitutional Court. The constitutional founder considered it an independent institution tasked with ensuring respect for the constitution, similar to the role previously assigned to the Constitutional Council, which was responsible for overseeing constitutional compliance. However, the constitutional founder attempted to distinguish the Constitutional Court from the Constitutional Council by granting it the task of regulating the functioning of institutions and the activities of public authorities, a power that was not previously granted to the Constitutional Council by the constitutional founder.[111]

Chapter One: The Constitutional Court as an Alternative to the Constitutional Council

The Constitutional Court is considered a substitute for the Constitutional Council in light of the 2020 constitutional amendment, and it has been entrusted with overseeing the constitutionality of laws in Algeria to build a state of law. This is what was addressed in the

[111] Ali Al-Dabbas, Constitutional Law, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2011, p. 211.

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The constitutional founder also tried to emphasize the change in the nature of oversight and the body itself, as he replaced the term "body" with "institution" and assigned it oversight institutions, unlike the 2016 amendment which did not allocate a specific chapter for the Constitutional Council. Among the points of difference between the two oversight bodies is the introduction of numerous amendments to the method of constitutional review of laws practiced by the Constitutional Council, where the Constitutional Court was granted a

different role regarding the constitutional review of laws[112]. Additionally, other new powers were introduced in the 2020 constitutional amendment in favor of the Constitutional Court, which were not previously granted to the Constitutional Council. However, despite the constitutional founder's attempts to distinguish between the excluded oversight body and the newly established oversight institution, However, it retained many of the components of the excluded oversight body within the components of the newly established oversight institution. Some of these components are related to the organic aspect, especially the composition of the Constitutional Court, while others are related to the functional aspect. Although the constitutional founder adopted the term "Constitutional Court," he did not define its judicial nature nor include it in the chapter dedicated to the judiciary but rather within oversight bodies. This makes it resemble the Constitutional Council in this regard, as a political institution with some judicial powers, although some believe that the Algerian Constitutional Council approaches a judicial character.

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[112] CF. BURDEAU. G, Droit Constitutionnel et Institutions Politiques, Op.cit, p. 99.

2020 constitutional amendment. This is provided that the entities specified in Article 193 notify the Constitutional Court about the order or regulation within one month from the date of its publication in the official gazette. If the one-month period specified in Article 190 of the constitutional amendment expires, the right of the notifying entities to initiate a review against the text is forfeited. However[113], the review process remains open thru the mechanism of raising unconstitutionality if its conditions are met, or by resorting to the Council of State regarding the regulation before the expiration of the judicial appeal period, which is four months according to Article 829 of the Civil and Administrative Procedure Code.

Monitoring the compliance of laws and regulations with treaties. Control of the conformity of laws and regulations with treaties

This type of oversight combines prior discretionary oversight and subsequent discretionary oversight. In the constitutional amendment of 2020, the constitutional founder subjected regulations, excluding orders issued by the President of the Republic and ordinary laws, but excluding organic laws, to oversight for compliance with ratified treaties. The Constitutional Court examines the compliance of regulations and ordinary laws with ratified treaties. However, the Constitutional Court must first be notified by the entities authorized to notify it, and the Constitutional Court must be notified regarding the law before its issuance; otherwise, the right to resort to this oversight

[113] Said Bouchaïr, the previous reference, p. 191; See, Bostla Cherazade and Medour Jamila, The Principle of Judicial Review of the Constitutionality of Laws and Its Applications in Algerian Legislation, Journal of Judicial Jurisprudence, University of Biskra, Issue 4, p. 345.

is forfeited. Additionally, the Constitutional Court must be notified regarding the compliance of the regulation with the treaty within one month from the date of the regulation's publication; otherwise, the right to resort to this oversight is forfeited.

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by the constitutional founder.[114]

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[114] CF. PRELOT. M et BOULOUIS. J, Op.cit, p. 223 -228.

[115] - See, Mahfoudh Laachab, The Constitutional Experiment in Algeria, Modern Printing House for Printing Arts, Algeria, 2000, p.

the judiciary but rather within oversight bodies. This makes it resemble the Constitutional Council in this regard, as a political institution with some judicial powers, although some believe that the Algerian Constitutional Council approaches a judicial character[116].

The first requirement: The nature of the Constitutional Court and the justifications for adopting it

In this section, we will address the nature of the Constitutional Court (first subsection), and then we will touch upon the justifications for adopting it (second subsection).

Section One: The Nature of the Constitutional Court

The Algerian constitutional founder indicated that the Constitutional Council is obliged to rule on matters of notification by decision. Considering that constitutional disputes are of an objective nature, this necessitates the acceptance of the authority of the judgments issued in them. It should be noted here that the ruling issued by the Constitutional Council falls into one of two categories: either the rejection of the notification, thereby affirming the constitutionality of the contested law, or the acceptance of the notification and ruling its unconstitutionality. The constitutional founder distinguished the decisions issued by the Constitutional Council with absolute authority in both cases thru Article 198/5, stating: "The decisions of the Constitutional Council are final and binding on all public,

[116] See, Fouzi Oussadek, Al-Wafi in Explaining Algerian Constitutional Law, Volume Two: General Theory of Constitutions, Third Edition, University Publications Bureau, Algeria, 2003, p. 186.

administrative, and judicial authorities.[117]" Thus, the constitutional founder's intention is to establish the non-appealability of the Constitutional Council's decisions, in addition to their binding nature on everyone, whether they are official entities or not. We note here that the pure non-composite judgments issued by the Constitutional Court have their effect either by a condition change or a reservation. Professor "Wajdi Ragheb Fahmy" defined them as "the judgments that decide on substantive requests and defenses, such as those that respond to the party's substantive requests or reject them." In this case, the constitutional judiciary concludes that the legal text is unconstitutional, thus acquiring authority that prevents it from being re-submitted. However, if the Constitutional Court does not find any constitutional flaw in the challenged legislative or regulatory text, it will reject the appeal.

As for the effects of the Constitutional Court's decisions, they take effect from the date of their issuance. This applies to legal texts that have come into force, meaning for subsequent review, except for those related to the plea of unconstitutionality, which loses its effect from the day the Constitutional Court's decision is issued. As for non-enacted laws, which are subject to prior review, they are not issued.

What is meant by the nature of the Constitutional Court? Is it a judicial or a political body?

If we look at the organization and functions of the court, we see that it has a special judicial and political nature, as it is politically

[117] CF. BURDEAU. G, Droit constitutionnel et institutions politiques, Op.cit, p. 113

constituted and has taken on the issue of the balance of powers into consideration, yet it enjoys independence in carrying out its tasks.

You can say that the Constitutional Court is not a political body because the composition of the court, according to Article 186 of the 2020 constitutional amendment, includes judges who are obligated to political neutrality, and the members of the court are required to maintain the confidentiality of deliberations. This aspect and nature are judicial.

The review of the constitutionality of laws can take many forms, which can be classified in several ways. It can be carried out by a political body or a judicial body, and the system of constitutional review can be centralized or decentralized. Based on the above, it is clear that the Constitutional Court exercises subsequent review and does not exercise review by motion because it only acts upon the request of the Senate, the House of Representatives, or the Council of Ministers. The court also belongs to centralized systems because the constitutional maker in the constitutional amendment adopted review. The constitutional maker in the 2020 constitutional amendment adopted the review of the constitutionality of laws thru the Constitutional Court, but its nature oscillates between political review and judicial review, which we will demonstrate according to the following classification.[118]

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[118] Maïfi L'Aziz, the previous reference, p. 57; Saïd Bouchaïr, the previous reference, pp. 201-203.

provide the text you would like me to translate?

First: Independence of the Court

From the way the Constitutional Court is organized, it is clear that the Constitutional Court possesses the most important characteristics of judicial bodies, particularly its independence from oversight authorities. So, what does an independent body mean? What are the tasks of the independence of the Constitutional Court?

The meaning of an independent body is linked to the independence of the judiciary, which means that the courts perform their work independently of other government bodies. The resolution of disputes is the exclusive jurisdiction of the judiciary, which is not subject to anything other than the law in its work. No authority has the right to dictate to the court or suggest how to rule in any case before it, or to alter the judgment issued by the judges or to suspend its execution. The body is independent if it swears not to receive any orders, directives, or instructions in the manner that occurs among administrative bodies, or any form of interference that undermines its independence. The relationship between judicial bodies is not governed by the principle of hierarchical subordination that governs relationships between administrative bodies.

Considering the organization of the Constitutional Court, we find that its independence is guarantyd by constitutional provisions thru the system of appointing its members, the non-renewable single term, the

incompatibility of functions, the disciplinary system, and the duty of confidentiality.[119]

In addition to this, I note that the Constitutional Court is fundamentally based on the constitution, which renews its formation principles according to Article 185 of the 2020 constitutional amendment and defines. Its competencies according to Article 190 of the 2020 constitutional amendment and its composition according to Article 186 of the constitutional amendment, which supports its independence from other authorities more than any judicial body.

Therefore, the Constitutional Court is legally protected from any possibility of altering its fundamental law in terms of its composition or functions, as these matters are stipulated in the constitution, making it immune to the influence of the public authorities it oversees. Neither the parliament nor the executive authority can affect its existence or powers.[120]

What also supports the independence of the Constitutional Court is that it sets its own rules of procedure. It is worth noting that one of the most important aspects of the Constitutional Court's independence, which reinforces the assumption of its judicial nature and distances it from a political description, is keeping it away from the political arena, both in terms of its decisions and its existence. This prevents members of the Constitutional Court from joining political parties.

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[119] Fouzi Oussadek, Al-Wafi in Explaining Algerian Constitutional Law, Volume Two: General Theory of Constitutions, Third Edition, University Publications Bureau, Algeria, 2003, p. 186.

[120] CF. PRELOT. M et BOULOUIS. J, Op.cit, p. 228-229.

Secondly: The Judicial Approach of the Constitutional Court

The judicial nature of constitutional oversight is evident thru the approach of the Constitutional Court itself when it undertakes constitutional oversight, as it is observed that it follows a judicial method in issuing its rulings and decisions (A). It also explicitly states that it only monitors legality and does not extend its activities to monitoring appropriateness (B).

A. Judicial for rulings:

When examining the decisions and rulings of the Constitutional Court and comparing them with judicial rulings, it becomes clear that the Constitutional Court follows a judicial style in its issuance, as the decisions and rulings are noted to be in a judicial form and adhere to judicial logic in their issuance. The facts of the case include the names of the parties, their titles and attributes, their residence, their presence or absence, the names of their representatives, a summary of their requests and documents, and the applicable legal texts. Regarding the grounds, the reasons on which the judge bases his ruling must be mentioned, and these should stem from legal rules and the results of investigation and evidence procedures. Failure to provide these grounds may result in the annulment of the judgment.

B. The Constitutional Court monitors legality, not appropriateness:

The Constitutional Court is called upon to rule on the conformity of laws and regulations with the constitution. Therefore, its oversight in this matter is a review of legality, not a review of appropriateness, because the aim behind it is to prevent the emergence of any text

tainted by unconstitutionality. In line with this, the Algerian Constitutional Court, like any constitutional court, is exempt from parliamentary oversight in the area of appropriateness, as it is an independent body that sets its own limits. If it is the prerogative of the legislator to propose and vote on the law with full sovereignty, it is the constitutional court's duty, by virtue of its constitutional powers, to ensure that the legislator respects constitutional provisions when exercising its legislative authority[121].

It is clear from the above that the Constitutional Court distinguishes between the area of legality control, which is within its jurisdiction, and the area of appropriateness reserved for the legislator alone, and that it does not intervene in the latter as it is not within its jurisdiction, which shows that the Constitutional Court considers itself a judge.

We conclude from the above that the Constitutional Court is, on one hand, of a judicial nature, considering its name and according to Article 185 of the constitutional amendment, it is of a judicial nature, and the constitutional maker also tends to adopt judicial oversight considering its procedures. On the other hand, it is of a political nature, considering its formation as stated in Article 186 of the constitutional amendment, where we find that not all of them are judges. Here, we say that the Constitutional Court is of a judicial nature and also of a political nature.

Thus, the constitutional founder, thru Article 198 of the 2020

[121] CF. BURDEAU. G, Droit Constitutionnel et Institutions Politiques, Op.cit, p. 99.

constitutional amendment, ruled that the decisions of the Constitutional Court are final decisions with absolute authority and are binding on all. Public, administrative, and judicial authorities must adhere to them based on the fact that constitutional lawsuits are inherently real lawsuits where the legal texts challenged for constitutional defects are the subject of the dispute. Therefore, the decisions issued in these cases have absolute authority, and their effect is not limited to the entities that initiated the review but extends to all, and all state authorities are bound by them.

Section Two: Justifications for Adopting the Constitutional Court

The supremacy of the constitution over other legal texts in the state necessitates the establishment of a mechanism that ensures this supremacy and guaranties respect for the constitution, as well as the embodiment of its content and spirit in all actions of public authorities. If the 2020 constitutional amendment included the provision for the Constitutional Court as an independent constitutional institution tasked with ensuring respect for the constitution and regulating the functioning of institutions and the activities of public authorities, this is what was stated in Article 185 of the 2020 constitutional amendment: "The Constitutional Court is an independent institution tasked with ensuring respect for the constitution." The Constitutional Court regulates the functioning of institutions and the activities of public authorities. The Constitutional Court determines its own rules of procedure. This topic highlights the objective and legal justifications that necessitate a role for the

Algerian judiciary in overseeing the constitutionality of laws, beyond merely filtering or dismissing constitutional challenges as seen in the hypothetical model[122]. Analysis has shown that a set of justifications, such as the equality of powers and non-discrimination, the judiciary's status as a power, and its role as the protector of rights and freedoms, call for recognizing the judiciary's role in overseeing the constitutionality of laws. Additionally, there is a need to benefit from the experiences of other countries that have replaced constitutional councils with constitutional courts. The vast majority of countries in the world rely on the judiciary for the review of the constitutionality of laws, and constitutional review thru a constitutional council is only applied in France and some of its colonies.

The recent constitutional amendment of 2020 introduced a new approach to the constitutional review of laws, replacing the Constitutional Council with the Constitutional Court. In this regard, the President of the Constitutional Council, Kamel Fenniche, confirmed that the Constitutional Court, as stipulated by the new constitution, adds value by having the authority to intervene in political discussions to avoid paralyzing constitutional institutions. He considered the establishment of the Constitutional Court, which will replace the current Constitutional Council, a new asset in the Algerian constitutional system, as it will undertake its new tasks, including

[122] Dhiaa Al-Din Said Al-Madhoun, "Judicial Review of the Constitutionality of Laws: A Comparative Study between America, Egypt, and Palestine," a thesis submitted for the Master's degree in Public Administration, unpublished (Academy of Administration and Policy for Graduate Studies, Joint Graduate Program with Al-Aqsa University), Gaza, Palestine, 2014, p. 114.

resolving disputes that may arise between constitutional authorities, which could spare the country from political crises.

The Constitutional Council, in its current form, has experienced several controversies that it could not resolve due to its structure as an appendage of the presidency. Legal and political debates arose regarding the eligibility of former President Abdelaziz Bouteflika to run for a fourth term in 2014 and then a fifth term in 2019. However, the council insisted on his candidacy and deemed it legal in the absence of an authority that should verify the president's health eligibility. These two historical milestones may have paved the way for the popular movement in February 2019, prompting the constitutional maker to transform the Constitutional Council into the Constitutional Court with broader powers to avoid future political crises by preventing any authority, intentionally or unintentionally, from encroaching on the powers of another authority[123].

There are also several reasons and circumstances that contributed to the emergence of the Constitutional Court and its replacement of the Constitutional Council, the most important of which are:

- The popular movement that took place in 2019 called for the necessity of political change, one of the most important tools of which is changing the constitutional system of the country.

[123] Nabali Fattah, The Role of the Constitutional Council in Protecting Public Rights and Freedoms: An Extended Field and a Limited Scope, A Thesis Submitted for the Degree of Doctor of Philosophy in Law, (Unpublished) Faculty of Law, Mouloud Mammeri University of Tizi-Ouzou, 2010, pp. 153, 154.

Section Three: The composition of the Constitutional Court and the conditions for its membership

In this section, we will address the composition of the Constitutional Court (first branch), and then its membership (second branch).

Section One: Composition of the Constitutional Court

Article 186 stipulates that the Constitutional Court consists of 12 members[124]:

• Four (04) members appointed by the President of the Republic, including the President of the Court.

• One (01) member is elected by the Supreme Court from among its members, and one (01) member is elected by the Council of State from among its members.

• Six (06) members are elected by direct vote from among the professors of constitutional law, with the President of the Republic determining the conditions and methods for the election of these members.

• The President of the Republic appoints the President of the Constitutional Court for a single term of 6 years, and the members of the Constitutional Court perform their duties for a single term of 3 years, with the members of the Constitutional Court being renewed every three years.

• The most important observation that can be made in this context is that the constitutional founder maintained the same number in the composition of the Constitutional Court compared to the

[124] Article 186 of the 2020 constitutional amendment.

Constitutional Council in the 2016 amendment. However, the new aspect in the composition of the Constitutional Court is the election of 6 members by popular vote from constitutional law professors, which is a positive development as it is likely to provide a strong impetus for the review of the constitutionality of laws, given the expertise these elected professors possess in the constitutional field. The members of the Constitutional Court, before assuming their duties, take an oath before the President of the Supreme Court, according to the following text: "I swear by Almighty God that I will perform my duties with integrity and impartiality, maintain the confidentiality of deliberations, and refrain from taking a public stance in a case within the jurisdiction of the Constitutional Court."[125]

Section Two: Organic Conditions

First: Conditions related to the members

Article 187 has stipulated certain conditions for the members, whether elected or appointed, in the Constitutional Court, which are as follows:

• Reaching the age of fifty (50) years on the day of their election or appointment.[126]

• Have at least twenty (20) years of legal experience and have benefited from training in constitutional law.

• Enjoy civil and political rights and not be sentenced to a custodial

[125] Yassine Tamam Chouki, The Nature of the Algerian Constitutional Council According to the 2016 Constitutional Amendment (A Comparative Study with the French Constitutional Council), Algerian Journal of Legal, Political, and Economic Sciences, Vol. 56, No. 04, 2020, p. 115

[126] Article 187 of the 2020 constitutional amendment

penalty.

• Non-affiliation with any political party.

• Once the members of the Constitutional Court are elected or appointed, they cease to hold any membership, position, assignment in another task, or engage in any other activity or free profession.

By examining Article 187 of the 2020 constitutional amendment, it becomes clear that the constitutional founder reconsidered the conditions for the reappointed or elected members of the Constitutional Court compared to the conditions for the members of the Constitutional Council in the 2016 amendment.

Where the age requirement for holding the position of a member of the Constitutional Court has become 50 years instead of 40 years, and the experience requirement has increased to 20 years instead of 15 years. The constitutional founder also added two other conditions: the enjoyment of civil and political rights and not having been sentenced to a prison term, as well as non-partisanship, so that the Constitutional Court remains free from any considerations. This is considered a new addition brought by the recent amendment regarding the composition of the Constitutional Court.

Secondly: Conditions related to the President of the Constitutional Court

In addition to the conditions that must be met by a member of the Constitutional Court, there are specific conditions that must be met by the President of the Constitutional Court, which are as follows:

• The President of the Constitutional Court must hold only the

original Algerian nationality, which is proven by the original Algerian nationality of both parents.

• He must be a follower of Islam.

• To prove original Algerian nationality only for the wife.

• To prove his residence in Algeria exclusively for at least 10 years before being appointed as the President of the Constitutional Court.

• He must prove his participation in the November 1, 1954 Revolution if he was born before July 1942.

• He must have completed national service or possess a legal justification for not having done so.

• To prove that his parents were not involved in actions against the November 1954 Revolution if he was born after July 1942.

• To submit a declaration of movable and immovable properties inside and outside the country.

• The stipulation of the necessity for specific conditions for the President of the Constitutional Court is due to the sensitive position of the court's president, as they may assume the duties of the head of state in the event of a vacancy in the presidency and a simultaneous vacancy in the position of the President of the National Assembly. Additionally, the President of the Constitutional Court provides numerous consultations to the President of the Republic as determined by the constitution.[127]

[127] Arabi Ahsan, Journal of Law and Political Science, Judicial Review of the Constitutionality of Laws in Light of the Constitutional Amendment, 2020, Issue 4, p. 23

The constitutional founder determined the term of the presidency of the Constitutional Court, which is a single term lasting six (6) years. Thus, it is not subject to renewal, and the position of the President of the Constitutional Court is not subject to a partial renewal every three years, which applies to the members of the Constitutional Court. Generally, the term of membership in the Constitutional Court is six (6) years, with half of the composition renewed every three years. Article 188 of the Constitution stipulates that the internal regulations of the Constitutional Court shall determine the conditions and methods of partial renewal, which serves as a guaranty for the independence of the Constitutional Court.

Section Two: Scope of Review on the Constitutionality of Laws

The oversight exercised by the Constitutional Court on legal texts varies, whether the texts are in the form of treaties, organic laws, ordinary laws, decrees, or regulations, with mandatory prior review for some legal texts and discretionary review for others.

Referring to Article 190 of the 2020 constitutional amendment, which states: "In addition to the powers explicitly granted to it by other provisions of the Constitution, the Constitutional Court shall decide on the constitutionality of treaties, laws, and regulations.[128]"

The first requirement: Constitutional oversight of treaties

Article 2 of the Vienna Convention on the Law of Treaties of 1969 states that an international treaty is a written agreement between subjects of international law with the intention of producing certain

[128] Article 190 of the 2020 constitutional amendment

legal effects in accordance with the rules of international law, whether this agreement is contained in a single document or in several documents, and regardless of the name given to it: convention, statute, declaration, protocol.

Section One: Constitutional Review of Treaties

The Algerian Constitution has entrusted the President of the Republic with the authority to conclude and ratify international treaties, as stated in Article 91 of the 2020 constitutional amendment, which reads: "The President of the Republic, in addition to the powers explicitly granted to him by other provisions of the Constitution, shall have the following powers and authorities..." Paragraph 11: "Concludes international treaties and ratifies them."

The constitution states in Article 190, paragraph 2: "The constitutional court can be consulted regarding the constitutionality of treaties before they are ratified and laws before they are enacted." The implication of this paragraph is that the constitutional court must be consulted regarding the law before its enactment; otherwise, the right to resort to this oversight is forfeited. The institution presents these treaties to the court due to their critical nature, as they are related to the state's independence and sovereignty. Article 102 of the constitutional amendment stipulates: "The President of the Republic signs ceasefire agreements and peace treaties; the President of the Republic seeks the opinion of the constitutional court regarding the agreements related to them." The President of the Republic immediately presents those agreements to each chamber of Parliament

for explicit approval[129]. "This implies the exclusion of the mandatory review for compliance. If the Constitutional Court is consulted on the matter at the request of the President of the Republic, it must rule on the notification regarding this type of treaties both formally and substantively. If it deems them unconstitutional, they will not be ratified by the President of the Republic due to their contradiction with the constitution, especially in cases where there is a conflict between the substantive provisions of the treaties and the provisions of the constitution, as a treaty that contradicts the constitution is considered unconstitutional."

For the President of the Republic to present it to Parliament immediately upon receiving the opinion of the Constitutional Court regarding it, and to subject the constitutional authority to urgent oversight procedures due to the sensitive nature of its subjects, which necessitates immediate action.

Deciding on its constitutionality, which is confirmed by the text of Article 83 of the system defining the rules of the Constitutional Council's work, which states that the Council must express its opinion immediately, meaning that the opinion must be given urgently.

It also maintained the subjection of international treaties below it to optional oversight by the Constitutional Court before ratification, in accordance with Article 190/2 of the 2020 constitutional amendment, which states: "The Constitutional Court can be notified regarding the constitutionality of treaties before ratification."

[129] Article 102 of the 2020 constitutional amendment

on them... "And this means that international treaties cannot be subjected to subsequent review after they come into force upon ratification. Although the review of international treaties is subject to optional oversight, they share with ceasefire agreements and peace treaties the lack of ratification if the constitutional court rules that their provisions are not in accordance with the constitution."

Article 198 states, "If the Constitutional Court decides that a treaty, agreement, or convention is unconstitutional, it shall not be ratified." This means that it is mandatory and must be ratified; otherwise, it will be considered unconstitutional.

Section Two: The Status of Ratified International Treaties within the Algerian Legal System

International treaties ratified by the President of the Republic become, by virtue of the constitution, superior to laws, as stipulated in Article 154 of the 2020 constitutional amendment, which states that treaties ratified by the President of the Republic, according to the conditions set forth in the constitution, take precedence over laws. International treaties are incorporated into national legislation as they go thru specific stages and procedures, which are:

•The stage of negotiations, preparation, and drafting.

•Phase of drafting.

•Approval stage.

•The stage of publication in the official gazette.

The second requirement: Oversight of the constitutionality of ordinary and organic laws and regulations

The oversight exercised by the Constitutional Court on legal texts is divided into whether these texts are in the form of international treaties, ordinary laws, organic laws, orders, or regulations.

Section One: Oversight of the Constitutionality of Ordinary and Organic Laws

Ordinary laws and organic laws are a set of laws issued by the competent authorities to regulate certain matters.

1.Control over ordinary laws

The 1996 Constitution defined it as a set of general and binding rules issued by Parliament based on a project proposed by the government or a proposal submitted by twenty deputies, following the procedures stipulated by the Constitution for either the approval, issuance, or enforcement of the Constitution.

Article 193 states: The Constitutional Court is notified by the President of the Republic, the President of the Senate, the President of the National People's Assembly, the Prime Minister, or the Head of Government, as the case may be. It can also be notified by forty (40) deputies or twenty-five (25) members of the Council of the Nation.

Ordinary laws are subject to prior discretionary constitutional review, whereas the former Constitutional Council, according to Article 187 of the 2016 constitutional amendment, required notification from fifty (50) deputies or thirty (30) members of the National Assembly. Once the law is enacted, these entities can no longer exercise their right to notify the Constitutional Council.

Ordinary laws are subject to prior discretionary constitutional review,

as the Constitutional Court is responsible for examining the constitutionality of a law before its publication in the official gazette, provided that the entities specified in Article 193 notify the Constitutional Court about the text of the law. Consequently, ordinary laws are not subject to subsequent discretionary or mandatory review, as laws are immune from constitutional review once they are enacted, unless the conditions for raising the unconstitutionality defense are met. In this case, the legislative text becomes subject to subsequent discretionary review.

The Constitutional Court can also, according to Article 190/02 of the 2020 constitutional amendment, preemptively and optionally review the constitutionality of ordinary laws before their issuance, if a notification regarding them is raised by the bodies specified in Article 193 of the 2020 constitutional amendment. Thus, the review that ordinary laws are subjected to is only a prior optional review, similar to international treaties, except for the subsequent review thru the plea of unconstitutionality. If the Constitutional Court decides that the ordinary law is unconstitutional, it will not be issued by the President of the Republic.

However, the constitutional founder did not address the issue of whether the Constitutional Court should address the text as a whole or if it should suffice with the articles subject to the notification. Meanwhile, it is understood from the text of Article 189 of the 2020 constitutional amendment that the Constitutional Court can declare the entire law unconstitutional without limiting itself to the articles

subject to the notification, as was previously practiced by the Constitutional Council.

Ordinary laws are those laws issued by the parliament based on a draft submitted by the government or a proposal submitted by the deputies, meaning those legislative texts issued by the parliament and approved in both chambers of parliament according to the constitutionally applicable rules.

And based on the above, ordinary laws are subject to prior discretionary constitutional review, as the Constitutional Court is responsible for examining the constitutionality of a law before its publication in the official gazette, provided that the entities specified in Article 193 notify the Constitutional Court about the text of the law. Therefore, ordinary laws are not subject to subsequent discretionary or mandatory review, as laws are immune from constitutional review once they are issued, unless the conditions for raising the unconstitutionality defense are met. In this case, the legislative text becomes subject to subsequent discretionary review.

2. The review of the constitutionality of organic laws Control over the constitutionality of organic laws

Organic laws first appeared in the 1996 Constitution and are superior to ordinary laws. Examples of organic laws can be found in Article 141 of the amended 1996 Constitution by Law 16-01. While the President of the Republic can issue ordinary laws immediately after parliamentary approval, this is not the case with organic laws, as they must be subjected to conformity control before issuance. It also refers

to those legal texts that complement the provisions of the constitution, but their subject matter is related to constitutional systems or bodies.

Where Article 190, paragraph five, states: "The President of the Republic shall mandatorily notify the Constitutional Court regarding the conformity of organic laws with the Constitution after they are ratified by Parliament, and the Constitutional Court shall issue a decision on the entire text."

Article 140 of the 2020 constitutional amendment explicitly states: "In addition to the areas designated for organic laws under the constitution, the parliament shall legislate organic laws in the following areas:

•Regulation of public authorities and their functioning.

•The electoral system.

•The law related to political parties.

•The law related to media.

•The Basic Law of the Judiciary and Judicial Organization.

•The law related to financial laws is approved by an absolute majority of the deputies and members of the Council of the Nation.

Similarly, the essence of these organic laws is approved by an absolute majority of the members of the National People's Assembly and the Council of the Nation, as was the case when the Constitutional Council previously operated based on Article 141 of the 2016 constitutional amendment.

The organic law, before its issuance, is subject to a constitutional compliance review by the Constitutional Council. Therefore, the

organic law is subject to prior constitutional review, and its approval requires an absolute majority of the deputies and members of the Council of the Nation, which is two-thirds (2/3) of the members of Parliament and not just those present. It was specifically created to manage constitutional institutions and advisory bodies in the state and is subject to mandatory oversight. To become effective, it requires three-quarters (¾) of the votes of the deputies and members of both chambers. It is of a lower rank than the constitution and treaties and falls outside the jurisdiction of the President of the Republic.

It is issued by an ordinary legislator (the legislative authority) but includes constitutional subjects by delegating the constitutional legislator, meaning that the latter instructs the legislative authority to enact laws called organic laws. Organic laws are presented to the Constitutional Council before their issuance because it is a prior review, according to Article 2/197 of the 2020 constitutional amendment.

2020, which states: "Decisions related to the oversight of organic laws are made by an absolute majority of the members."

Section Two: Oversight of the Constitutionality of Regulations

They are represented by presidential decrees issued by the President of the Republic that fall outside the framework of the law, and executive decrees issued by the Prime Minister or the Head of Government after the approval of the President of the Republic.

The executive authority in the Maghreb countries has a wide scope to issue regulations independently and separately from the legislative

authority in matters not within the parliament's jurisdiction. Referring to the principle of the hierarchy of laws, these regulations rank lower than basic and ordinary legislations. According to the organic criterion, they are considered administrative decisions due to the executive authority's jurisdiction over them. However, from a substantive perspective, they are regarded as independent legislations as they contain general and abstract legal rules. Therefore, subjecting them to constitutional review is logical based on their legal status as independent legislations.

The constitutional founder of the Constitutional Court has recognized the validity of constitutional oversight over regulations thru Article 190 of the 2020 constitutional amendment, which states: "In addition to other powers explicitly granted to it by other provisions in the constitution, the Constitutional Council shall issue an opinion on the constitutionality of treaties, laws, and regulations." The constitutional founder of the Constitutional Council has acknowledged the validity of constitutional oversight over regulations thru Article 190 of the 2020 constitutional amendment, which states: "In addition to other powers explicitly granted to it by other provisions of the Constitution, the Constitutional Council shall express its opinion on the constitutionality of treaties,

The 2020 constitutional amendment assigned the regulatory authority to the President of the Republic, according to Article 141, which states, "The President of the Republic exercises regulatory authority in matters not allocated to the law." Since they do not come into effect

until they are issued and published in the official gazette within a month, according to the third paragraph of Article 190, which states: "The Constitutional Court can be notified regarding the constitutionality of regulations within a month from the date of their publication." And the fourth paragraph states: "The Constitutional Court shall issue a decision regarding the conformity of laws, regulations, and treaties..." And thus, the regulations are subject to subsequent discretionary review.

The Constitutional Court is responsible for reviewing the constitutionality of regulations and orders issued by the President of the Republic during parliamentary recesses or the vacancy of the National People's Assembly, in accordance with Article 142 of the 2020 constitutional amendment. This is provided that the entities specified in Article 193 notify the Constitutional Court about the order or regulation within one month from the date of its publication in the official gazette. If the one-month period specified in Article 190 of the constitutional amendment expires, the right of the notifying entities to initiate a review against the text is forfeited. However, the review remains open thru the mechanism of raising the unconstitutionality plea if its conditions are met, or by resorting to the Council of State regarding the regulation before the expiration of the judicial appeal period, which is four months according to Article 829 of the Civil and Administrative Procedure Code.

The regulations are divided into executive decrees and presidential decrees.

1. Executive decrees: Executive decrees:

The second paragraph (02) of Article 141 of the 2020 constitutional amendment states: "The application of laws in the regulatory field falls under the jurisdiction of the Prime Minister or the Head of Government, as the case may be, and includes, for example, the new executive decrees."

• Executive Decree No. 23-123 dated 25 Sha'ban 1444, corresponding to March 18, 2023, amending and supplementing the provisions of Article 05 of Executive Decree No. 21-44 dated January 17, 2021, which defines the exploitation system applicable to all types of public networks and various electronic communication services.

• Executive Decree No. 22-110 dated 11 Sha'ban 1443 AH, corresponding to March 14, 2022, regulates the principles for determining the tariffs of electronic certification services.

• Executive Decree No. 22-369 dated the 1st of Rabii al-Thani 1444, corresponding to October 27, 2022, amends Executive Decree No. 22-39 dated the 7th of Jumada al-Thani 1443, corresponding to January 10, 2022, which defines the conditions for granting a general license for the establishment, operation, and provision of electronic communication services to the public, as well as the amounts of financial compensation, royalties, and annual contributions related to it.

• Executive Decree No. 22-161 dated 13 Ramadan 1443 corresponding to April 14, 2022, includes the establishment of the Scientific Council of the Great Mosque of Algiers, specifying its

tasks, organization, working methods, member appointments, and its financial provisions.

2. Presidential decrees: Presidential decrees:

And they are issued by the President of the Republic, and it was stated in its first paragraph: "The President of the Republic exercises regulatory authority in matters not assigned to the law."

And as an example, new presidential decrees:

• Presidential Decree No. 21-343 dated 27 Muharram 1443 AH, corresponding to September 5, 2021, which defines the model basic law for reception, rest, and recreation institutions affiliated with the social sector of the People's National Army.

• Presidential decree dated 21 Muharram 1443, corresponding to August 30, 2021, includes the termination of the duties of the Director of Studies at the Presidency.

Since there is a legal consensus regarding the necessity for regulatory decrees (presidential decrees) issued by the President of the Republic to be subject to the same rules as general and abstract legislation, the presidential decree has a dual nature. It is considered an administrative decision according to the organic criterion, as the executive authority is responsible for its issuance, and it is considered legislation according to the material organic criterion.

Finally, regulations are subject to subsequent discretionary review, as the Constitutional Court is responsible for examining the constitutionality of regulations issued by the President of the Republic during parliamentary recesses or the vacancy of the National People's

Assembly, according to Article 142 of the 2020 constitutional amendment.

3. Election oversight: Election oversight:

The Constitutional Court reviews the appeals submitted regarding the provisional results of the presidential and legislative elections and the referendum, and announces the final results. In the same context, it is responsible for accepting the files of presidential election candidates in accordance with the provisions of Article 95 of the new 2020 constitutional amendment. If a candidate receives approval from the Constitutional Court, it cannot be revoked. It is also worth noting that Algeria established, under Law No. 19/07, the Independent Authority for Election Monitoring, which oversees the management of elections independently from the executive authority and supervises them until the final results are announced, which is the prerogative of the Constitutional Court. This means that the Independent Authority's role is to supervise and ensure the proper conduct of elections, while the Constitutional Court is responsible for monitoring and announcing the final results.

Article 191 of the 2020 amendment states: "The Constitutional Court reviews the appeals it receives regarding the provisional results of the presidential and legislative elections and the referendum, and announces the final results of all these processes." The role of the Constitutional Court in elections is to examine the appeals it receives regarding the provisional results of the elections, acting as a court for reviewing electoral disputes, while the supervision of the elections is

the responsibility of the Independent National Authority for Elections.

4. Supervision of the internal regulations of the parliament: Control over the internal regulations of the parliament:

Article 190 of the 2020 constitutional amendment, in its sixth paragraph, stipulates that the Constitutional Court decides on the constitutionality of the internal regulations of the two chambers of Parliament in relation to the constitution. This oversight has been present since the 1989 Constitution, as the purpose of the internal regulations is to ensure the proper functioning of the assigned duties and to guaranty the strength and effectiveness of Parliament. The internal regulations encompass the procedures and methods that govern the National Council and the Council of the Nation, as well as the relationship between them and the government, thus they must be in accordance with the Constitution.

The internal regulations of the two chambers of Parliament refer to the set of rules prepared and approved by the members of both the National People's Assembly and the Council of the Nation. These rules are subject to compliance oversight to prevent each chamber from exceeding its designated framework and to ensure the proper functioning of both councils and the functional relationship between them and the government.

5. Control of the conformity of laws and regulations with treaties combines both prior discretionary control and subsequent discretionary control. The constitutional founder, in the 2020 constitutional amendment, subjected regulations (excluding orders

issued by the President of the Republic) and ordinary laws (excluding organic laws) to control for conformity with ratified treaties.

Whereas Article 198 of the 2020 constitutional amendment did not include a specific provision for the compatibility review between legislative texts and regulations on one hand and treaties on the other, but rather included a provision on the effects of unconstitutionality of the legislative or regulatory text. The Constitutional Court declares the unconstitutionality of the law or regulation that conflicts with the treaty, just as it declares the unconstitutionality of the same text if it conflicts with the Constitution. Therefore, the effects are the same whether the law or regulation conflicts with the treaty or with a constitutional text. In both cases, the Constitutional Court declares the unconstitutionality of the law or regulation, but does not declare the incompatibility of the law or regulation with the treaty, and this is what is understood from the text of Article 198.

6. The plea of unconstitutionality The plea of unconstitutionality

The review of unconstitutionality is a subsequent review of the issuance of the regulatory or legislative text in the official gazette, where the Constitutional Court is notified thru a referral by the Council of State or the Supreme Court that the legislative or regulatory text in question, which is the subject of the dispute, violates the rights and freedoms guarantyd by the constitution and is likely to be unconstitutional. The Constitutional Court then issues a decision regarding the constitutionality or unconstitutionality of the referred text.

Thru our study, we concluded that the constitutional legislator gave great importance and care to constitutional oversight of laws thru the constitutional amendment of 2020 and the establishment of the Constitutional Court as a replacement for the Constitutional Council, in order to protect the rights and freedoms of individuals.

The Constitutional Court is composed of members representing the executive, legislative, and judicial authorities. The 2020 constitutional amendment introduced the Constitutional Court, which oversees the constitutionality of laws, replacing the Constitutional Council established in the 2016 constitutional amendment. It is responsible for judicial oversight of the constitutionality of laws, including conformity control and the constitutionality of laws, treaties, and regulations.

The exception of unconstitutionality (L'exception d'inconstitutionnalité) is a new mechanism in the Algerian legal system for monitoring the constitutionality of laws. It was introduced for the first time in the Constitution of March 6, 2016, in Article 188, which states in its first paragraph: "The Constitutional Council can be notified of the exception of unconstitutionality based on a referral from the Supreme Court or the Council of State, when one of the parties in a trial before a judicial authority claims that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guarantyd by the Constitution..." This text represents a qualitative leap in establishing the rule of law and reinforcing the principle of legality, which is one of the pillars of

democracy and the principle of the supremacy of the constitution, considering it "above all, and it is the fundamental law that guaranties individual and collective rights and freedoms, protects the freedom of the people's choice, and legitimizes the exercise of powers." Preamble of the Constitution of December 30, 2020, ratified in the referendum of November 1, 2020. In this direction, resorting to constitutional justice has become an open field for litigating citizens to access the Constitutional Council (now the Constitutional Court) thru the plea of unconstitutionality.

And it should be noted, first and foremost, that objectively judging the role played by the plea of unconstitutionality in protecting rights and freedoms since its implementation in our country necessarily requires a comprehensive assessment of the use of this mechanism in order to evaluate it.

What is the plea of unconstitutionality?

The plea of unconstitutionality is a procedure that allows one of the parties in the trial to assert the unconstitutionality of a legislative ruling that it considers to infringe upon

The rights and freedoms guarantyd to him by the constitution.

What is the legislative text?

The text that can be challenged for unconstitutionality must be of a legislative nature, meaning a law voted on by the parliament.

What is the judicial authority and the period during which the plea of unconstitutionality cannot be raised?

The plea of unconstitutionality can be raised before any ordinary or

administrative judicial authority, at the first instance level.

or appeal or cassation.

What are the conditions for accepting the plea of unconstitutionality?

The conditions for accepting the plea of unconstitutionality are:

_ The opposing legislative text must form the basis for the prosecution or the outcome of the dispute must depend on it.

_ The Constitutional Council has never declared the legislative text to be in accordance with the constitution, except in cases of changed circumstances.

_ The plea of unconstitutionality must be of a serious nature.

What do the judicial authorities do following the plea of unconstitutionality?

The judicial authority before which the plea of unconstitutionality was raised examines as a priority whether the conditions for its acceptance are met.

If the judicial authority considers the unconstitutionality plea acceptable, it sends its decision to the Supreme Court of the State Council within 10 days. The proceedings of the case or trial are suspended until the constitutional challenge is resolved.

What is the role of the Supreme Court and the Council of State in the procedure of raising the unconstitutionality objection?

After receiving the referral of the unconstitutionality plea, the Supreme Court or the State Council shall decide within a period of two (02) months on the referral of the unconstitutionality plea to the Constitutional Council.

In the case where the parties directly approach the Supreme Court or the State Council, these two latter institutions shall prioritize and decide within a period of two (02) months regarding the referral of the unconstitutionality plea to the Constitutional Council.

What is the role of the Constitutional Council in the procedure of raising the unconstitutionality plea?

The Constitutional Council is the authority authorized to rule on the plea of unconstitutionality.

The session of the Constitutional Council is public. The parties represented by their lawyers, as well as the government representative, can express their observations during an oral discussion.

What are the effects of raising a constitutional objection?

If the legislative ruling subject to the unconstitutionality plea is deemed unconstitutional, it loses its effect starting from the date specified by the Constitutional Council.

The decision of the Constitutional Council is communicated to the Supreme Court or the Council of State to inform the judicial authority before which the unconstitutionality plea was raised.

The decision of the Constitutional Council is published in the official gazette of the People's Democratic Republic of Algeria.

Applicable texts

• Articles 188 and 189 (paragraph 2) of the Constitution

• Article 191 (paragraphs 2 and 3) of the Constitution

• Organic Law No. 18-16 dated 22 Dhu al-Hijjah 1439, corresponding

to September 2, 2018, which defines the conditions and procedures for raising the unconstitutionality plea

In the context of exercising its constitutional powers, the Constitutional Court issued a decision regarding a parliamentary notification concerning the opening of the parliamentary session for the year 2025-2026. The decision was published in issue 68 of the official gazette, dated October 14, 2025.

The Constitutional Court is tasked with ensuring respect for the provisions of the constitution, and in this case, the constitution has not been respected!

This violation will become a constitutional custom that will be repeatedly practiced, and therefore a solution must be found regarding the circumvention of constitutional provisions.

The original and logical approach would have been for the parliament to seek the opinion of the Constitutional Court in advance regarding the practice of this procedure, rather than notifying the Constitutional Court after its implementation.

Conclusion

Constitutional rules are considered the foundation of constitutional law study. If the introduction to legal sciences is the general preface to legal studies in general, then undoubtedly the general theory of constitutional law is considered the essential introduction to studying the positive constitutional system in any country.

It can be said that the general theory of constitutional law differs in many rules from its counterparts in the theory of law. It is an independent theory with its own rules that distinguish it from the general theory of law. This independence is due to the different nature of the relationships governed by constitutional law, as it is the law that regulates the relationship between authority and freedom thru the organization of public powers in the state, unlike legal rules that

govern the relationship between the state and individuals or the relationship between individuals themselves. This difference is evident in the dissimilarity of the sources of constitutional rules, the manner in which these rules are enacted, the method of their amendment, and the means of their termination.

thru our study of the constitutional law course, we covered the basic concepts in defining the conceptual framework of the state by examining its origin, the stages it has gone thru, the theories, and the elements of the state, which are represented by territory, people, and political authority. We then discussed the characteristics of the state, its sovereignty, and its legal personality, in addition to the fact that the state is subject to the law, meaning the existence of the rule of law and the subjection of both the ruler and the ruled to the law. We also studied the types of states, including simple and compound states, federal states, and confederate states.

We also dedicated a section of our study of constitutional law to the constitutional system, where each state has its own written constitution, and there is also an unwritten constitution that includes the formation of constitutional institutions, their constitutional powers, the relationships between them, and the independence of each authority. The constitution includes the rights and duties of individuals and public freedoms. We then studied the methods of constitution formation, the procedures for amending them, as well as the end of constitutions and the establishment of a specialized body to monitor the constitutionality of laws, which can be political or

judicial, called the Constitutional Court.

As for the third chapter, we studied the methods of exercising power, where all countries use the electoral mechanism as a democratic method to choose the ruler. We also discussed in this chapter the political systems based on the principle of separation of powers.

And thru our study of constitutional law and its topics, we clarified the position of Algerian constitutional law on all matters, especially political systems, the monitoring of the constitutionality of laws, the establishment of a constitutional court in the 2020 constitutional amendment, and the evolution of constitutions.

In conclusion, we find that the constitutional founder undertook several reforms reflecting his desire to seek structures and procedures more compatible with the culture and the state's policy. Therefore, several constitutional amendments were introduced to enhance the parliament's authority in exercising legislative power, with various amendments affecting this authority, whether concerning the legal framework of the legislative function or the rules governing legislative work.

The parliament is the foundation of the democratic state because it derives its legitimacy from the people, who are considered the source of all powers, thus holding a prestigious position in the institutional structure of any state. Therefore, the Algerian constitutional founder, in his desire to adapt the fundamental text to the social and political reality that has witnessed constant changes during the stability that followed the suspension of the electoral process in 1991, a phase that

did not seek to recognize the principle of popular sovereignty and the establishment of the principle of separation of powers, which resulted in the consolidation of the parliament's independence as the legislative authority in terms of its formation as an elected institution and the freedom of its functional structures, and the recognition of its powers derived from its status as the representative body.

And although the constitutional texts before 1989 attempted to prioritize the executive authority at the expense of the legislative authority and subjected the latter to the will of the party rather than the will of the people, the constitutional founder, after the adoption of the 1989 Constitution and then the 1996 Constitution, and the adoption of the bicameral system with the reorganization of powers and relations between them, as his desire – the constitutional founder – to enshrine the principle of separation of powers by dividing parliamentary work into more than one chamber, thus creating the Senate to prevent the tyranny of the National People's Assembly. Additionally, the combination of election and appointment methods allows for the expansion of national representation, the inclusion of various segments of society, and the improvement of the parliamentary role.

In addition, the government became accountable to Parliament, which has the authority to monitor it and hold it accountable for its mistakes. The importance of Parliament as a space for developing the democratic experience has also increased.

And because the short experience of this constitutional institution

with its bicameral structure revealed many difficulties and shortcomings that limit its effectiveness as a legislative authority, as the second chamber was not granted the power to initiate laws,

In addition, the electoral conditions allow for the election of representatives who are not skilled in law-making. Therefore, the constitutional founder attempted to address this in the recent constitutional amendment, making the initiative for laws a shared right between the upper and lower chambers. He highlighted the legislative and oversight role of Parliament, along with legislative and constitutional amendments to enhance parliamentary democracy, striving to elevate the electoral system to the level of the latest parliamentary democracy standards, and emphasizing the need to give Parliament its rightful place as a cornerstone of democracy. The nature of the democratic and republican system was affirmed, which is based on the democratic rotation of power thru free and fair elections, as well as the separation of powers, allowing elected representatives to fulfilll their duties toward their constituents without government pressure.

The constitutional founder also included new conditions for membership in the People's National Assembly and the Council of the Nation in the 2020 constitutional amendment, which were not present in the 2016 constitution, ensuring integrity and transparency in candidacy for membership in both councils.

As for the functional aspect of the parliament, it is the focus of the amendment. Although the parliament retained the same areas in

which it legislates, such as enacting laws, setting the internal regulations, voting on the finance law, and approving international treaties, it introduced significant changes, the most important of which is the expansion of the scope of ordinary law-making. What stands out in this constitution is the enhancement of the Senate's status, making it a partner with the National People's Assembly in the legislative field, granting it the right to initiate and vote on laws with the same voting percentage as the National People's Assembly.

And despite the wide privileges that the parliament has come to enjoy, the constraints and manifestations of executive authority's influence prevent it from performing its duties, the most prominent of which is the executive authority's interference in legislative work and legislative jurisdiction.

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