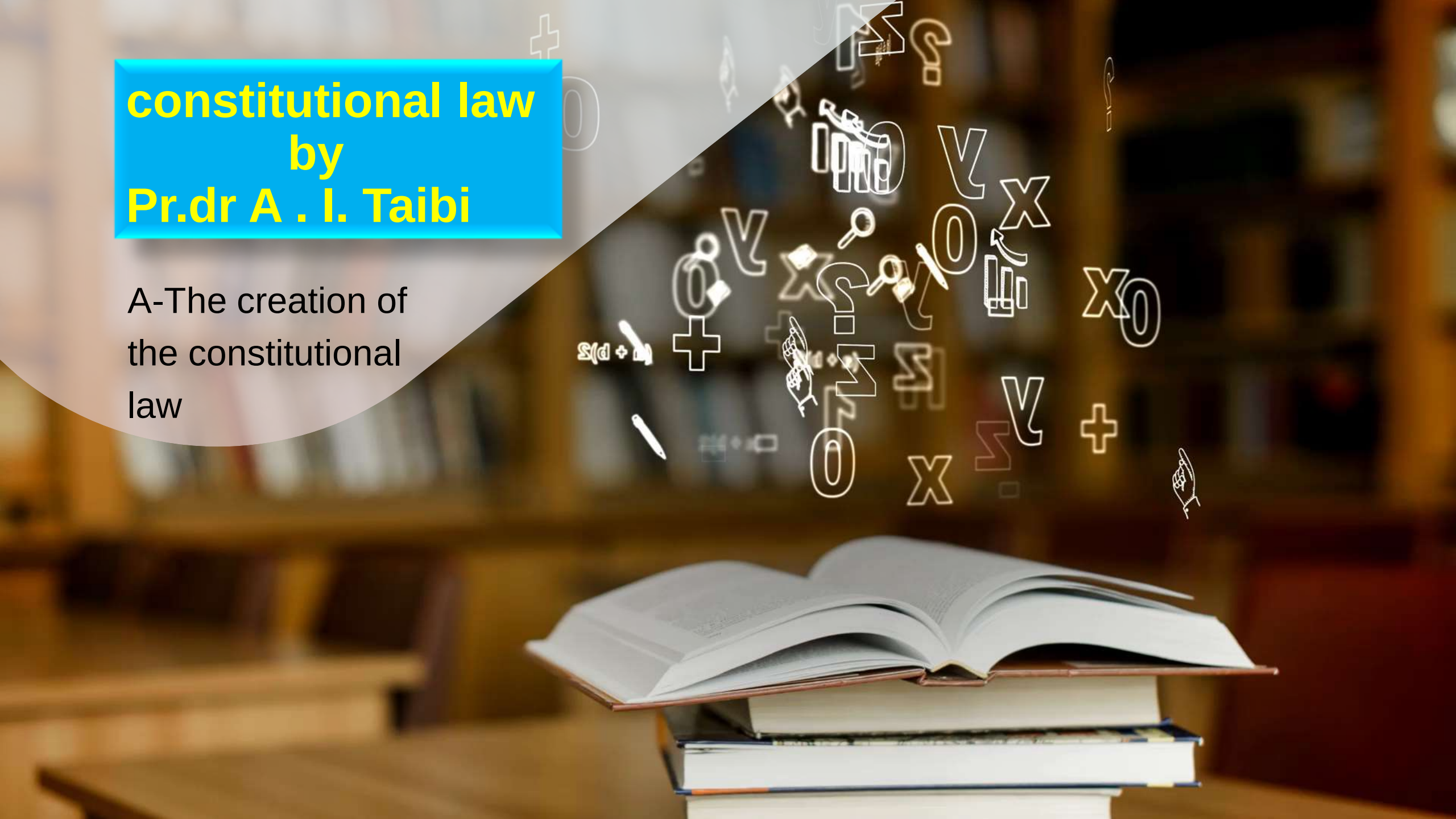
constitutional law
by
Pr.dr A . I. Taibi

A-The creation of the constitutional law



The programme of the constitutional law module

- **Part one: theory of state**

1)The conception and the creation of the constitutional law.

2)Relationship of the constitutional law and the different parts of the public law.

3)Elements of the state.

The programme of the constitutional law module

a)people.

b)territory.

c)Government.(power or authority.)

d)Sovereignty.

- 4) Theories of state creation.

Part two: theory of constitution

- 1 types of constitutions.

a) Flexible constitution .
b) Inflexible or rigid constitution.
c) written or codified constitution.
d) Unwritten or uncodified constitution.
e) short constitution.
f) long constitution.

Part two: theory of constitution

e) **Long constitutions.**

f) Republican and monarchical constitution.

g) Parliamentary and presidential constitution.

1 types of constitutions.

a) constitution of programme.

b) constitution of law.

c) constitution of contract.

d) constitution of grant or donation.

2-Separations of powers principle .

- 1-Types of powers.
- 2 - Definition of separation of powers.
- 3- Evaluation of separation of powers

Types of democracy

1)Direct democracy.

2)semi direct democracy.

3)Undirect democracy or representative democracy.

•

The creation of the constitutional law

- **<u>The first topic:</u> The concept of constitutional law and its relationship with other laws section one), then knowing the relationship of constitutional law to other laws (a second section).**

The creation of the constitutional law

- **<u>Section one:</u> the concept of constitutional law**
- It is the science that is concerned with studying systems of government and its forms. It is more **jurisprudence than law**, as it deals with theories, principles, and foundations related to governance affairs in the state.

The creation of the constitutional law

- Constitutional law is of recent origin, as Italian universities were the first to teach this branch of law, in the late eighteenth(18) century at the University of Bologna in Italy. Then the teaching of this standard moved to France by bringing in an Italian professor who graduated from the University of Bologna, named Rossi.

Pellegrino Luigi Odoardo Rossi (13 July 1787 – 15 November 1848)

The creation of the constitutional law

- Jurisprudence has graduated in its concept of constitutional law from a formal standard (first branch) to objective standard (second branch).
- The first section: The concept of constitutional law according to the formal standard

Definition of the constitutional law

- According to this meaning, the constitution is defined as a set of basic rules regulating the state that were issued in the form of a constitutional document by the competent authority. (the rules which are written in the document of the constitution only.)

Definition of the constitutional law

- It is also known as a set of rules included in the document called the constitution, which cannot be established unless after following special procedures that differ from the procedures that are followed when drafting ordinary law. All rules contained within the constitution document are considered constitutional, and any rules other than them are not considered constitutional anymore.

Definition of the constitutional law

- However, adopting this criterion denies the second type of constitutions, which is customary constitutions, and therefore this criterion is not considered comprehensive and excludes all types of constitutions, and accordingly, it cannot be relied upon as a criterion for defining all constitutions.

Definition of the constitutional law

- Due to the defects in the formal standard, the objective standard was found. What is meant by the objective standard?

The second section: The concept of constitutional law according to the objective standard

- The objective criterion is adopted to define constitutional law. If it is of a constitutional nature, it is considered as such, and if it exists outside the constitutional document, whether it is present in the constitutional document or outside it, and as an example of this, the Algerian election law.

The second section: The concept of constitutional law according to the objective standard

- It is of a constitutional nature but exists outside the constitution. Constitutional jurist Laferrière says that these rules determine the form of the state, whether it is simple or complex, and the form of government, whether it is a republic or a monarchy. It also includes the basic principles that govern the executive and legislative powers and the relationship between them. As for the jurist George Vidal, he says that constitutional rules are which determines how political power is organized and exercised.

The second section: The concept of constitutional law according to the objective standard

- Professor Faber defined the constitution objectively, saying that the word “constitution” means a set of rules for the pol
- itical, social and economic organization of the state. Thus, it appeared that constitutional jurisprudence deals with topics that show the general political, social and economic trends in the state, which are considered to be at the core of constitutional topics.

The second section: The concept of constitutional law according to the objective standard

- Private law is characterized by freedom of contract between members of society, which differs from the nature of administrative law, which requires that the state be one of the parties to the contract. Regarding the relationship between constitutional law and branches of private law, such as civil law or family law, the origins of these laws are derived from the constitution, which is considered the center and soul of constitutional law.

- The third requirement: distinguishing constitutional law from the constitution .
- Constitutional law is distinguished from the constitution in that it is a jurisprudence composed of theories, foundations, and principles attached to the traditions of the systems of government that human society has known through its development throughout the ages.

- As for the constitution, it is the basic law of any state. However, methods for understanding the constitution require exposure to its linguistic meaning (section one) and the terminological (section 2), which we will discuss in the following:

The first section: the linguistic definition of the constitution

- The first section: the linguistic definition of the constitution
- Linguistic definition: The word “constitution” is not Arabic, but rather Persian. It means the notebook of the ruler, and it is circulated as the basic law of the state. Constitution is a Persian word that means the notebook in which the names of the soldiers are written, and in which the king’s laws are collected. It is also called the minister, and it is composed of the word “constitution.

The first section: the linguistic definition of the constitution

- . دست” “Dest” means a rule, and the word ور “wour” means a companion. It was transferred to Arabic from Turkish meaning (law, permission), and then its use developed until it is now used to refer to the basic law of the state.
- Constitution in English means the set of political principles by which a state or organization is governed, especially in relation to the rights of the people it governs .

Section Two: The technical definition of the constitution

-
- According to the jurist Faber, the constitution means that it studies the set of rules for political, social and economic organization. The jurist George Vidal also believes that the constitution’s requirements for delegation are directly regulating how political and political organization is done, that is, they are the creation of a variety of options.

Section Two: The technical definition of the constitution

- . While the jurist and political writer Henry John believes that the constitution is that collection of laws, customs, and institutional systems resulting from some well-established logical principles that constitute the public order according to what the group agreed upon to govern. In this regard, Professor Dabri continues to say that:

- A constitution is a relatively straightforward document, with an apparently clear and practical purpose. Most of the words virtually every constitution, the American one included, are spent on describing how the political system will be set up and function: the procedure to be followed in taking decisions; the distribution of power among the various organs of state ;the limits of authority imposed on government officials ;the means used to select and elect officers of the state..and so on.

Ben Dupre ,opsit, p 113. •

- **Section four: The relationship of the constitution to authority and freedom**
- _Constitutional rules determine the nature of the relationship between power and freedom, and the constitution stipulates whether it determines the organization of power alone, the organization of freedom alone, or a reconciliation between them. Over the course of constitutional jurisprudence, both traditional and modern, a third trend has emerged that makes the constitution coexist between authority and freedom. The jurist André Horeau is considered the pioneer of this trend, as he criticized everything that traditional constitutional jurisprudence, which considers that the constitution regulates freedom, and modern constitutional jurisprudence, which considers that the constitution Regulates power.

Part two: Types of constitutions

Constitutions vary and are numerous in terms of their external and internal structure, depending on their length (**section one 1**), their forms (**section two 2**), the ways of amending them (**section three 3**) and according to their legal nature (**section four 4**).

Section one 1: Types of constitutions according to their length

Constitutions are divided according to their length into brief constitutions (sub section one) and detailed ones (subsection two).

Part two: Types of constitutions

Types of constitutions according to their length:

1- short constitutions.

2- long constitutions.

The first section: The abbreviated constitutions Short constitutions are defined as a type of constitution that is characterized by its limited articles and paragraphs, as it is shortened to general principles .These constitutions contain broad outlines for the issues of organizing power in the state, and their detail is left to the rest of the ordinary laws. There is great wisdom in that, which is represented in the survival and stability of the constitution for a long period, and this is what distinguishes the constitutions of liberal countries, as this type of constitutions recognizes

- The second section: The detailed constitutions
- It is a type of constitution characterized by its large number of articles and paragraphs in order to give other additions to some topics. France has adopted this type of constitution, as has Algeria, as it follows in the footsteps of the French constitutional founder in many cases. The best example of this is what came in the amendment of the Algerian constitution of 2016, where it arrived. The number of its articles reached 2018, as a result of dealing with topics that were sufficient to be regulated by organic or regular laws.

- What is noted about this type of constitution is that it gives great importance to the political aspect at the expense of the legal aspect, and its supremacy is relative given the constitutional subjection to the Charter, as the socialist countries have charters, as was the case with Algeria in the National Charter of 1976.

- What is noted about this type of constitution is that it gives great importance to the political aspect at the expense of the legal aspect, and its supremacy is relative given the constitutional subjection to the Charter, as the socialist countries have charters, as was the case with Algeria in the National Charter of 1976.
- **Types of constitutions according to their forms**
- Constitutions are divided according to their forms into customary constitutions (first branch) and written ones (second branch).
- The first section: The customary constitutions
- Customary constitutions are considered earlier in appearance than written constitutions, as they appeared in Britain and represent a set of customs and customs related to governance in the state.

- They are known to both the rulers and the ruled, and they have remained and continue to be so for centuries. They also consist of the jurisprudence of judges and the opinions of legal scholars.
- The unwritten constitution is defined as that constitution which is not written down and is made up of a set of customs, where the rules of the customary constitution derive their obligatory status through repetition over a long period.
- The unwritten constitution operates according to a specific course of action in one of the constitutional subjects, where this course acquires the character of binding. However, the existence of the customary constitution does not negate the existence of some written laws or some writings about that constitution that attempt to record its articles in these writings.

- It goes without saying that drawing attention to some The charters on which the customary constitution depends, especially in Britain, such as what is found in the Magna Carta of 1215. There are those who believe that all constitutions were customary until the beginning of the eighteenth century, as constitutional customs and customs all contributed to the emergence of customary constitutions, in addition to political precedents and traditions of governance, which formed a kind of accumulations and literature regarding the functioning of governance systems, and over time a feeling was born.

- Respecting those customary rules, and as a result of the many criticisms of the customary constitution, most notably that the customary constitution can only be amended by a modified constitutional custom, and in view of the long period of time it takes for a new custom to emerge, thinking began to move to another new type, which is written constitutions, the first of which was the American Constitution.

Section Two: The Written Constitutions

- Codification is considered the best guarantee for clarifying the rules of the constitution and commitment to its strictness on the part of the rulers and the ruled. The American Constitution is considered the first written constitution. Then this type of constitution spread in Europe and from there to many countries in various parts of the world. Regarding the importance of official writing in the constitution.

- . It makes the provisions of the constitution clear to everyone, as the jurist Thomas Paine said, that the constitution is not considered such unless it can be put in a pocket, that is, it should be practical like a pocket dictionary to know its texts and contents, and written constitutions are also known as those constitutions written by Constituent power and established constituent power.

Section three: Types of constitutionsaccording to the methods of amending them

- Constitutions are divided according to the methods of their amendment into **flexible** constitutions (first branch) and **rigid (inflexible)** ones (second branch).

- Flexible constitutions take this formula for ease of amendment, as their amendment does not require complex procedures. Socialist systems are usually characterized by this type of constitution due to their adoption of national charters, which are considered superior to the constitution in this type of system, as was the case in the Constitution of the Soviet Union. This type of constitution also exists in liberal countries. Examples include the British and Irish Constitution of 1922, as well as the Italian Constitution of 1848.

The second section: The rigid (inflexible) constitutions

- The second section: The rigid (inflexible) constitutions
- This type of constitution is characterized by the difficulty of amending it, due to the complexity of the amendment procedures, which require very high voting percentages, as is the case here in Algeria. There are those who believe that a rigid constitution is one whose amendment is prohibited for a specific period of time or at all.

Fourth requirement: Types of constitutions according to the nature of their content

- The types of constitutions are distinguished according to the nature and nature of the constitutional rules they contain and are divided into constitutions of programs (first branch), constitutions of laws (second branch), and compromise or consensual constitutions (third branch).

The first section: The program constitutions

- The program constitution is an ideological constitution in which the ideology adopted by the state is emphasized, usually the socialist or communist ideology, because it is characterized by this type of constitution. Examples of program constitutions include the Algerian constitutions of 1963 and 1976. This type of constitution is known to integrate programs Politics with constitutional articles and party ideologies.

Section Two: The Law constitutions

- Constitutions of laws are concerned with stipulating rights, freedoms, and separation of powers. They are also characterized by their great loftiness because of imposing control over the constitutionality of laws, especially in countries that rely on judicial oversight of the constitutionality of laws, as is the case with the United States of America. This type of constitution is usually found. In liberal countries.

The third section: The central constitutions

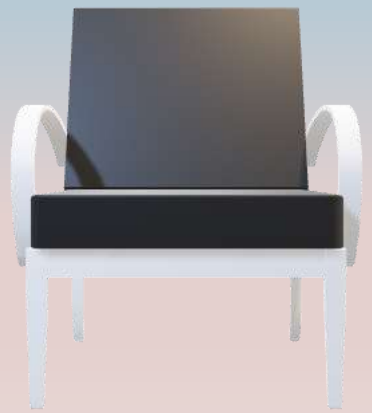
- This type of constitution contains some features of law constitutions and some features of program constitutions. We can point out here that the latest constitutional amendment of 2020 is characterized by something of this, as we find that the last amendment has a clear advantage of law constitutions, and this is represented by the emphasis On rights, freedoms, and the separation of powers, but on the other hand, we notice some signs that indicate some influence on the program constitutions, namely some economic issues and the preservation of agricultural lands.

Methods of creating constitutions

- The emergence of constitutions takes one of the following two paths: non-democratic methods (first requirement) and democratic methods (second requirement).
- The first requirement: non-democratic methods in creating constitutions

- These methods were the first to establish constitutions, since kings were tyrannical and the ruled were submissive and submissive to the rulers. Therefore, these constitutions were either a grant by the rulers and kings or an agreement between the two rulers and the ruled.

Non-democratic methods in creating constitutions



The first section: Grant Method

- The grant method appeared with the aim of kings preserving their thrones or protecting their rule from the revolt of the people, absorbing their anger, and involving them in governance. Therefore, charters of rights are considered to be the deprivation of some political rights by the governed from the kings, which is considered the first building block in the transition from an absolute monarchy to a restricted monarchy. Examples of constitutions include Grant: We find the French Constitution of 1814, which was granted by Louis The eighteenth of the French nation after the fall of Napoleon and the Constitution issued in 1889.

- The eighteenth of the French nation after the fall of Napoleon and the Constitution issued in 1880, the Japanese Constitution issued in 1889, as well as the Constitution of the Principality of Monaco issued in 1911, and the Constitutions of the Emirates and Qatar of 1971, as well as the Magna Carta, that document issued in Britain in 1215.

- It contained a set of concessions from the king’s absolute powers to the people, as it is considered one of the most famous constitutional documents in the history of the Western world, about which the opinions of jurists differed, in terms of determining whether that agreement was before or after the revolution, given that the ruler considers it as a gift from him, other than That document (the Magna Carta) was not the first, as it was preceded by another document announced by the English King Henry I in 1101.

- This was after pressure from the nobility and the bourgeoisie on it. After the Magna Carta, Britain issued the Petition of Rights in 1628 due to Parliament’s opposition to the king. Examples of constitutions, or rather grant laws, include the Law of Individual or Personal Liberty, which is known as the Habeas Corpus, issued under the rule of King Edward Iin 1302,

- This was after pressure from the nobility and the bourgeoisie on it. After the Magna Carta, Britain issued the Petition of Rights in 1628 due to Parliament’s opposition to the king. Examples of constitutions, or rather grant laws, include the Law of Individual or Personal Liberty, which is known as the Habeas Corpus, issued under the rule of King Edward I. , year 1302,

The second section: Style of contract

- This type of non-democratic methods for drawing up constitutions is described as a method in which an agreement and contract is made between the will of the ruler and the will of the ruled. Constitutional jurisprudence has differed in analyzing and interpreting whether this contract is a contract of the people’s submission to the king or a contract in which there is a balance between the wills of both the king and the people, or whether it is a contract in which the wills of both the king and the people are balanced.

- A contract of the king’s submission to the people, so the king is forced to agree with the people or abandon the throne, so there are those who see that submission is on the part of the king to the people, as we said, and there are those who see that submission is on the part of the people in their submission to the king’s power and armies.

- The strong party to the contract is considered to be the ruler, but there is another opinion that sees equality of wills between both parties, that is, between the king and the people. As for the fourth opinion on this subject, it considers that this contract is not an adhesion contract but rather a contract of equal (=)wills, but it is equal to the will of the individual who is the ruler. He saw the people as the source of all authority.

- The strong party to the contract is considered to be the ruler, but there is another opinion that sees equality of wills between the two parties, that is, between the king and the people. As for the fourth opinion on this subject, it considers that this contract is not a contract of submission, but rather a contract of equal wills, but it is equal to the will of the individual who is the ruler. He saw the people as the source of all authority.

- Thus, the matter is not right, because the people are the sole owner and source of authority, as was the case with the revolution that took place against King James II in the year 1688, which resulted in a document consisting of thirteen articles restricting the king’s powers, despite the large number of charters that embodied the first indications of the constitutions. As a result of the devastating revolutions that Europe witnessed in the Middle Ages, the rights of peoples were undermined and stagnated until American independence from Britain was achieved in 1776, which stipulated human rights to equality, freedom, and life.

- Then came the French Revolution in 1789 to embody it, as a result of which the French Declaration of the Rights of Man and the Citizen was issued in the same year and contained many rights, such as the right to life, liberty, and security.
- Thus, the constitutions of the contract appeared successively, the first of which was the French Constitution issued in 1830, then the Belgian Constitution of 1931, leading to some Arab constitutions such as the Bahraini Constitution of 1973. It is noteworthy that the Magna Carta or the Magna Carta issued in 1215 is considered part of the British Constitution, as well as the Law of Rights issued The year 1889.

The second topic: Democratic methods in the creation of constitutions

- There is no doubt that in a society in which democracy is found, the people exercise their freedom and exercise governance by drawing up constitutions, through either the Constituent Assembly or the Constituent council, meaning that the people exercise their right to draw up the constitution and not only to consult on a banner, but rather people are the ones who determine the method of governance. Which they want to rule and lay down the broad outlines of the constitution through the Constituent Assembly, the Constituent Assembly, or through a popular referendum.

Subsection one : Constituent Assembly Style

- This Constituent Assembly is elected directly by the people, but it is required to be dissolved immediately after it draws up the constitution, due to a basic principle that the members of this assembly do not establish a foothold in power for themselves, as a privilege, after the drafting of the constitution.
- The Constituent Assembly has types, as it can be divided into a pure Constituent Assembly, or special for drafting the constitution, and a general Constituent Assembly, or not special for drafting the constitution.

First: The pure Constituent Assembly

- The pure, original or pure Constituent Assembly is considered to have a specific goal or purpose. It usually takes place when the state emerges or the state is established for the first time, or when there is a subtle change in the system. An example of this is what happened in France in 1791, and also like what happened in the Constituent Assembly of Tunisia after the Jasmine Revolution, as It is called the Constituent Assembly in Egypt after the revolution and before the coup, and it is one of the most important examples

- It is similar to that which the United States of America knew, after its independence from Britain and its issuance of the Constitution of the Union in the Philadelphia Assembly in 1787. It is noteworthy that despite the tempting nature of this type of methods, the fear remains, especially in Third World countries, of the possibility of tempting the representatives of the people to draw up the constitution on their own.

- By granting them positions in the bodies that will be included in the new constitution, or the greed for such positions makes them flatter or flatter the rulers by granting them broad powers. However, in democratically developed countries, the matter of this constituent assembly is usually entrusted to an elite of honorable, upright and honest ones.

Second: The non-pure constituent assembly

- The functions of the non-pure Constituent Assembly are unified. In addition to its basic mission of drawing up the constitution, other tasks are added to it, including legislation. Regarding the models of this type of constituent assemblies, there are many examples of this type, including: the French Constituent Assembly in 1789 and in Italy in the year 1948, as well as the Constituent Assembly of Algeria on the day of independence, where the assembly was assigned three tasks: drafting the constitution.

- , appointing a temporary government as well as legislating in the name of the Algerian people, but it did not complete its work due to the intervention of the President of the Republic by assuming the political office of the National Liberation Front party under the pretext of achieving the goals of the revolution. This is considered the only case in which Algeria knew a constituent assembly, because the situation required it by virtue of the re-establishment of the independent Algerian state.

Section Two: The constitutional or founding referendum

- Here, it is necessary to distinguish between the founding referendum and the popular referendum. The first means seeking to accept or reject a new constitution that is drawn up through an elected constituent assembly or a committee of experts of a technical nature and then presented to the people to accept or reject it. However, the authentic founding referendum is the true expression of the constitutional referendum. Free will of the people.

- The people made the constitution and the people can unmake it. It is the creature of their own. and lives only by their will.
- That is, the people are the ones who make the constitution and are the ones who can end it. It is subject to the people’s own will, without which they cannot live.
- In this regard, we point out the necessity of distinguishing between the popular constitutional referendum and the founding referendum. The second means a referendum regarding the establishment of a new constitution in its entirety, while the first means a referendum regarding amending the constitution only.

- The referendum follows either the Constituent Assembly carrying out its work or the Committee of Experts drawing up the constitution, and there is no doubt that the first method is the most democratic. The yes-or-no constitutional referendum remains incomplete and less democratic if it does not follow the method of electing the Constituent Assembly by the people. Experts, especially if they are appointed by the President of the Republic, are undoubtedly not free to the extent necessary.
- Some also distinguish between a constituent referendum and a political referendum. What is meant by that?

Political referendum

- Political referendum is the traditional means of establishing constitutions with an absolute system of rule. The role of the people in the founding referendum is active, as they are the ones who decide what they want from the constitution regarding the method of governance, while the role of the people in the political referendum is passive or ineffective, because it is limited to accepting what

- He offers him. Therefore, this type of referendum is considered the natural way to prepare authoritarian constitutions, and this is usually represented by the people’s request to approve a coup or to draw up their constitution, the aim of which is to confer alleged legitimacy on authoritarian regimes through this type of referendum.

- The Constituent Assembly can also be divided into a pure and a simple one. The Sovereign Assembly does not content itself with drawing up the constitution, but rather works to enforce the implementation of its texts, as the French Constituent Assembly did in the years: 1991, as well as the years 1848 and 1871. As for the simple or limited Constituent Assembly, it is content with a technical role, which is represented in: Establishing the constitution and nothing else.

The third section: How and what stages of constitutional amendment

- The third section: How and what stages of constitutional amendment. The construction stages are explained into three stages, which are represented in the following:
- First: The proposal of constitutional amendment stage.
- Second : the preparation of the constitutional amendment stage.
- Third: the approval of the constitutional amendment stage.

Section One: The amendment proposal stage

- The proposal to amend the constitution varies according to the systems, and usually the executive authority is responsible for that, and sometimes the parliament, or both of them together, and other times in some systems the proposal can be made by the people, and this is especially in the assembly government system, where the legislative proposal is made as well as the proposal to amend the constitution.

Chapter Two: the amendment preparation stage

- This also depends on the nature of the system, and is concerned with the executive authority, its subordinate body, or legislation.

Section Three: The stage of approving the amendment

- Approval at this stage shall be through the Parliament or Parliament meeting in the form of a conference or through a popular referendum.

The second chapter: procedures and stages of constitutional amendment in Algeria

- The Algerian constitutional founder committed to the same stages of constitutional amendment known in constitutional jurisprudence, which are proposal, preparation, and approval.

The first section: the initiative to amend the constitution

- The initiative to amend the Constitution may be carried out by a specific party or by multiple parties. Restriction of these parties leads to giving priority and dominance to one party over another. This has a kind of monopoly on initiating the amendment. In general, this right is given to the President of the Republic, which is what is stipulated in Article 191 of the Constitution.

- The 1976 Constitution and Articles 7 and 163 of the 1989 Constitution, but in addition to the President of the Republic, the institution of Parliament became an important partner in proposing to amend the Constitution, which is what the 1963 Constitution did, which granted the President of the Republic and Parliament together the right to initiate constitutional amendment, but the phrase “revision” was used instead of the phrase “amending the Constitution.” .

Section Two: The stage of preparing the constitutional amendment

- The constitutional amendment shall be prepared through two recitations and two votes by an absolute majority of the members of the National Council, with an interval between them of two months, as stipulated in Article 72, and this before submitting it to a referendum, as stipulated in Article 73. The benefit of the period here is to give time for the dimensions to mature.

- That amendment, which leads to the smoothness and sobriety of the constitutional amendment, because the consequence of being patient is always the stability of the constitutional institutions and the avoidance of slippage and serious unrest. As for the 1996 Constitution, it reserved for the President of the Republic the right to initiate the constitutional amendment in Article 174, as can three

- Quarters, ¾ of the two chambers of Parliament, may initiate a proposal to amend the Constitution, and the President of the Republic can also submit it to a popular referendum, as stipulated in Article 177. It can be said here that Parliament has regained its right to initiate an amendment to the Constitution, which was taken from it in the 1976 Constitution.

Section Three: The stage of approving the constitutional amendment

- At this stage, we can distinguish between two types of approval of the amendment to the Constitution, which are partial and total or final approval.
- First: Partial approval of the constitutional amendment
- This stage takes place by presenting the text of the constitutional amendment to the two chambers of Parliament for a vote, according to the procedures stipulated for enacting laws, if this proposal is made by the President of the Republic.

Second: Final approval of the constitutional amendment

- If the proposal to amend the Constitution is made by the President of the Republic, this amendment may be submitted to a popular referendum.

Third part: Constitutional interdiction

- Constitutional interdiction means the articles that are prohibited from being violated when amending the constitution. It is divided into two basic types: substantive prohibition and temporal prohibition. Some also divide the first type into partial and absolute.

The first section: objective interdiction

- The objective interdiction means some issues to which the constitutional founder attaches great importance, and he indicates to them in one of the articles of the constitution that they cannot be affected by the amendment due to their utmost importance to the survival and safety of the state. The objective interdiction is of two types: absolute and partial. Examples of objective interdiction are what was stated in the constitutional amendment of 2020.

- It is prohibited to infringe on the national constants represented in the republican character, the democratic system based on pluralism, Islam as the state religion, Arabic as the national and official language and also Tamazight which newly added in this amendment, basic freedoms and human and citizen rights, the safety and unity of the national territory, the national flag and the national anthem as symbols. The revolution, the republic, and the re-election of the President of the Republic only once.

- Examples of objective interdiction what the French Constitution of 1946 stipulates that it is not permissible to amend the constitution to prejudice the republican form of the state, and examples of it also include what the Algerian Constitution of 1976 stipulates prohibiting any constitutional amendment that prejudices the republican system, the religion of the state, the socialist system, basic freedoms, and the principle of Direct and secret universal suffrage and the safety of the national territory. As for the new constitutional amendment of 2020

- The objective interdiction was stated in the following:
- No constitutional amendment may affect:
- 1 The republican character of the state
- 2 The democratic system based on party pluralism
- 3 Islam as the state religion
- 4 Arabic as the official national language
- 5 Fundamental freedoms and human and civil rights
- 6 The integrity and unity of the national territory
- 7 The national flag and the national anthem as symbols of the revolution and the republic
- 8. Re-electing the President of the Republic only once.

The second section: temporal interdiction

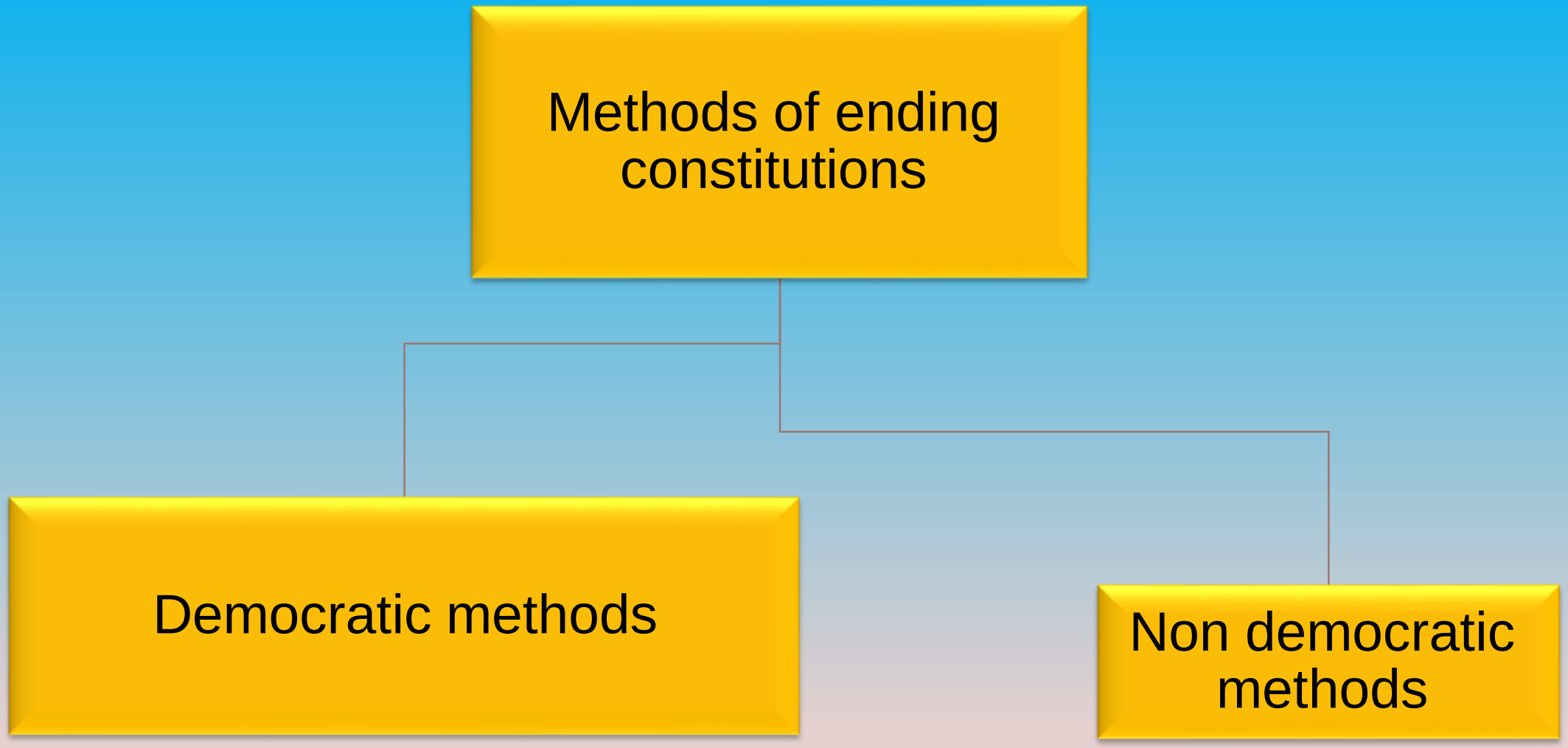
- Temporary interdiction means preventing any amendment to the constitution during a certain stage, as it aims to protect the provisions of the constitution from amendment during a period of time. This period may be specific or indefinite, but it is temporary in all cases. An example of this prohibition is the French Constitution of 1791, which prohibited any amendment to its texts for a period of four years starting from the date of its entry into force (see Article Three of Part Seven, in reference to Article Two: Chapter One of Part Three of this Constitution).

- As well as the temporal interdiction imposed by Article (119) of the Iraqi Basic Law of (1925) for a period of five years starting from the date of its entry into force (except for subsidiary matters of the Constitution, which Article 118 permitted to be amended within only one year from the date of entry into force of the Constitution). The Kuwaiti Constitution of 1962 also included a constitutional temporary interdiction for a period of five years starting from the date of its implementation.

- The Syrian Constitution (1973) stipulates that it is not permissible to rule before twenty months have passed from the date of its entry into force. Sharia law may be imposed due to factors taking place in the country, such as foreign occupation. An example of this is what was stipulated in the French Constitution of 1946, who is not governed by foreign law in the foreign state of the homeland or part of it.

The second section: Methods of ending constitutions

- Here we can distinguish between two types of methods for amending and ending the constitution, through democratic methods (first topic) and non-democratic methods (second topic).
- The first topic: legal methods for the end of constitutions
- This occurs through the state adopting a new constitution by repealing the old constitution, or through the authorities amending provisions that were prohibited in the previous constitutional amendment, as this is considered tantamount to abrogating the constitution.


Methods of ending constitutions
Democratic methods
Non democratic methods

Democratic methods

Drowing up a new constitution

Amending the interdicted articles

Non-democratic methods

Revolution

COUP

- Through this method, the work of enforcing the constitution can be completely and finally ended without resorting to violence, and replaced with a new constitution whose provisions are in line with the political, economic and social developments occurring in society and the state.
- The end of the flexible constitution does not raise any significant difficulty, as it takes place in the same way and method in which the regular law was established and abolished. If the constitution was not written, it would be canceled and replaced with another unwritten constitution, either by custom, precedent, or legislative authority.

- However, if the flexible constitution was written, it would be canceled and replaced with another by the legislative authority, using the same procedures followed by repealing legislation (ordinary law).
- In abolishing rigid constitutions, a distinction is made between two cases: the case of stipulating how to abolish the constitution and the procedures that must be followed in this abolition, as in the Constitution of the Third French Republic of 1875, and the case of not stipulating how to replace the existing constitution with a new constitution, which represents the prevailing trend in Constitutions, which raises the question whether the authority competent to make partial amendments can make a complete amendment to the constitution and replace it with something else?

- To answer this question, the prevailing opinion in jurisprudence is that the authority competent to make a partial amendment does not have the right to introduce a complete amendment to the constitution, given that this authority is an established authority like all other state authorities (legislative - executive - judicial). If it undertakes to amend the constitution completely, Thus, it exceeds the limits of its powers, as it replaces itself with the original constituent authority, which is

- considered a constitutional violation that would invalidate the entire procedure. This right is entrusted to the nation alone in democratic systems, as it is the holder of the original constituent authority, and it alone is capable of determining the extent to which the constitution needs to be amended completely. And the model of the constitution that can be proposed as an alternative.

- It is necessary to distinguish in the method of drawing up the new constitution, which replaces the constitution that the nation has abolished, between drawing up this constitution under a democratic system and being drawing up it under a non-democratic system. If the constitution is drawn up under a democratic system, this is usually done by Before an elected constituent assembly, or through a referendum, but if it is established under a democratic system, it is usually conducted by the ruling authority or in agreement with the will of the nation.

- It is not required that the original constituent authority that drafted the abolished constitution be the same one that drafted the new constitution. The abolished constitution may be drawn up by grant, contract, or constituent assembly, while the new constitution is drawn up by constitutional referendum.
- And the abolition of the constitution, or it can be done explicitly by stipulating in the new constitution that the provisions of the previous constitution be suspended, as in the Jordanian constitution in force for the year 1952, where Article (129/1) of it stipulates that (the Jordanian constitution issued on December 7, 1946 shall be cancelled. (with any modifications thereto).

- Or this cancellation can be used implicitly, when the provisions and principles contained in the new constitution conflict with those stipulated in the abolished constitution, or when a new constitution is issued that addresses all the topics and principles contained in the old constitution, but in a new way and treatment, and the legislator obligates the provisions to be implemented from the date of its publication in The Official Gazette or after a certain period has passed from the date of publication.

- It must be noted that abolishing the constitution, explicitly or implicitly, requires the survival and continuity of the legal personality of the state, which is what distinguishes a constitutional amendment from constitutional replacement and the complete termination of the constitutional document. However, the legal personality of the state may be destroyed by its joining a federal union, and in this case all The constitutions of the countries organizing the Union are automatically dissolved due to end of their legal personality and are replaced by a new constitution that governs the new legal personality.

- And this is what happened in the thirteen American states that make up the American Federal Union, where the declaration of the Federal Union resulted in the cessation of work on the constitutions of the states that make up the Federation and replacing them with the federal constitution in force of the year 1787. And this is also what happened in the Egyptian Constitution of 1956 and the Syrian Constitution of 1950, where they were replaced by the United Arab Republic constitution of 1958 followed the declaration of unity between the two states.

- The opposite may happen, such that the existing union disintegrates, its legal personality is destroyed, and as a result several entities arise, each of which is described as a state. In this case, the provisions of the federal constitution are suspended and replaced by a new constitution that governs the constitutional status of the new international entities arising from the disintegration of the union, as in the Constitution. The former Soviet Union of 1977, which was canceled after declaring the dissolution of the Federal Union in 1991 and was replaced by new constitutions for the number of countries emerging from the dissolution of this Union.

- A new constitution may be issued, and before its provisions are put into effect, circumstances arise that prevent its implementation, as in the French Constitution of 1793, the provisions of which have not been implemented since its issuance, until public opinion prevailed that this constitution no longer represents the prevailing legal idea in society, which led to its replacement with a new constitution in 1795.

The second part : illegal methods for ending constitutions

- Illegal methods of ending the constitution include a military coup or **revolution**.
- The first section: the military coup
- The military coup consists of the usurpation of legitimate authority by the military authority, which is an act outside the constitution, legitimacy, and the law.

- All actions of the authority that usurped the legitimate authority are considered constitutionally and legally invalid, because they are outside legitimacy, the constitution, and the will of the people. However, these coup regimes usually work on Drawing up new constitutions and laws in an attempt to cover up its heinous actions against the people. We can also distinguish between the role of the coup in amending the constitution and its role in ending the constitution in some cases, depending on the goals of the coup plotters against legitimacy.

Section Two: The Revolution

- Terminating the constitution in this case is an actual, illegal termination. What is said about the coup is said about the revolution with regard to amending the constitution, as the revolutionaries can be satisfied with introducing fundamental amendments to the constitution, and they can also terminate the old constitution completely to sever the relationship with the remnants of the former regime. It is an undemocratic method because it is done by revolutionaries completely changing the system, including the constitution.

Section Four: Constitutional supremacy

- Constitutional supremacy means its superiority over other laws, as it is the basic law of the state through which the legal system of the state is determined. It is also considered one of the legal characteristics of the state, as the state authorities have a duty to respect it and not violate it. The principle of constitutional supremacy does not prevail except in democratic systems. It also disappears in dictatorial regimes because the rulers in this type of regime do not respect constitutions or other laws. divided into two types: objective supremacy and formal one.

- Some constitutions stipulate their supremacy, such as the Constitution of the United States of America and the Constitution of Italy issued in 1948.
- The issue of constitutional supremacy, especially objective supremacy, is equal to all types of constitutions. Written and unwritten, both flexible and rigid. Constitutional supremacy is divided into two types, objective and formal.

The first part : the objective supremacy of the constitution

- Objective constitutional supremacy has two basic aspects:
  The first section: The first aspect of objective supremacy is **the establishment of governing bodies in the state**
- **and the definition of their powers.** The constitution serves as the legal basis from which it derives its legitimacy, given that they are functions exercised in the name of the state and subject in their powers to the constitution.

- Therefore, these bodies and institutions must be completely subject to the constitution by virtue of its highness over them because ite is the one which created it and gave it its jurisdiction. If these bodies deviate from the rules of the Constitution, they will lose their legal support with the collapse of the legal basis on which they were established.

The second section: The second aspect of the objective supremacy of the constitution, the legal idea of the general framework

- It decided to appear second in the legal rules of the state, considering that the constitution is one in which the representative of the framework participates in public choices and extends them in all its practices. Therefore, all governing bodies of the state are bound by the constitution. Accordingly, all activities fall outside the limits of this framework are considered invalid.
- The second subsection The effects resulting from the objective supremacy of the Constitution:

- The implications of the provisions of the Constitution are in two basic results:
- Section One: **respecting Legitimacy**
- This means that both the rulers and the ruled are subject to the rules of the constitution and the law, and this is through the constitution, all the laws, and the same applies to both the rulers and the ruled.

Section Two: Preventing the delegation of jurisdiction

- While the Constitution grants public bodies in the state jurisdiction, on the other hand, it prevents them at the same time from delegating this jurisdiction to another body, since the delegated body does not accept delegation. When a governing body exercises its special privilege, but rather it exercises a jurisdiction specified by the Constitution for it, it does not have its authorization. Others by exercising it, unless the Constitution stipulates otherwise.

- Based on this proposition, most constitutional jurisprudence rejects the delegation of legislative authority to the executive authority, about executive decrees, the results of the objective supremacy of the Constitution are limited to the political sphere, not the legal sphere.

Section two : The formal supremacy of the constitution

- The formal supremacy of the constitution is not achieved unless the constitution is subjected to difficult and complex procedures in amending it, which is what exists in rigid constitutions, while objective supremacy can be found in all types of constitutions.

Section Five: Oversight of the constitutionality of laws

- Oversight of the constitutionality of laws is divided into two main types: political oversight (first section) and judicial oversight (second section).
- The first section: political control over the constitutionality of laws.

- The jurist Siaz was the first to demand the creation of a body whose mission would be to abolish laws that contradict the constitution. The goal of this was to protect the constitution from the authority’s assault on its provisions. The first application of this idea was in the constitution of the eighth year of the revolution in France on December 15, 1799. However, this council fell into the hands of Napoleon who tampered with it as he wished, and so did Napoleon after him, who ruled the same council under the Constitution of 1852, and the same thing was repeated in the Constitution of the Fourth French Republic of 1946.

Section One: The composition of the Constitutional Council in France

- The French Constitutional Council consists of former Presidents of the Republic for life and nine temporary members, three of whom are chosen by the President of the Republic, the President of the National Assembly chooses three other members, and the remaining three are chosen by the President of the Senate, for a term of nine years, not subject to renewal. While it renews a third of the members every three years. The President of the Republic also appoints the President of the Constitutional Council.

Section Two: Notifying the Constitutional Council

- The Constitutional Council is notified by the President of the Republic and the heads of the two chambers of the French Parliament, in addition to 60 representatives of the members of the National Assembly or 60 senators. This is in accordance with the Constitutional Amendment of 1974. The notification is intended to request the Constitutional Council to examine the constitutionality of the laws.

Section Three: jurisdictions of the French Constitutional Council

- The powers of this body revolve around verifying the extent to which the law conforms to the constitution or violates it. In addition, this council supervises the election of the President of the Republic. It also considers appeals submitted regarding the presidential and legislative elections, and also monitors the validity of popular referendums and their results.

- The Council also expresses its opinion when the President of the Republic returns to exceptional powers, and one of its inherent tasks is to consider the constitutionality of international treaties and their conformity with the provisions of the Constitution, before concluding them. In the event that the treaty conflicts with the Constitution, the President of the Republic cannot ratify it, and if the President of the Republic expresses his desire to do so. It is forced to amend the constitution, which actually happened in 1992 and in 1996, when it came to approving treaties related to the European Union.

- The decisions of the Constitutional Council are considered binding on all institutions and constitutional bodies and are applicable directly, because they do not accept any form of appeal by the administrative and judicial authorities in implementing those decisions. The decisions of the Constitutional Council are considered judicial, even though the body it consists of is mostly political. It is noteworthy in this regard that when he drafted the French Constitution of 1958, General de Gaulle’s goal was to restrict the powers of Parliament due to his dissatisfaction with the parliamentary system.

- The clear evidence of this is changing the nature of the system towards mixing it with some aspects of the presidential system, despite what some jurists say that The Constitutional Council has some judicial powers, especially with regard to protecting the rights and freedoms of citizens, but it remains a pure political body through a majority of its members.

Judicial oversight of the constitutionality of laws

- Assigning the task of verifying the conformity of laws with the Constitution to a judicial body is considered a matter of utmost importance, given the guarantees of neutrality and objectivity that the judiciary and its men have, especially if the judiciary is fair and independent.

- Although there are many countries that have adopted judicial oversight, they differed in the methods of implementing it. Modern constitutions often entrust this task to a special court charged with what is called the European model of judicial oversight of the constitutionality of laws, which ensures avoiding conflicts
- in judicial rulings with respect to a single law.

- There are some of these countries use the original lawsuit method, and there are those who take another method, which is called sub-exception of unconstitutionality, so it was necessary for us to approach this path.

Judicial oversight through the original lawsuit

- This type of oversight is also called oversight by annulment before the competent court, where the original lawsuit is established when the concerned party or the person harmed by a particular law files his original lawsuit before the court requesting its cancellation for violating the constitution,

- without waiting for this law to be implemented in future lawsuits, so the aggrieved party files a lawsuit. Her original lawsuit is before the court asking her to cancel the law. If the court confirms that the law violates the Constitution, it requests its cancellation and it becomes as if it never existed.

The second section: Characteristics of oversight through the original lawsuit.

- The original lawsuit is characterized by a set of characteristics, namely that it is an initial lawsuit, and that it is also decisive and effective, and it is also objective.

- First: The original lawsuit is a preliminary lawsuit
- This means that the concerned party directs it independently, given its violation of the Constitution.
- Second: The original lawsuit is a objective lawsuit
- That is, it concerns a subject in itself and not against any specific person, rather, the person concerned raises his lawsuit against an unconstitutional law on the occasion of defending himself in a personal case, his own,

- , while the original lawsuit does not involve this person in a specific case or lawsuit, but rather everything in the matter. This person believes that this law is unconstitutional in its regulation of a specific subject and that this lawsuit would affect the outcome of a criminal or administrative ruling that has the force of authority of the judged thing.

- While judicial oversight through sub-exception of unconstitutionality is indirect or subsidiary oversight, that is, defense is made during the consideration of the case before the judge, which the concerned party finds unfair to him and that it is unconstitutional. After the judge conforms the law to the Constitution, if he finds this law to be in violation of the Constitution, then Refuses to apply it, so this method is called abstention oversight . This type of sub-exception is also characterized by the fact that it pertains to a specific person to whom this law does not apply, meaning that the law remains in effect with respect to other courts.

- Rather, the same court in another case before the law can apply it in another case if it deems it constitutional.

Section Three: Judicial oversight through exception of unconstitutionality

- We are dealing with this type of oversight, when the concerned party or the person harmed by a particular law challenges it before the competent court to demand the repeal of that law due to its violation of the Constitution. If political oversight is prior, as we have seen in judicial oversight, it is usually subsequent, but sometimes it is It could be a precedent.

- Many constitutions grant individuals the right to appeal unconstitutionality whenever the condition of interest in the case is met, including what was stated in the Constitutional Amendment in Algeria of 2016, which stipulates the following: (The Constitutional Council may be notified of a claim of unconstitutionality based on a referral from the Supreme Court or the Council of State. When one of the parties in court claims before a judicial body that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the Constitution.

- Many constitutions grant individuals the right to appeal unconstitutionality whenever the condition of interest in the case is met, including what was stated in the Constitutional Amendment in Algeria of 2016, which stipulates the following: (The Constitutional Council may be notified of a claim of unconstitutionality based on a referral from the Supreme Court or the Council of State. When one of the parties in court claims before a judicial body that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the Constitution.

- The United States of America is considered the cradle of judicial oversight, especially judicial oversight of exception of unconstitutionality , given that the American Constitution does not address the issue of oversight of the constitutionality of laws. The Federal Supreme Court of the United States of America examined the constitutionality of laws and that was through its famous ruling in the case of Marbury v. Madison. Under presidency of Judge Marshall in 1803.

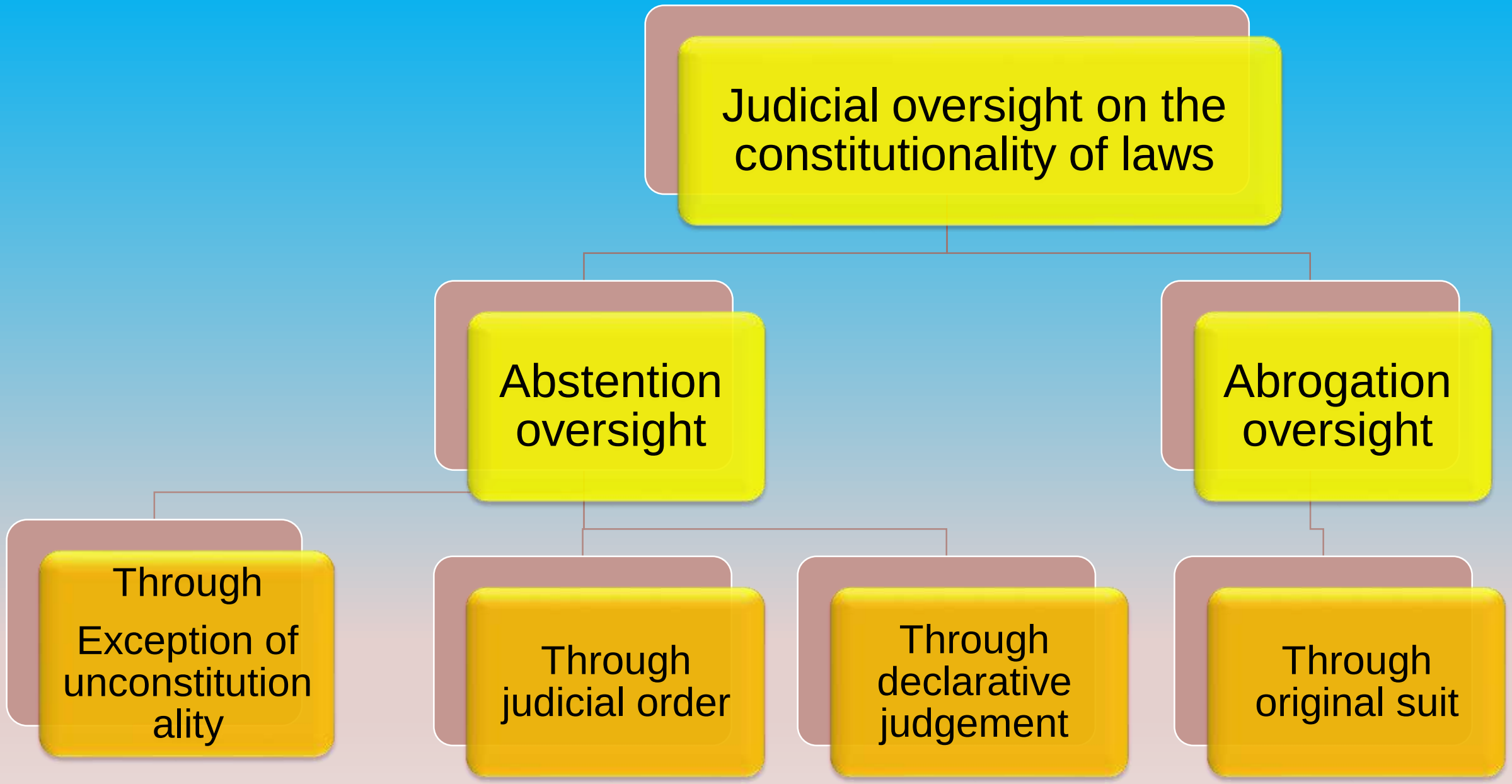
- The intervention of the Federal Supreme Court in the United States of America in the field of constitutional oversight of laws had an impact, as since that date it opened the way for other courts to monitor the constitutionality of laws. However, there are those who believe that the court has exaggerated in imposing its oversight on the constitutionality of laws in America, and from that standpoint, both the legislative and executive powers revolted against it, so the Federal Supreme Court was called the government of judges.

Types of judicial oversight on the constitutionality of laws

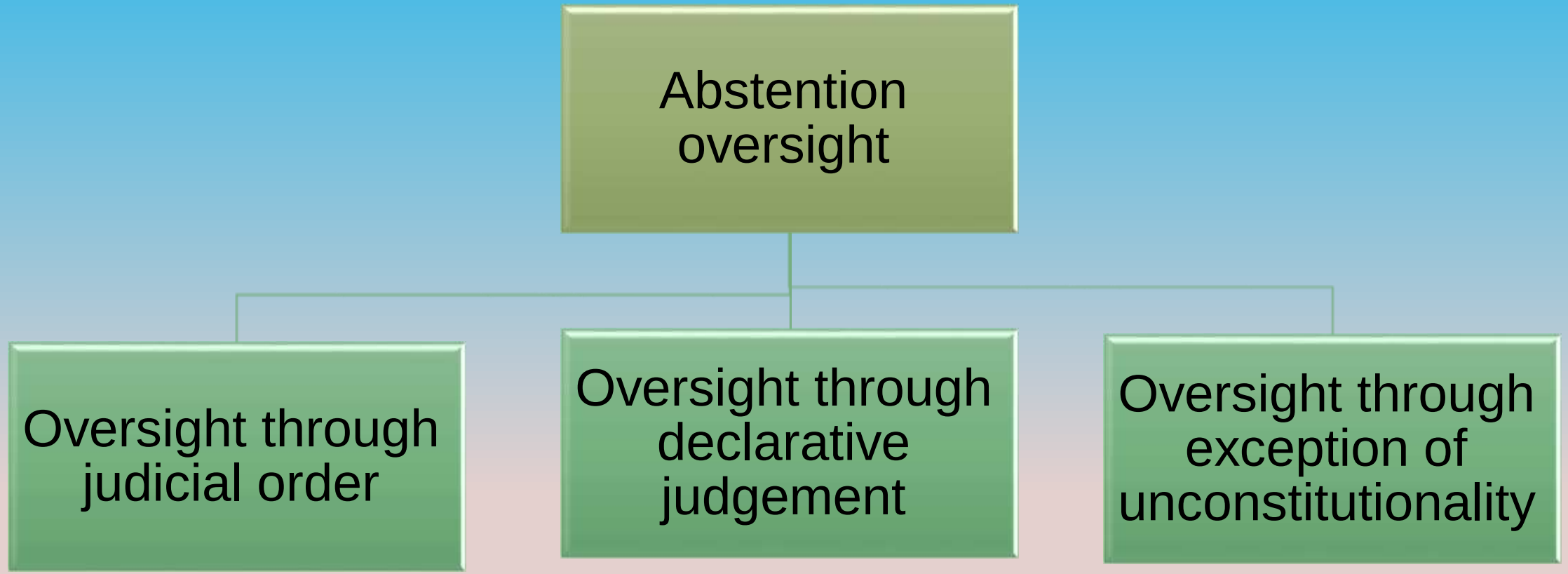
- We can distinguish between Judicial order two types of judicia oversight on the constitutionality of laws; judicial oversight through abrogation and judicial oversight of abstention, the latter is about exceptions on the application of law it is called also substantial oversight because the aim of this suit is not to abrogate the unconstitutional law but to avoid it's a practise on the actual suit, where we can find this type of oversight in the United States of America , and this is what we call exception of unconstitutionality in addition to two other types: the oversight through Judicial order and the oversight through declarative judgment,

- , this what we call the American model. whereas in the European model is about the abrogation through what we call the original suit. This kind of suit is called offensive claim, that is to say the law which the person thinks that is unconstitutional and may be affected by it is attacked previously, and because of the dangers of this suit many constitutions have strict conditions about it such as the clear text in the constitution, because the abrogation of the law here is final. Some examples of constitutionals that stipulate the constitutional court; the Iraqi constitution in 1925, the Kuwaiti constitution in 1962 and the Libyan constitution in 1963. Some constitutions

- Some constitutions operate on a referral system, such as the Algerian constitution of 2020 that give us the local court the right to refer the law to the supreme Court which also refer it in its turn to the constitutional court, if the judge thinks that that law is unconstitutional.


Judicial oversight on the constitutionality of laws
Abstention oversight
Abrogation oversight
Through Exception of unconstitutionality
Through judicial order
Through declarative judgement
Through original suit

The American model of the judicial oversight on the constitutionality of laws



The European model of oversight on the constitutionality of laws

Oversight through original suit or abrogation oversight

Through the constitutional court

Through the ordinary courts

Constitutional Custom

- To distinguish between constitutional custom and the customary constitution, we must address the latter. The customary constitution is the legal rules that result from custom that were not written down in a constitutional document and did not receive objection. As for constitutional custom, it is also one of the rules that arise from custom, but in the constitution. Or in the document of the state constitution, it is mentioned as an example of what was stated in the Constitution of the Third French Republic,

- which gave the right to dissolve Parliament to the President of the Republic, but this right was dropped by amending the custom to prevent it from being used. As a clarification of the difference between the constitutional custom and the customary constitution (unwritten constitution) , we find in Britain a customary constitution, there is also a famous event in addition to the constitution, due to the presence of rules that were stable for a long time. These rules were not written down, but they exist.

- As for countries that have written constitutions, such as the United States of America, there is a written constitution, but there are constitutional norms alongside it.

Elements of constitutional custom:

1-The material element in the formation of constitutional custom

- This element is represented by the presence of a set of conditions that must be met for it to be formed, the most important of which are: repetition of the incident, lack of objection to it, duration of the incident, stability and clarity of the incident.

First: Repetition of the incident

- The repetition of the incident means that the latter is repeated permanently by the ruling authorities. A single incident is not sufficient to constitute custom, despite some opinions of jurists in constitutional law, such as jurist Ribou, who believes that custom begins with the first act. However, the other side of jurisprudence, such as jurist Shantipu, considers that a single act It is considered a precedent, and this precedent has no binding force unless it is repeated, and thus custom is created, as it does not arise except by repeating these precedents and getting used to them for a certain period.

Second: Not objecting to the incident

- It is assumed that a constitutional customary incident or custom should not be objected to by public authorities or individuals for it to be a constitutional custom.

Third: The duration of the incident

- The period during which the incident becomes a constitutional norm is considered indefinite, but in any case, it remains a long period. An example of this is the doubt that the modern English parliamentary system was not completed until 150 years later, after Queen Victoria was removed from meeting with the government.

Fourth: Repeated continuously

- The incident that produces the constitutional custom must be repeated and continue to be repeated without interruption. If that repetition stops for a certain period and then happens again, it does not become a product of the constitutional custom.

Fifth : clearness of the incident

- The incident that produces the constitutional custom must be clearly defined and not marred by any confusion or ambiguity.

The second section: The moral element in the formation of constitutional custom

- The moral element of the constitutional custom is the feeling of the binding force of that tradition related to the form of government in the state by the public opinion of the people. This is what results in the belief of the public authorities in the state in the necessity of implementing the constitutional custom, which is what qualifies it to have legal force.

The second topic: Types of constitutional custom

- Constitutional custom arises alongside the constitution, so it may be an interpreter of a constitutional text, or it may be complementary to a constitutional text that suffers from certain deficiencies, and that custom may also be a modification of one of the provisions of the constitution.

The first section: the interpreting constitutional custom

- The interpreting custom aims to clarify and remove the ambiguity that may prevail over some constitutional texts. In doing so, it does not create a new constitutional rule as much as it removes the ambiguity that surrounded it.
- Thus, the interpreting constitutional custom becomes a part of the written constitution, and therefore enjoys the legal force of the constitution.

The second section: complementary constitutional custom

- The importance of the complementary constitutional custom appears when a deficiency appears in the provisions of the constitution, and the complementary constitutional custom comes to compensate for this deficiency and complete it. Thus, the complementary constitutional custom creates a new constitutional rule.

Section Three: The amending constitutional custom

- The amending custom aims to amend the constitutional texts by adding a new provision or provisions to their provisions or by deleting one or some of their provisions. Therefore, the amended custom had types, namely the amended custom by addition and the amended custom by deletion.

First: The amending custom by addition

- The amended custom allows in addition to adding a new constitutional rule that did not previously exist. An example of this is the amended constitutional custom in addition to the one that was implemented under the French Constitution of 1875, by delegating Parliament to the executive authority to set general rules through decrees, despite its possession of legislative jurisdiction.

Second: The amending custom by deletion

- The amending custom by deletion is defined as that custom which works to abolish one of the rights established by the Constitution or that works to not implement a text of the Constitution. Examples of this include what has been the norm in France, whereby the President of the Republic does not use his authority to request a reconsideration of the laws issued by the parliament,

- as well as not using its right to dissolve the House of Representatives from 1877 until 1940, during the German occupation of France and the establishment of the Vichy government, when a constitutional custom emerged, amended by deletion, requiring the dropping of the constitutional texts that give the President of the Republic these rights.

- Some jurisprudents, such as Professor Maurice Horio, believe that the President of the Republic’s failure to use his right to dissolve the Parliament does not mean that that right has been forfeited, because this right cannot be abrogated from non-use. This is due to the absence of a legal impediment standing in the way of the President of the Republic. And regarding the legal force of custom. The constitutional jurisprudence opinions differed about it, so, there were three (3)different opinions emerged on this issue.

- First opinion:
- It is considered that the modified custom has the force of ordinary law without reaching the force of constitutional rules.
- Second opinion:
- It is considered that the power of amended constitutional custom is equal to the power of constitutional rules.

- Third opinion:
- This opinion was divided into two trends:
- First trend:
- It see the illegality of the amending constitutional custom because it creates a constitutional rule that is inconsistent with the idea of a written constitution in which all clearly stated rules appear.

- The second :trend
- It considers that the amending constitutional custom has the force of constitutional texts in addition to it being able to amend the constitutional texts. As for the amending custom by deletion, this trend does not recognize it due to its illegality.
- Supporters of the third opinion generally acknowledge the existence of a amending custom because it includes a positive violation of the provisions of the Constitution, and they call it the contradictory custom. For example, the Constitution stipulates that elections should be direct.

- Then a custom arises that relies on indirect election, and the proponents of this opinion also see that the contradictory custom, like an amending custom by deletion, is considered illegal due to its violation of an explicit provision of the Constitution. The prevailing trend today considers that constitutional custom cannot cancel a written constitutional text, no matter how long it takes. During which this constitutional provision was not applied.

Chapter Two: Theories of origin of state

- The theories explaining the emergence of the state are divided into force , and evolutionary theories. These theories are divided into;
- a) Divine and force theories.
- b) Contractual theories and;
- C) Conceptual and evolutionary theories.
- The first section: Firstly, force theories
- Force theories are divided into the divine or theocratic theory (the first topic) , the theory of force and dominance (the second part) and.

Theories of origine of state

- Contractual theories
- Divine and force theories.
- Conceptual and evolutionary theories

First - the theocratic theory:

- This theory is characterized by the deification and worship of the ruler, as happened with the Egyptian Pharaoh Ra, who ordered his governed to worship him. As Pharaoh said to Moses, where the Lord Almighty said in this regard: ((He said, “If you take a god other than me, I will certainly make you one of the prisoners”)), just as Pharaoh insisted to his ruled that he was the god. He said, “I am your Lord, the Highest.”

The first section: The theory of direct divine authorization

- Its content - according to its advocates - is that God chose the ruler and delegated his authority directly to him, which means that the ruler derives his authority from God, and therefore he does not bear any responsibility for his actions, nor can he be disputed in rule.

The second section - the theory of indirect divine delegation

- The concept of this theory is that God delegated his authority to the ruler through the ruled to him and their acceptance of his rule. However, God delegated his authority to the ruler indirectly.
- Evaluation of the theory: All theocratic theories establish tyrannical governance and the enslavement of peoples.

The second part: theories of power and dominance

- These theories are represented by the leadership theory of Ibn Khaldun, the theory of economic power by Karl Marx, and the theory of solidarity power by Léon Digue.

The first section: Ibn Khaldun's theory of leadership

- The idea of this theory is that the doctrine of loyalty to the ruler and his support, other than that rule requires that it be in accordance with true Sharia law. Therefore, the weakness of some Islamic countries is due to society's far distance from its pure Islamic faith, which leads rulers to Arbitrariness and injustice to their ruled. Ibn Khaldoun set standards and characteristics for a Muslim ruler, leader, which are: statesmanship, courage, wise, hones, To be faithful to his promises and covenants, knowledge, and competence.

The second section: The theory of economic power by Karl Marx

- Karl Marx believes that the state is established through the assumption of the reins of government by the proletariat class, consisting of workers and the labor force of the toilers and the common people, the elimination of all forms of financial and political monopoly, the elimination of class, equality for all, and the replacement of the dictatorship of the bourgeois class with the dictatorship of the proletariat, that is, the workers and the ownership of the state for all means of production.

The third section: The theory of solidarity power by Leon Digue

- The content of this theory is that the state is a social phenomenon because of differences in character and individual differences among people. Therefore, because of the group's need for the power of solidarity to manage its interests, the state arises, and this is the result of the subjection of the governed to the rulers through two factors: the requirements of social solidarity and the means of coercion by public force.
- Evaluation of the theory: This theory is considered a beginning to limit the powers of the rulers.

The third section: doctrinal theories

- This group of theories traces the emergence of the state to the contract between the governed on the one hand and between them and the rulers on the other hand, with its parties differing from one theory to another, as the concept of these theories differed from one jurist to another. They are the jurists: Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. In addition to these positivist theories, there is the legal theory of the pledge of allegiance in Islam Bay’ah.

The first section: The social contract theory of Thomas Hobbes 1588-1679

- In his theory, Hobbes believes that humans are inherently evil, driven by selfishness, as man is a wolf to his fellow man. As a result of this disastrous situation, individuals tried to move from the nature of life as the goal to an organized society governed by a single body that was not a party to this agreement forming the contract. However, this body is not a party to the contract, and therefore it is not bound by any obligations before the group in order to live in peace. And tranquility. Therefore, the ruler's authority is absolute, requiring the total submission of the ruled to the ruler. Without that, society returns to a state of chaos.

Criticism of the theory:

- Hobbes is considered close to the ruling family in Britain in his time, so his theory came to establish the absolute rule of the king, therefore it supports dictatorship.

The second section: The social contract theory according to John Locke 1632-1672

- The pre-state stage was dominated by the innate state governed by the values of justice and equality under natural law, where human beings have a charitable nature, so everyone is equal and peaceful. Individuals contracted to move from the natural state to the civil state with the aim of preserving their rights. Likewise, contracting It included the ruled among themselves, as well as the ruled and the ruler, so it was possible to isolate the ruler and hold him accountable, based on the idea of resisting the rulers.

Evaluation of the theory:

- This theory is considered a serious contribution to restricting the powers of the rulers.

The third section: The social contract theory according to Jean-Jacques Rousseau

- This theory believes that man is naturally good, but with the advent of agriculture, industry, and private property, equality disappeared, and thus the idea of the social contract emerged as an agreement between the governed rather than the rulers, who are merely agents of these individuals who give up all their natural rights to the societal entity that embodies the will of the nation in exchange for transfer. To an organized life in which political and civil rights prevail.

Evaluation of the theory:

- This theory considers that the basis of authority is enshrined in the majority, especially if it extends to the public, which may not always be right due to many of them being ignorant of the interests of the nation. It is also not devoid of short-sightedness and human whims, which, even if they develop in their forms, remain deficient as they emanate from an ideology. My situation is limited, so the defects of modern parliamentary democracy appeared, which necessitated its patching with new mechanisms such as participatory democracy and falling into the error of combining contradictions.

Section Four: The pledge of allegiance in Islam

- In Islam, the pledge of allegiance is considered a full-fledged contract, given that individual Muslims have voluntarily and without coercion chosen the ruler or caliph to manage religious and worldly affairs for the Muslim community. Thus, the pledge of allegiance was a real and actual social norm and not pure speculation and imagination, as is the case in Western contract theories. The pledge of allegiance is a pledge and loyalty to the ruler or caliph of the Muslims, and that is that the individual Muslim surrenders consideration of his own affairs and the affairs of the Muslims to the caliph and obeys him whether active or compulsory, just as they obey him as he obeys God in them. If they see any crookedness in him, straighten him with the point of the sword.

Characteristics of the ruler power in Islam

- First: The authority of the head of state is legally restricted
- Second: The absence of sanctity and infallibility of the head of state in Islam
- Third: The nation’s right to monitor the head of state
- Fourth: The equality of the head of state with all other individuals before the law and before the judiciary
- Fifth: The nation’s right to dismiss the head of state:

Section Five: The theory of the legal pyramid by Henri Kelson 1881-1973

- .Section Five: The theory of the legal pyramid by Henri Kelson 1881-1973
- Kelson considers the state to be a hierarchical, sequential system of rules regulating it. Every legal rule derives its legitimacy from the rule above it, all the way to the constitution that forms the top of the legal hierarchy.

Evolutionary theories

- This group of theories includes both the theories of family development and historical development.
- The first section: Theory: family development
- The state is considered as a group of families that doubled in number, becoming tribes that turned into clans and then into villages and cities until the state. This theory also likened the authority of the ruler to the authority of the father.

Evaluation of the theory:

- This theory cannot be generalized to all countries, as it may apply to some countries, such as ancient Athens and some countries of the Arabian Gulf, and it does not apply to the emergence of other countries, such as the country of Madagascar, which lived in chaos and primitiveness. Regarding the comparison of the ruler’s authority to the authority of the father, this is not correct and does not establish individual rule.

Section Two: The Theory of Historical Development:

- This theory was borrowed from its predecessors and tried to combine them, as it believes that the state arose as a result of political, social, and cultural development throughout the ages. However, historical circumstances distinguish the emergence of each state from other states.
- Evaluation of the theory: This theory is considered the most acceptable in modern constitutional jurisprudence.

The second topic: The concept of the state

- The concept of the state has several definitions, and although they differ in some details, they all share the basic foundations for the establishment of any state, which are known as the pillars of the state.
- The state has two meanings, linguistic and terminological.

The first requirement: nor the linguistic meaning of the state:

- A-State in Arabic language:

- The word "state" does not exist in the sense of the current meaning of "state." However, the word "state" is mentioned in the Noble Qur'an in the nominative case, and what is meant by it is common, and that is mentioned in the Noble Verse ((Whatever God has given to His Messenger from the people of the villages is for God, and for the Messenger, and for relatives, and orphans, and the dead. Resident and wayfarer so that it does not happen A state among the rich among you. And whatever the Messenger has given you, take it, and whatever he forbids you, abstain from it, and fear God. Indeed, God is severe in punishment.) The Holy Qur’an brought the conce
- pts known in the era of its revelation. The state at that time was merely cities and villages.

Origin of the word “state” in Latin languages

- ORIGIN OF STATE 1 First recorded in 1175–1225; Middle English noun stat(e), partly from estat estate, partly from Latin status "condition" (see status); the meanings in defs. 7-11 derive from Latin status (rērum)) "state (of things)" or status (reī pūblicae) "state (of the republic)"

The second section : The terminological meaning of the state:

- The state is considered a social phenomenon that has developed throughout the stages of history, through the steady development of man in all different aspects of life and through intellectual, social and political maturity. In ancient times, Aristotle said that the state, which is the city of Athens according to him, derives its strength from the number of its population and its wealth. He defined it as that society that consists of individuals in order to achieve a public interest, but in Roman civilization, it means the city of order.

The third topic: The pillars of the state

- The concept of the state includes three pillars: the people, the territory, and the authority.
- The first section : the people
- The state creates a human group that lives continuously within the borders of its territory. The people are the cornerstone of the establishment of any state, and the number of the people is not specified. It may be limited to a few thousand, as is the case in some countries, such as the state of Manak and Kuwait, and there are countries whose population exceeds a billion. People, as is the case with the People's Republic of China, but all of these countries remain equal in the eyes of international law, except for the political and economic aspects.

The second section: the territory

Territory is defined as the geographical area on which the people permanently settle, as it is inconceivable that a state would arise without a territory of its own and that had clear borders. The state’s territory includes the surface of the earth and the maritime territory, as well as what lies above the lakes and everything that is adjacent to the land from the territorial sea, and thus The territory has three parts: the terrestrial territory, the water territory, and the air territory

The first section: the terrestrial territory

- It is that area that has certain borders and over which the state exercises its sovereignty. The terrestrial territory is also characterized by certain characteristics, such as being fixed and defined by natural or artificial landmarks or by imaginary geometric lines such as lines of longitude and latitude.

Section Two: Maritime Territory

- It is called the maritime territory or the water territory. It is also called the territorial sea, which is the part of the sea connected to the coast and adjacent to the country's beaches. It also includes internal waters, which are those bodies of water within the land territory of the country, such as rivers and lakes.
- In view of the economic importance of the territorial sea adjacent to or adjacent to the state's shores, and to avoid disputes between countries regarding this, the territorial sea was determined in the past to be three (3) miles,

- based on the maximum range that artillery shells could reach if they were positioned on the state’s shores, and Due to the development of weapons and the increase in their range, the extension of the territorial sea changed accordingly to 12 miles.
- This is based on the Law of the Sea of 1982, where the state exercises its sovereignty over this area, then comes another area called the adjacent territorial sea, which is another 12 miles long, and then comes the exclusive economic zone, which is an additional 200 miles long. . The state exercises its sovereignty over its maritime territory and has the right to maritime navigation therein, as the Algerian legislator defined it as:

- : (navigation practiced on land and sea in internal waters by ships specified in Article 13). As for the areas of international maritime navigation, according to international law, they are divided into the high seas area. Another area is called the exclusive economic zone
- The area adjacent to the territorial sea is followed by the area of the territorial sea in internal waters or the area of the territorial sea and the area adjacent to it, where the state exercises absolute sovereignty over the territorial sea and the area adjacent to it, with complete freedom, as it is not bound by other states to certain conditions except with regard to innocent passage with the necessity of the presence A prior license for it, and accordingly the state has the right to do so

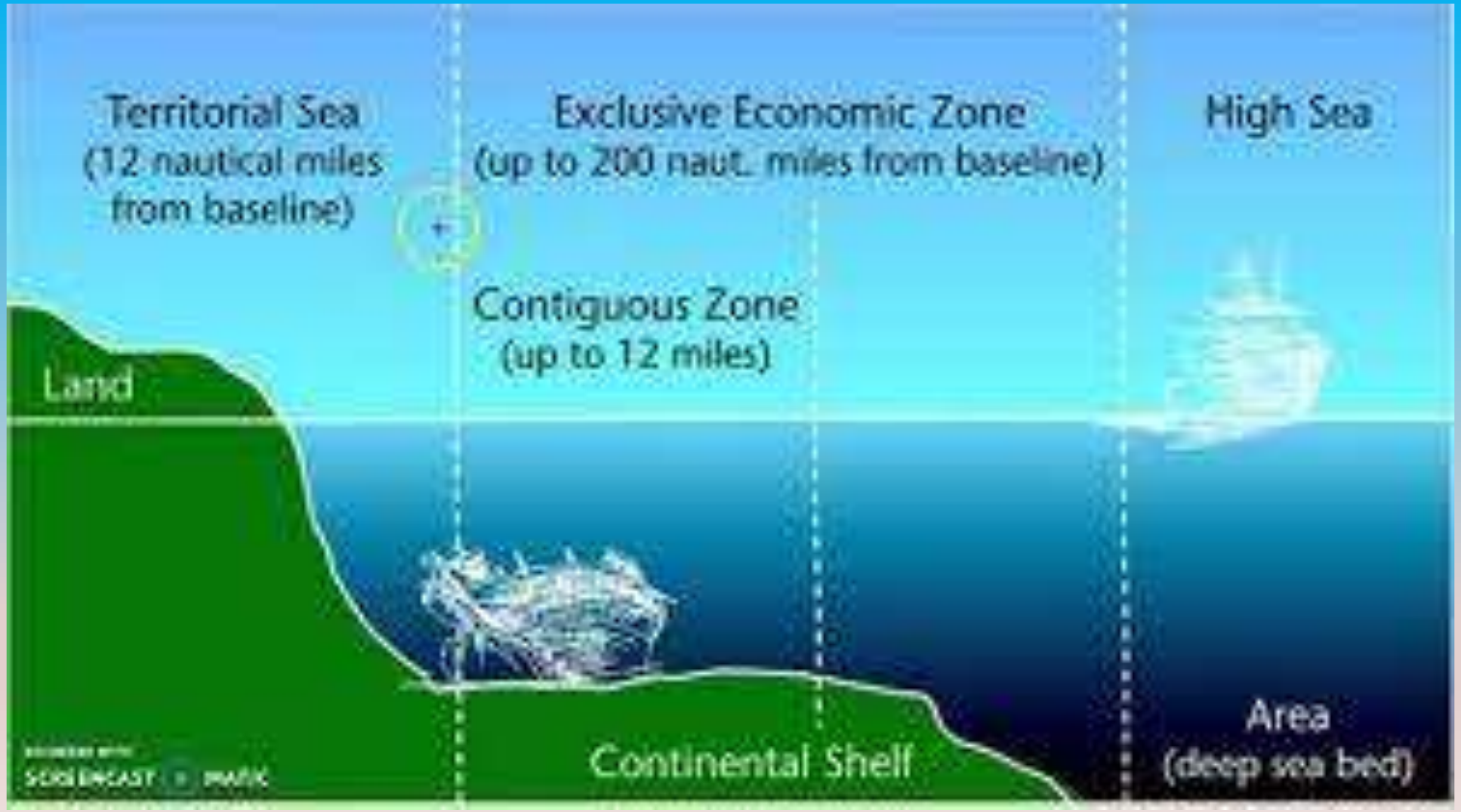
Section Three: The exclusive economic zone

- The area of this area is estimated at 200 miles, and it is an area adjacent to the area adjacent to the territorial sea and is not subject to state sovereignty, as the state benefits from the marine exploitation of living and non-living wealth up to the seabed area, which is considered subject to special provisions for the continental shelf, and in the event of a surplus for the exploitation of marine wealth. For a coastal state, it can allow some other landlocked states to exercise the right of navigation in that area.
-

- The coastal state has the right to practice marine fishing and scientific research in the exclusive economic zone and does not allow other countries to practice these activities in this zone.

Section Four: Free Sea Zone high sea

- This region is also called the high seas, and it is an area that is not subject to the authority of any state. Rather, it belongs to all of humanity, and the state bordering it has no right to possess it.


Territorial Sea
(12 nautical miles
from baseline)
Exclusive Economic Zone
(up to 200 naut. miles from baseline)
High Sea
Contiguous Zone
(up to 12 miles)
Land
Continental Shelf
Area
(deep sea bed)

Section five; The air territory

- It includes everything above the terrestrial territory and the sea territory (land and sea regions), which are air and space layers. The importance of the air territory began to appear after the invention of airplanes, as interest in this region began in Europe, so the first treaty in this regard was concluded in the 1919 in France, which is the agreement to facilitate air navigation, followed by the Havana Agreements in 1919 and 1928 and the Chicago Convention in 1944, where the latter affirmed the state's absolute sovereignty over its air territory, as foreign aircraft are not allowed to cross the state's air territory except with a license from it, otherwise they will be shot down.

- As for the space field, which goes beyond aircraft science, its importance has increased after the invasion of space with satellites, due to the industrialized countries' possession of the technology. They do so without seeking permission from anyone, even though they can pose a danger to the rest of the countries by spying on satellites or throwing Nuclear waste. Regarding the state's right over its territory, there have been conflicting opinions and jurisprudential theories about this. There are those who believe that the state's right over its territory is a property right, but that conflicts with the right of private property for individuals.

- There are those who attribute the state’s right over its territory to the right of sovereignty, but this theory has been criticized for... The basis is that sovereignty is over persons and not over things, so that a third theory is established, which is called systemic real rights and is considered the closest to logic and correctness.

Section six : Political power

- The elements (pillars) of the people and the territory (region) are not sufficient for the establishment of the state. Rather, there must be a ruling authority whose mission is to enforce respect for the laws and regulations necessary to achieve security and stability for the members of the group. Questions may arise in this context about the necessity of the people’s consent to the authority. Jurisprudence almost agrees that it does not require the people’s consent to the authority. Rather, it is sufficient for its establishment to have a force that imposes order, but this matter may affect the interests of the state in terms of recognizing the government

- If the authority is illegitimate, it may not be accepted by the international community. Here we must distinguish between recognition of the government and recognition of the state. Recognition of the government is related to the extent of its legitimacy, while recognition of the state is based on the state’s relationship with the international community. There are those who consider that international recognition is a fourth pillar of the establishment of the state. Other than jurisprudence, there is no agreement on this.

Characteristics of the power

- Authority is also characterized by a set of characteristics, which we summarize as follows: First: It is a temporal authority
- As it is characterized by the timing of the rulers' stay or reigns of rule.
- Second: force and coercion
- This means that the authority has the means of force and coercion from the police and the army.

Characteristics of state

- Moral personality
  - Separating the moral personality of the state from the personality of the ruler
  - Equality between states
- The state is a subject of law
  - The state performance for its functions
- Sovereignty
  - S - + S.of/people/ nation/legal

Moral personality

- The moral personality of states means that a unit that is distinct from its components and rulers of that state , This is what gives the state the legal capacity that allows it to abide by duties and obtain rights.

- The results of the moral personality of the state

- One : Establishing governance.
- Two: The stability of the state.
- three: Independence of the state's financial liability.

Results of the moral personality of state

- The permanence and continuation of the state. The disappearance of people and rulers does not affect the survival and continuation of the state. For example, its laws remain in effect, and it remains committed to its obligations and obligations that it has undertaken, regardless of the changes that occur in the state.
- The state enjoys financial liability independent of the liabilities of the people who make up and manage it, because the actions carried out by the rulers are due to the financial liability of the state and not to the financial liabilities of the people ruling it.

- It has the right to sue and it can be judged by individuals
- The right to contract with individuals or with states and international organizations
- Equality between countries in rights and duties because recognition of legal personality results in the emergence of a new international legal person who is equal to other countries in rights and duties.

Equality between states

- Equality between countries in rights and duties because recognition of legal personality results in the emergence of a new international legal person who is equal to other countries in rights and duties.

Sovereignty

- What is meant by sovereignty is that the state is free to act inside and outside its territory within the framework of what is imposed by the rules of international and internal law. Sovereignty has two formalities:
  1. Legal sovereignty: It means that the state is represented in its institutions, the authority to issue and implement laws, and the right to punish anyone who violates these laws.
- 2. Political sovereignty: It belongs to the people only, and people here is taken in its political sense, which is limited to the group of individuals who are entitled to enjoy and exercise political rights, and this sovereignty is prior to legal sovereignty.

الجمهورية الجزائرية الديمقراطية الشعبية

وزارة التعليم العالي والبحث العلمي
المديرية العامة للتعليم والتكوين

رقم: **301** /م.ع.ت.ت.ع/ 2023 — الجزائر في**18** ماي **2023**

السّادة رؤساء الندوات الجهوية للجامعات
بالاتصال مع السّيدات والسّادة مدراء مؤسسات التعليم العالي

الموضوع: حول ترقية التدريس باللّغة الانجليزية.

بغية ترقية التدريس باللّغة الانجليزية كلغة للعلم والتكنولوجيا ، أطلب منكم ما يلي:

- برمجة مواد التعليم في الجذع المشترك بالانجليزية وإسنادها لأساتذة حاصلين على الأقل على مستوى (B2) في اللّغة الانجليزية.
- مواصلة تكوين الأساتذة باللّغة الانجليزية لبلوغ مستوى (B2).
- وضع مخطط استراتيجي لتطوير التدريس باللّغة الانجليزية في مؤسستكم.

كما أطلب منكم القيام بنمذجة لاستعمال الزمن ابتداء من اليوم وذلك لتفادي كل النتائج الناجمة عن نقص في التأطير والتواصل مع الأساتذة المكونين في الجذوع المشتركة اللذين تمت برمجتهم من أجل المعالجة المسبقة لأية نقائص محتملة وكذا معرفة وتقييم مدى استعدادهم لهذه العملية.

كما أحيطكم علمًا أنه سيتم متابعة وتقييم هذه العملية على مستوى كافة المؤسسات الجامعية عقب الشروع فيها.

أولي أهمية بالغة لتنفيذ فحوى هذه المذكرة.

تفضلوا، بقبول فائق عبارات التقدير والاحترام.

Signature numérique de Ali CHOUKRI
Date : 2023.05.18 14:31:58 +02'00'

الجمهورية الجزائرية الديمقراطية الشعبية •

وزارة التعليم العالي والبحث العلمي •

المديرية العامة للتعليم والتكوين •

رقم: 301 /م.ع.ت.ت.ع / 2023 الجزائر في 18 ماي 2023 •

السّادة رؤساء الندوات الجهوية للجامعات •

بالاتصال مع السّيدات والسّادة مدراء مؤسسات التعليم العالي •

الموضوع: التدريس باللغة الانجليزية •

•

حول ترقية التدريس باللغة الإنجليزية كلغة للعلم والتكنولوجيا ، •

•

بغية ترقية التدريس باللغة الإنجليزية أطلب منكم ما يلي: •

- برمجة مواد التعليم في الجذع المشترك بالإنجليزية وإسنادها لأساتذة حاصلين على •

الأقل على مستوى) 2 Bغة) •

- برمجة مواد التعليم في الجذع المشترك بالانجليزية وإسنادها لأساتذة حاصلين على
الأقل على مستوى) 2 Bغة)
في اللغة الانجليزية.
مواصلة تكوين الأساتذة باللغة الإنجليزية) 2-وضع مخطط استراتيجي لتطوير B2
التدريس باللغة الإنجليزية وفق أطلب منكم القيام بنمذجة لاستعمال الزمن ابتداء من
اليوم وذلك لتفادي كل النتائج
الناجمة عن نقص في التأطير والتواصل مع الأساتذة المكونين في الجذوع المشتركة اللذين
تمت
برمجتهم من أجل المعالجة المسبقة لأية نقائص محتملة وكذا معرفة وتقييم مدى
استعدادهم لهذه العملية.
كما أحيطكم علمًا أنه سيتم متابعة وتقييم هذه العملية على مستوى كافة المؤسسات
الجامعية عقب الشروع فيها.

- الناجمة عن نقص في التأطير والتواصل مع الأساتذة المكونين في الجذوع المشتركة اللذين تمت
  - برمجتهم من أجل المعالجة المسبقة لأية نقائص محتملة وكذا معرفة وتقييم مدى استعدادهم لهذه العملية.
  - كما أحيطكم علمًا أنه سيتم متابعة وتقييم هذه العملية على مستوى كافة المؤسسات الجامعية عقب الشروع فيها.
  - أولي أهمية بالغة لتنفيذ فحوى هذه المذكرة.
  - تفضلوا بقبول فائق عبارات التقدير والاحترام.