CONSTITUTIONAL LAW

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Objectives:

This module entitled “constitutional law” aims to provide students to understand the institutional mechanisms permitting to legally handle a legal or *de facto* issue affecting the constitution

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I. Definition of constitutional law

Constitutional law is that part of the public law which relates to the system of government of the country. It is more useful to define constitutional law as meaning those laws which regulate the structure of the principle organs of government and their relationship to each other and to the citizen, and determine their main functions. It is the law relating to the constitution of the state.

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Constitutional law deals with the distribution and exercise of the functions of government and the relations of the governmental authorities to one another and to the individual citizen.

Nevertheless, the relationship between the authorities and the subject (or the state and the subject) rests, in this context, on a basis of inequality; in other words, the state is in a position of authority vis-à-vis the individual. When the relationship between state and subject is on a basis of equality it is governed, not by constitutional law, but by private law

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More specifically, constitutional law includes the rules governing the constitution of the legislature, the executive and the judiciary; the powers, appointment and removal of the head of the state; the election, powers and privileges of the members of the legislature; the position of the ministers (executive) and judges (judiciary); citizenship; civil liberties and the protection of individual rights.

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In a formal and technical sense, constitutional law is the body of normative rules that determine and regulate the structure of the principle organs of government, their relationship between the individual citizen and the state. In certain constitutions these rules consist of both legal norms in the formal sense and constitutional understandings, commonly called conventions, which although not enacted are nevertheless accepted as normative.

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This means that many of the practices which control and regulate a system of government are not part of the law in a rigid sense. This is particularly the position in the UK where the conventions of the constitution are a seminal feature of the operation of executive and legislative government

2. Constitutional law and similar branches of law and sciences

2.1 **Constitutional law and administrative law**

There is no precise demarcation between constitutional and administrative law. Administrative law may be defined as the law which determines the organization, powers and duties of administrative authorities. Like constitutional law, administrative law deals with the exercise and control of governmental power. In fact, administrative law falls within the ambit of constitutional law in the wider sense of the term, and the two fields cannot be distinguished in character and content, but the distinction is maintained largely for reasons of convenience.

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A rough distinction may also be drawn by suggesting that constitutional law is mainly concerned with the structure of the primary organs of government, whereas administrative law is only concerned with the work of official agencies in providing services and in regulating the activities of citizens. In other words, administrative law is not simply the law governing the executive function of the state, leaving constitutional law to deal with the legislature and the judiciary.

2.2. Constitutional Law and Public International Law

Public international law is that system of law whose primary function is to regulate the relations of states with one another. International law thus deals with the external relations of a state with other states; constitutional law deals with the legal structure of the state and its internal relations with its citizens and others present in its territory. Both are concerned with the problem of regulating by legal process and values, the great power which states wield

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In the dualist tradition, national and international law operate at two distinct levels; both are concerned with state power and are necessarily connected. Thus one important branch of constitutional law is the national law relating to a government's power to enter into treaties with other states and thus to create new international obligations. So too, the procedure of extradition, by which a criminal who escapes from one state to another may be sent back to the state in which the crime was committed, operated both in international and constitutional law: the government of a state which is party to an extradition treaty must equip itself with the powers necessary in national law if the state is to be able to fulfil its treaty obligations.

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International organizations have today established new forms of cooperation between states and have set standards of conduct for the international community. Increasingly, international law has become concerned with treatment of minority groups and individuals by states. These developments make it necessary to reconsider the nature of internal sovereignty which the national system of constitutional law ascribes to the state.

2.3. Constitutional law and political science

The political science has close links with constitutional law. Both are concerned with the state; but constitutional law relates to the law governing the way in which the state is run, while political science is concerned with topics such as governmental structures and the influences of social, psychological and economic factors on government; in other words, the dynamic and static aspects of state, government and politics.

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Political science, broadly conceived, is the study of governments and other political actors, including their origins and foundations, interactions with groups and individuals, and interactions with nations. Within this larger framework political scientists study power, authority, conflict, economic relationships, culture, laws, policy, values, ethics, justice, equality, rights, legitimacy, and representation, to list only a few. Using these and other concepts, they analyze the political impacts of social issues such as war, peace, poverty, crime, education, the environment, race, gender, and globalization. Modes of inquiry are highly interdisciplinary.

3. Key basic concepts and definitions in constitutional law

They are a number of concepts encountered in constitutional law which are in such common use that their meaning is seldom questioned or analyzed. Terms such as constitutionalism, democracy, constitutional state, and so on are bandied about by constitutional lawyers and laymen alike, and it is therefore necessary to examine them more closely in order to arrive at a reasonably precise definition of each. In addition, there are certain basic (key) concepts and ideas which are somewhat more specialized, but need to be defined and elucidated at the outset, so that what is said later on will be more readily understood

3.1. The principle of democracy and accountability

The concept of democracy can also be traced to two greek words namely ***demos*** (people) and ***kratos*** **(power/strength).** Combined, the words refer to the power of the people. Democracy thus means the power or strength of the people. In a democratic system, the power to govern is not vested in one person (a monarch) or in a small group of persons (an aristocracy) but in the people of the state. In this regard democracy presupposes free political expression, the right of all to take part in political decision-making and the protection of minority interests.

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A democratic state is one where government is accountable to the people through free and fair elections to public office; adults have equal rights to vote and stand for election; civil and political rights are respected and a form of civil society can function where social associations, independent of the state, exist. In other way, democracy is said to be an ideal, an abstraction which often assumes concrete dimensions for the people of a country through the electoral system.

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In fact, democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their participation in all aspects of their lives. Democracy has its genesis in the political conduct of the city states of ancient Greece, in which the whole citizen body formed the legislature, a system rendered feasible by the fact that the population rarely exceeded 10.000 persons, and women and slaves were not the recipients of political rights. This was a manifestation of direct democracy

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In political theory, democracy describes a small number of related forms of government and also a political philosophy. A common feature of democracy as currently understood and practiced is of course competitive elections. Competitive elections are usually seen to require freedom of speech, freedom of the press, and some degree of rule of law. Civilian control of the military is often seen as necessary to prevent military dictatorship and interference with political affairs. In some countries, democracy is based on the philosophical principle of equal rights

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Though the term "democracy" is typically used in the context of a political state, the principles are also applicable to private organizations and other groups. Democracy has its deep origins in Ancient India, Ancient Greece, Ancient Rome, Europe, and North and South America but modern conceptions are significantly different. Democracy has been called the "last form of government" and has spread considerably across the globe. Suffrage has been expanded in many jurisdictions over time from relatively narrow groups (such as wealthy men of a particular ethnic group), but still remains a controversial issue with regard disputed territories, areas with significant immigration, and countries that exclude certain demographic groups.

3.2. The principle of constitutionalism

Constitutionalism in its formal sense means the principle that the exercise of political power shall be bounded by rules which determined the validity of legislative and executive action by prescribing the procedure according to which it must be performed or by delimiting its permissible content. Constitutionalism becomes a living reality to the extent that these rules curb the arbitrariness of discretion and are in fact observed by the wielders of political power, and to the extent that within the forbidden zones upon which authority may not trespass there is significant room for the enjoyment of individual liberty.

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Constitutionalism is a commitment to limitations on ordinary political power; it revolves around a political process, one that overlaps with democracy in seeking to balance state power and individual and collective rights; it draws on particular cultural and historical contents from which it emanates; and it resides in public consciousness.

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Constitutionalism expresses the apprehension about human nature, about the human penchant to act selfishly and to abuse power. It is driven by the reasoning that there are discoverable standards for judging infringements on human dignity and for preventing the government from encroaching upon personal liberty. This normative element in constitutionalism is reflected also in the thinking that certain forms of institutional arrangement will optimize the possibilities for good government and the safeguarding of important values.

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The theory of constitutionalism has been criticized for being too legalistic, for dwelling almost exclusively on constitutionally prescribed authority, and for ignoring or down playing the importance of social forces in the study of politics. Many stigmatize the principles of constitutionalism for their overt normative content. Western theorists of comparative constitutionalism may find illuminating the series of objections by socialist constitutional lawyers regarding the rule of law, separation of powers and protection of property.

3.3. The principle of a constitutional state

The principle of a constitutional state is similar to the principle of constitutionalism. The concept has originated from German constitutional law and it is said to embody everything that is good in a state. This is includes many other constitutional principles including the separation of powers doctrine, the supremacy of the constitution, the principle of legality, legal certainty, access to independent courts, enforceable fundamental rights and multiparty democratic government. In a constitutional state the law is supreme and the state is also bound by the law.

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The constitutional state has three purposes:

- To provide security: it is the task of the state to ensure the citizen freedom from fear. This purpose of the state to ensure justifies its monopoly on the exercise of authority- it must have more authority than the individual and private institutions;
- To ensure the liberty of the individual: the state must be capable of protecting the individual's liberty better than he can do it himself. Therefore the power of the state may not exceed what is required for the promotion of the public good. The state's function to provide security justifies only the limitation of freedom, not its destruction. The instruments developed for this purpose include the separation of powers, legality of the administration, independence of the judiciary and human rights;
- To guarantee a minimum standard of social security: the constitutional state's function of protecting society led to a new fear founded upon the economic risks of social life, thus generating this "new" purpose.

3.4. The principle of the rule of law

The rule of law thus entails that no person may be deprived of their basic rights through the exercise of arbitrary and wide discretionary powers of the state. Only, the ordinary courts may deprive or limit such basic rights. The principle of the rule of law further mandates that the government must act and exercise its powers in accordance with the law and must also obey and adhere to the law. No one is above the law and everybody or institution, including the state, is subject to the jurisdiction of the courts.

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For many scholars, the rule of law (or the supremacy of law) signifies a system where governmental agencies must operate within the framework of law and their actions are subject to review by independent judicial authorities. To put it differently, it is a system where the legal security of the individual is assured. Implicit in this definition are 3 elements absolutely essential to the rule of law:

1. judicial control of the legality of administrative acts;
2. judicial control of the constitutionality of laws and
3. the independence of the judiciary.

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The rule of law is said to prevail in a state when all individuals and institutions are subject to the law and no person or institution is above the law. This concept represents a common ideal of all free democratic societies and means a government which offers to the individual, legal security and standards inspired by justice.

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Finally, the rule of law is a concept intimately connected with a democratic political life. It is possible that a non-democratic regime will try to shape its legal institutions to conform to the requirements of the rule of law. In fact, the rule of law has often started under a non-democratic system. This was the case with the beginning of human rights protection in England and in Turkey, the judicial control of public administration in France and in Turkey and, particularly, the independence of the judiciary in almost every country. But the rule of law can definitely and comprehensively be achieved and preserved only in a body politic under the control of those who are its beneficiaries (namely under popular control).

3.5. The doctrine of separation of powers

The doctrine of separation of powers or *trias politica* as it is also known is fundamental to many constitutional systems. The doctrine was developed by the elaborate French political philosopher **MONTESQUIEU** on his celebrated book **"*L'esprit des lois*".** According to the doctrine, governmental powers are divided into legislative powers, executive powers and judicial powers. Each of the different powers is exercised by specific bodies of state, namely legislative bodies, executive bodies and judicial bodies.

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This division of power is enforced on all levels within the state. The main purpose of the doctrine is to prevent the excessive concentration of governmental powers in one person or body of the state. Montesquieu believed, there could be no political freedom in a state, where the same person or institution created the law, implemented the law and adjudicated disputes regarding the law The theory of the separation of powers does not favour the free functions of government, being distributed between three independent institutions without some overlapping or co-ordination. Such an arrangement would prevent good government. By separating the organs of government, limited power is conferred on such; thus no organ is possessed of unlimited power. Abuse of power by one can be checked by the others and tyranny is prevented. This doctrine is more than a mere political theory; it is one which has considerable constitutional importance.

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The doctrine of separation of powers incorporates some or all of the following elements: a formal division of state authority between the legislative, executive and judicial branches of government; a separation of personnel which guards against a person or organ functioning in more than one branch; a separation of function so that one branch cannot usurp the function of another and the principle of checks and balances. The doctrine of separation of powers is, however, the most dominant and enduring feature of the American constitution.

4. The sources of constitutional law

As with all other fields within law, it is important to investigate and identify the sources of such branch of the law. Five main such sources can be identified within the domain of constitutional law. They are constitution, organic laws, ordinary laws, constitutional custom and jurisprudence.

4.1 The constitution

The constitution is the most important statutory source of constitutional law. The constitution of a country (in a legislative format) is a law that contains the most important rules of law in connection with the constitutional system of that country. The constitution is the system of fundamental principles according to which a nation, state, or body politic is constituted or governed. A constitution is not the act of a government, but of a people constituting a government and a government without a constitution is power without right.

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A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. Constitutions are concerned essentially with political authority and the exercise of power in a state. They determine the location, conferment, distribution, exercise and limitation of authority and power among the organs of a state. They are therefore involved with matters of procedure as well as substance.

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A country's constitution is a product of its unique history and its contemporary political situation. This means that there is no pre-ordained stereotype of an ideal constitution. Each country has its own peculiar political and socio-economic needs that determine the kind of constitution that is most appropriate for it.

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A constitution thus defines government authority, where such authority vests, how and by whom such authority is to be exercised and how it can be limited. Furthermore a constitution guarantees and regulates the rights and freedoms of the individual. A constitution is a key component of the legal system of a state and also an important expression of the will of the people reflecting the prevailing values of society and thus requiring the support of the citizens. A constitution therefore can be regarded as a symbol of statehood.

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In addition , a constitution is often regarded as a special law with higher status than other laws. It provides the norms to which all government actions should conform to. The constitution thus forms the basis of the legal order, is a reflection of the will of the people, and can be described as the ***lex fundamentalist.***

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In Rwanda, the constitution is supreme, it is entrenched and the courts are vested with the power to test any actions of government against constitutional validity (article 96 of the Constitution). Even executive authority is subject to the constitution.

There are various ways whereby higher status can be conferred on a constitution of a state. The three most are:

1. Entrenchment: to entrench a constitution is to make it more difficult to amend than ordinary laws. The constitution therefore is strongly protected and has higher status.
2. Enforcement: the constitutional provisions must be enforceable. In this regard the role of the courts is very important. In Rwanda, the Supreme Court is vested with the power to invalidate laws that conflict with the constitution (Article 53 of the Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court (Official Gazette n° 28 of 09 July 2012).
3. Special adoption procedures: through special adoption procedures, thus special procedures for its enactment and acceptance, a constitution can be given higher status than other legislation. A further purpose of special constitution, making

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arrangements is to ensure the support of the people and by that also the legitimacy of the constitution.

In general, four categories of special arrangements for the adoption of a constitution can be distinguished:

A constitution can be adopted by a constituent assembly. This assembly must be representative of the citizens and must be elected and accepted by the majority of the people of the state.

The existing parliament or legislative bodies of a state can also adopt a constitution. This normally includes, prior to its adoption, consultative steps and the approval through special majorities.

A constitution can also be identified. Ratification is the approval by institutions or persons outside the legislative bodies/parliament. Without such approval, the constitution cannot become operative.

Some of the above-mentioned methods can also be combined to ensure the final adoption of a new constitution.

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An important distinction to be made in modern constitutional law is the difference between a referendum and a plebiscite. A referendum can be defined as a constitutionally binding poll by the people (mostly citizens) of a state. The government will be bound by the result of such a referendum. A plebiscite, on the other hand, is conducted by a government to consult with the voters of a state. The government is not constitutionally bound by the result and the exercise is many to obtain the general public opinion on certain matters.

The characteristics of the constitution

- **The constitution in terms of constitutional reality**

A part it is an expression of the will of the people, the true constitution is, according to this view, to be found in the power structures and relationships within the state. Reality is given absolute status and the normative aspect is regulated to the background.

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- **The constitution is an all-embracing organizational embodiment**

The constitution is an all-embracing organizational embodiment of the system of government. Here, the emphasis is on the organizational aspect, a rather narrow, formal approach.

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- **The constitution is a continuous dialectical process**

According to this approach, the interpretation of the constitution is not merely a mechanical action, but a creative process. The constitution is not like a contract in private law which must be rigidly interpreted and applied within a narrow framework. It can grow to accommodate the changing needs of the community it serves. This view indicates that the creation and interpretation of a constitution go hand in hand. It is emphasized here that the constitution making is not a single process with a complete and final result.

The contents of constitutions

The content of constitutions differs from state to state. Various political and historical circumstances and other factors have influence on the contents of the constitution of a specific country. It suffices to say that the outcome of a constitution-making process is the text of a constitution, which reflects the values and background circumstances of the country. This text consists of words and phrases used by the constitution makers to give effect to their purposes. These words and phrases are influenced by the prior negotiations, the political background and the capabilities of the constitutional drafters.

Because of these and other factors, various clarifications of constitutions can be distinguished from one another. These clarifications are briefly discussed below:

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Written and unwritten constitutions

A constitution is categorized as a written one when its most important governing principles are specially enacted. This is however a question of degree. Most of states have written constitutions in the narrow sense of the word, the notable contemporary exceptions being United Kingdom, Israel and New Zealand. But, the law of the constitution in those countries can be found in writing, in statutes, law reports, parliamentary standing orders, works of authority, and so on; although an authoritative and reasonably comprehensive document called "constitution" is lacking

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Flexible and inflexible constitutions

The flexibility of a constitution refers to the fact if the constitution can easily be amended or not. The more rigid a constitution is, the more difficult it is to amend such a constitution. Rigidity also provides the constitution with a higher status and mostly also makes reference to the fact that the constitution is the supreme law of a state. There is good reason for entrenchment of a constitution. As said, a constitution is regarded as the will of a nation and it incorporates the values and principles where to such a nation has committed itself. It also protects the rights and procedures whereby individual interests should be protected.

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The Rwandan constitution can be regarded as an inflexible constitution, which is also the highest law of the state. In Rwanda, he power to initiate the revision of Constitution is vested in the President of the Republic after approval by Cabinet, or in each Chamber of Parliament through a two thirds (2/3) majority vote of members (article 175 of the Constitution as revised in 2023).

The amendment or revision of the Constitution requires a three-quarters (3/4) majority vote of the members of each Chamber of Parliament. However, if the amendment concerns the term of office of the President of the Republic or the system of democratic Government based on political pluralism, or the constitutional regime established by this Constitution especially the republican form of the Government and national sovereignty, the amendment must be passed by referendum, after adoption by each Chamber of Parliament.

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Single or multi-document constitutions

Most modern constitutions are contained in one single document. In practice however, many other laws play an important role in the constitutional system of a state. Thus a constitution should always be studied together with such other laws. The Rwandan constitution is contained in one single document but even the constitution itself envisages other laws to supplement the constitution (organic laws).

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Constitutional interpretation

It was explained above that constitutions are generally special pieces of legislation that form the basis of the legal system of a country. As legislation, constitutions contain various terms and phrases that must be interpreted and applied. Many of these terms or concepts must be supplemented before they can be applied. This supplementary process is a law-making action and it entails more than the mere determination of the meaning of words used in the constitution.

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It is however argued that the Constitution as the fundamental law of the State, must be accepted, interpreted and construed according to the words which are used; and these words, where the meaning is plain and unambiguous, must be give their literal meaning. Of course, the Constitution must be construed as a whole and not merely in parts and, where doubts or ambiguity exist, regard may be had to other provisions of the Constitution and to the situation, which obtained and the laws, which were in force when it was enacted. Plain words must, however be given their plain meaning unless qualified or restricted by the Constitution itself".

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The interpretation of a constitution entails that meaning is attached to its provisions and the meaning of a particular provision is determined by employing various sources. The meaning which the drafters of a constitutional provision attached to it can never be determined objectively and accurately. Factors similar to those which could have influenced the constitution makers in using particular words and constructions may influence the meaning which an interpreter gives to the text. Although interpreters investigate the very same words which they attach to a provision will most probably never be the same as that which the drafters had in mind.

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The text is interpreted at different points in time, within different formal and informal structures, according to different processes, and by different people with different levels of capabilities, insight and knowledge in respect of, for example:

Language;

- The constitutional system and the constitution as a whole;
- The national values underlying the constitution;
- The history of the country and of the constitution, and

Comparable international and foreign systems.

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The influences of those factors are accounted for in the theories on, and approaches to the interpretation of constitutions. For example everybody seems to be in agreement that a literal and technical approach that concentrates exclusively on the literal meaning of words and phrases in the text (grammatical interpretation) must not be followed. A provision must be interpreted by also taking into account the constitution as a whole (systematical interpretation), the values that are protected and promoted, the purpose of the constitution or particular provisions (teological interpretation), the history that preceded the adoption of the constitution or a particular provision (historical interpretation), and international and foreign law (comparative interpretation).

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1. ***Grammatical interpretation*:** this method acknowledges the importance of the role of the language of the constitutional text. It focuses on the linguistic and grammatical meaning of the words, phrases, sentences and other structural components of the text. This includes the rules of syntax, which are the rules dealing with the order of words in a sentence;
2. ***Systematic interpretation*:** this method is concerned with the clarification of the meaning of a particular constitutional provision in conjunction with the constitution as a whole. This is also known as a holistic approach. The emphasis one the "wholeness" is not restricted to the other provisions and parts of the constitution, but also takes into account extra-textual factors such as the social and political environments in which the constitution operates;
3. ***Teleological interpretation*:** this method deals with the aim and purpose of the provisions, and the values embodied in a constitution are also taken into consideration. In other words, it is used to ascertain what the particular constitutional provisions must accomplish in the legal order;

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4. ***Historical interpretation*****:** this method refers to the use of historical context of the constitution. The historical context includes factors such as the circumstances with gave rise to the adoption of the constitution, preceding discussions and negotiations (the so-called travaux préparatoires), as well the original intent of the drafters or ratifiers of the constitutional text. The preceding discussions and the original intent of the framers, however, cannot determine the final meaning of the constitution;

5. ***Comparative interpretation*****:** this refers to the process during which the courts examines international human rights law and the constitutional decisions of foreign courts. This must be done with due regard to the unique domestic context of the constitution under consideration.

Finally, these traditional methods are complementary and should be applied in conjunction with one another. In other words, they are in a continuous interaction.

The elaboration and the revision of the constitution

When a State still has no constitution it has just built up itself or when it has not it any more following a revolution for example, it is necessary to elaborate a constitution which will be at the origin of the State or of the new regime. This power of elaboration of a constitution is called the “original constituent power”. When on the contrary, a constitution is effective and when we consider necessary not to replace it but only to modify it, it is done according to rules established by the very constitution. Every constitution foresees how it will be modified. This power of modification which ensues from the constitution is called “derived constituent power”.

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The revision of the constitution: the derived constituent power

The modification of the constitution is made to adapt it to the new circumstances which oblige the change of character. This power of modification is foreseen by the very constitution. In this respect, it distinguishes itself from the original constituent power by two principal points. It is conditioned at first because he has to respect the forms and the procedures prescribed by constitution. It serves only for modifying the constitution not to replace it by the other one because it would get rid of its own foundation. To modify the constitution, the procedure differs as we are in front of a flexible or rigid constitution.

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Revision of a flexible constitution

The constitution is flexible if she can be easily modified by one of the powers established for example by the legislative power in the term of the ordinary legislative procedure. In other words, a simple ordinary law easily modifies the flexible constitution; it is for the same level as the ordinary laws in the hierarchy of the norms. It is exactly the case every time there is no formal constitution, either because the constitution is customary as in Great Britain or still because it is for the main part expressed in ordinary laws as in Israel.

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The revision of a rigid constitution

The separation of the powers can be thus protected only if the established powers have not the constituent power that is if the constitution is rigid. The rigidity does not mean that the constitution cannot be modified or revised, but that it can be so only according to certain forms as it organized itself and by the organs, which it established for that purpose. In other words, the rigid constitutions can be revised only according to a special procedure, more complex than the common legislative procedure, and thus more difficult to operate. This procedure contains often three phases.

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The initiative of the revision

In a dictatorship, the initiative comes only from the government and it is the case of the Napoleonic constitutions. In the democracies, the initiative is reserved for the parliament and it is the case of United States of America. It is often foreseen that the initiative can come from the parliament or from the government. It is the case of the French constitutions of 1875, 1946 and 1958. For countries practicing the direct half-democracy, the initiative can emanate from the government, from the parliament or from the people. It is the case of Switzerland and Italy.

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As for Rwanda, the initiative of the revision of the constitution returns jointly to the president of the Republic, after deliberation of the cabinet, and to every chamber of the parliament on vote with the majority of two thirds of its members. The revision is acquired only by a vote with the majority of three quarter of the members who compose each chamber. However, when the revision concerns a mandate of the president of the republic, a pluralistic democracy or a nature of the constitutional regime notably the republican form and the integrity of the national territory, it must be approved by a referendum, after her adoption by every chamber of the parliament.

THE ORGANIC LAWS

By expression organic law, we can appoint two types of different texts by their place in the hierarchy of the rules. He can involve common laws the contents of which are materially constitutional, because they are relative to the functioning of authorities. He can also involve laws which take place in an intermediate level between the constitution and the common law.

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It is on this second sense (direction) that the expression is especially employed. These laws present three characters:

- they are materially constitutional;
- It is the constitution that provides for those organic laws to complete and precise the text. It does so in the very important domain for instance organization, functioning and competence of the prosecution are governed by an organic law;
- The organic laws are adopted or modified according to the particular procedure, appreciably more binding than the ordinary legislative procedure. It is obviously a question of preventing that the organic law, under pretext to complete the constitution, questions the principles. The Rwandan constitution subjects to a particular procedure the organic laws adoption

THE ORDINARY LAWS

It is a set of the laws, which are relative to the organization, and the functioning of public authorities. All the times when the constitutional matter is concerned and when there is a law on that subject, that law constitutes a source of the constitutional law.

THE CONSTITUTIONAL CUSTOM

In law, custom can be described as the established patterns of behaviour that can be objectively verified within a particular social setting. A claim can be carried out in defence of “what has always been done and accepted by law”. Generally, customary law exists where: a certain legal practice is observed; the relevant actors consider it to be law (*opinio iuris*).

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This is the oldest source of constitutional law in that originally law derived from the well-worn and well-accepted practices of the community. To be legally binding, a constitutional custom must have been generally observed over a long period; if it is reasonable, by society standards, and certain in its ambit it will then be enforceable, provided it has not been superseded by some other form of custom. In other words, for a constitutional custom to have legal validity, the following requirements must be satisfied:

- **Antiquity:** as a rule, a constitutional custom must have existed for a long time and no living person should know the beginning of it.

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- **Continuity:** a constitutional custom must be continuously observed. Of it is abandoned or its practice is interrupted in favour of another custom, the requirement of continuity is the material and objective factor applied to prove the validity of constitutional customary observance.
- **Popular belief in the rightness of a constitutional custom:** constitutional custom must consciously or unconsciously be considered right by the members of the society. Roman jurists called this spiritual and subjective condition *opinio necessitatis* or *opinio juris*. There should be a belief among the members of a society about the rightness and binding force of a constitutional custom. If a constitutional custom is maintained only by force, it cannot be considered as valid. Therefore, a certain mode of conduct which is not voluntarily observed by the members of society but forced upon them by an external or internal power is not to be deemed a constitutional custom.

THE JURISPRUDENCE

Before applying a legal text, whatever it is, it is necessary to determine the meaning. The meaning of a legal text is what this text orders or allows, it is the rule which it expresses. We call interpretation the operation by which we attribute a meaning to a text. The interpretation of a constitution is made in two manners: either it is interpreted by a law voted by the parliament, or by the judge by applying the constitution. This last way is made when the control of the constitutionality is made posterior. The judge then plays a dominating role in the determination of the sense of the constitution. Its decisions which interpret the constitution can serve as source of the law.

5. STATE

The term **“state”** is a continuous concept. It is also used in a variety of senses. In international law, it means an independent, politically organized community living in a defined territorial area. This is the sense in which one speaks of, for example, Burundi, England, and Canada as being state. In political science it is used to refer to the institutions of government and organized political power. A classical sociological definition identifies the state as a human community that claims the monopoly of the legitimate use of physical force within a given territory

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In constitutional law, state means the organized authority of a particular political community which manages the public affairs of that community, both internally and externally. In other words, the state is an independent political society occupying a defined territory, the embers of which are united together for the purpose of resisting external force and the preservation of internal order. The operation of a contemporary state encompasses very much more than these two functions. The modern state has numerous branches and institutions. It is worth noting that the word "nation" is often used as expressing a state. A nation is defined as a body of people recognized as an entity by virtue of their historical, linguistic, religious or ethnic links and without regard to political or geographical boundaries.

ELEMENTS OF A STATE

In this point the intention is to briefly look at the different elements individually and to point out some of the important aspects with regard to those elements. In general, three separate elements have been identified that are considered to be the core essential elements of a state, those elements are the following :

1. a community of people,
2. a specific territory(territory of state) and
3. specific government authority.

6. DIFFERENT FORMS OF GOVERNMENT

A form of government, also referred to as a system of government, is a social institution composed of various people institutions and their relations in regard to the governance (or government) of a state. The distribution of government authority is important to determine the type of form of state of a specific country. A wide range of different forms of government have been proposed or used in practice. The study of such forms is called comparative government. Categorising forms of government gives idea of the power structure of the governance of a country. In this regard, it is important to distinguish between a unitary form of state and a federal form of state. If a state should be regarded as unitary or federal, is largely dependent on the relationship between the national and provincial levels of government. The stronger a provincial level is vis-à-vis the national level, the closer such system moves to a federal governmental system.

Cont'd

- **UNION/UNITARY FORM OF STATE**

A unitary state is a state or country that is governed constitutionally as one single unit, with one constitutionally created legislature. Governmental power may well be transferred to lower levels, to regionally or locally elected assemblies, governors and mayors "devolved government", but in a unitary state the central government has the principal right to recall such delegated power.

In a union, the national government is the highest authority in the state. Although authority is distributed to other levels and government bodies, these levels or bodies can never restrict the authority of the national government either to exercise or withdraw such delegated authority. Thus, the national government remains the highest authority in the state and there is no real distribution of powers. It should be evident that the central or national government is supreme in a unitary state and there is a clear protection in favour of centralisation rather than decentralisation.

Cont'd

- **FEDERATION**

A federal form of state is distinguished from other forms of state because there is real distribution of authority. Authority is properly distributed between the federal government and its participating states. A federation is generally regarded as a sophisticated government form which is a combination of two legal disciplines, which are not entirely subjected to one another. Each discipline has its own measures of autonomy. In a federation, the national government is usually known as the federal government whereas the separate parts of the federation are known as provinces (Canada) or states (USA or Australia) or *hander* (Germany) or regions (Spain). One can suffice with the term participating states, as it suggests the true position of federation.

Cont'd

Federations often come into being when some independent states agree to form a new state. The United States of America is the best example. It is however possible for a union to decide to become a federation. See Germany for example.

Most federal states also have unitary lower levels of government. Thus while the United States itself is federal, most (if not all) U.S. states are themselves unitary, with counties and other municipalities having only the authority given (devolved) to them by the state constitution or legislature.

Cont'd

The organization of the federal State

The component communities are always represented within the parliament which is composed with two chambers. One of the chambers fills this specific function. The representation is generally assured on an equalitarian base. In United States of America, this principle of equality is respected: the senate consists of two senators by state; whatever is the geographic and economic importance of this one. Contrarily of Germany where every state is represented by three to six members according to its dimension.

Cont'd

We shall note that, outside the constitution, the other modalities of participation were able to be made necessary in connection with the cooperative federalism. In Canada, the second chamber of the parliament does not insure a representation of provinces. And so that a constitutional agreement wanted that these provinces are represented according to their population within the federal government. In Switzerland, cantons possess a right of initiative in federal legislation and are associated to the parliamentary works, notably for the texts which affect their rights and obligations.

Cont'd

- **CONFEDERATIONS**

A confederation must be distinguished from a federation. They are not the same. A confederation is an association of sovereign states, usually created by treaty but often later adopting a common constitution. Confederations tend to be established for dealing with critical issues, such as defence, foreign affairs, foreign trade, and a common currency, with the central government being required to provide support for all members.

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The classical distinction between a federation and a confederation is that in the latter all powers vest in the constituent states of the confederation except those ceded by the constituent states to the federal central government. Switzerland is the best living example of this and makes constant and conscious efforts to balance centrifugal and centripetal forces which are in a steady flux. However, it too shares with unitary states and federations the central federal monopoly of the military might of the state within its borders.

cont'd

A confederation, in modern political terms, is usually limited to a permanent union of sovereign states for common action in relation to other states. The European Union (EU) and the British Commonwealth are examples of such confederations. Thus a confederation provides a form of operation between independent states according to the principals of international law, and is not a state in the true sense of the word.

Cont'd

The term "confederation" is a frequently disputed one; loose confederations might be similar to international organisations, while tight confederations might be similar to federations. Because laws in every confederation, are the same as every state in general relationships between different subjects of a confederation are different, and therefore classification may be difficult; different powers are vested to central government and different powers are kept by member states in different confederations. In a non-political context the term is used to describe a type of organisation which consolidates authority from other semi-autonomous bodies.

Confederation versus federation

Sometimes confederation is erroneously used in the place of federation. Some nations which started out as confederations retained the word in their titles after officially becoming federations, such as Switzerland. The United States of America was at first a confederation before becoming a federation with the ratification of the current US constitution in 1789.

Confederation as an event

As a verbal noun, confederation refers to the process of (or the event of) confederating; i.e., establishing a federation or confederation. For example, in Canada (in actually a federation), the phrase "after confederation" generally means "after the British North America Act of 1867", which established the Dominion of Canada.

7. POLITICAL SYSTEMS

Different forms of government have different political systems, a term which is generally considered to be a separate but related concept. This chapter analyses political regimes, according to a series of different ways of categorising them as major ones. The systems discussed are of course not mutually exclusive, the purpose in this chapter is to distinguish some main types of political leadership, dominion and authority. Some various subtype political systems are also viewed.

7.1 THE MONARCH

A monarch is a type of ruler or head of state, whose titles and ascent are often inherited, not earned, and who represents a larger monarchical system which has established rules and customs regarding succession, duties, and powers.

The word **“monarch”** derives from greek ***monos archein***, meaning “one ruler”, and referred to as an absolute ruler in ancient Greece. With time, the word has been succeeded in this meaning by others, like autocrat or dictator, and the word monarch in modern usage almost refers to a traditional system of hereditary rulership. The word monarch can also be used about a country which has such a system.

Cont'd

Monarchy is one of the oldest forms of government, with echoes in the leadership of tribal chiefs. Many monarchs once claimed to rule by divine right, or at least by divine grace, ruling either by the will of the god(s) or even claiming to be (incarnated) gods themselves (see theocracy). Monarchs have also been selected by election (either in a broad popular assembly, as in Germanic tribal states; or by a small body, such as in the Holy Roman Empire, and as in Malaysia and United Arab Emirates (UAE) today; or by dynastic succession; or by conquest; or a combination of any number of ways). In some early systems the monarch was overthrown or sacrificed when it became apparent that divine sanction had been withdrawn.

Since 1800, most of the world's monarchies have been abolished by dismemberment or annexation, or have been transformed into republics; most current countries that are monarchies are constitutional ones

Different types of monarchs

Monarchy can be either absolute or constitutional. In absolute monarchy, the monarch has power over every aspect of the state, and a constitution may be granted or withdrawn. Modern versions tend to survive only in societies with sufficient technology to allow the concentration and organisation of power, but not to allow education and rapid communication to flourish. The economic structure of such monarchies is that of concentrated wealth, with the majority of the population living as agricultural serfs.

Cont'd

Constitutional monarchies may even restrict the powers of the monarch to the point where he is little more than a near-powerless figurehead, which is a common modern practice. A constitutional monarch is subject to the constitution like other citizens, though in some cases he has certain constitutional privileges such as inviolability. Most constitutional monarchs retain reserve powers, and other constitutionally defined roles and responsibilities. Many are also constitutional monarchs who can dissolve parliament and call for new elections (usually at the request of the prime minister). Though the latter may technically still propose legislation, the conventions of constitutional monarchy disallow them from doing so, as well as from wielding power in the unlimited manner of ancient monarchies, unless in the face of a constitutional, governmental, or some other crisis.

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Elective monarchies were once common, although only a very small portion of the population was eligible to vote. As the impact of the feudal system diminished, many monarchs were eventually allowed to introduce hereditary succession, guaranteeing that the title and office will stay within the family. Today, almost all monarchies are hereditary monarchies in which the monarchs come from one royal family with the office of sovereign being passed from one family member to another upon the death or resignation of the incumbent. Existing elective monarchies include Malaysia, Saudi Arabia and the Holy See. The former system of the election of the doge in Venice is also widely known.

Cont'd

A sovereign is the monarch of a sovereign state. Although non-sovereign states have had monarchs historically (not least within the Holly Roman Empire), all European monarchs since 1981 have been sovereigns. Outside Europe there still exist several monarchs of subnational entities however, most notably in Malaysia and the United Arab Emirates.

Forms of monarch

- **Succession**

Succession from one monarch to another varies from country to country. In constitutional monarchies the rule of succession is generally embodied in a law passed by a representative body, such as a parliament. Traditionally, hereditary succession within members of one family has been most common. The usual hereditary succession has based one some cognatic principles and on seniority, though also merits have influenced. Thus, the most common hereditary system in feudal Europe was based on cognatic primogeniture, where a lord was succeeded by his eldest son, and failing sons, by either daughters or by sons of daughters.

Cont'd

The system of tanistry was semi-elective and gave weight also to merits and capability. The quasi-Salic succession provided firstly male members of the family to succeed, and secondarily males also from female lines. In most feudal fiefs, females (such as daughters and sisters) were allowed to succeed, brothers failing, but usually the husband of the heiress became the real lord and most often also got title, *iure uxoris*. Great Britain and Spain are today continuing this old model of succession law, in form of cognatic primogeniture

Cont'd

Some countries however accepted female rulers early on, so that if the monarch had no sons, the throne would pass to the eldest daughter. This cognatic primogeniture was the rule that let Elisabeth II become Queen. In some monarchies, e.g. Saudi Arabia, succession to the throne has passed to the monarch's next eldest brother; and only to the monarch's children after that (agnatic seniority). In some other monarchies, like Jordan, the monarch chooses who will be his successor, who need not necessarily be his eldest son. Monarchies can come to an end in several ways. There may be a revolution in which is overthrown; or, as in Italy, there may be a referendum in which the electorate decides to form a republic.

Cont'd

Arguments for monarchies

Monarchists make the following arguments, among others, in support of monarchy:

- A hereditary monarch is likely to be a more competent head-of-state than is an elected president, because the former may have been prepared, from childhood, to serve as such.
- A monarchy may be less costly to maintain than a republic because it spares the state the expense of holding presidential elections, and because the royal family's private fortune may be enough for its own support, compared to the public expenditures the accommodations, pensions and other maintenance of a republic's presidential incumbent and former presidents.
- The competition and criticism to which republican presidents typically are exposed, as elected officials and especially during the election campaigns themselves, damages the reputation and dignity of the head of state

Cont'd

Some monarchists even argue that monarchy not only symbolises continuity, but actually guarantees of political stability, and instance, to support this view, historical cases where the abolition of monarchy has been followed by civil wars and the rise of totalitarian systems, such as Jacobinism in France, Nazism in Germany, and Communism in Russia and China.

Cont'd

Arguments against monarchies

Republicans argue against monarchy:

- A monarchy symbolises priviledge;
- A monarchy symbolises greed and exploitation;
- It is a fundamental right of the people of any nation to elect their Head of State and for every citizen to be eligible to hold that public office, and that such a Head of State is more accountable to the people;
- All people are created equal and a monarch born into power, without earning it, is not likely to be the best person to act as Head of State, whereas someone elected is likely to be chosen on merit for their superior qualities

Cont'd

In some specific cases monarchy has been questioned because it became associated with fascism, occupation or dictatorship. Examples are Italy where the monarchy was dissolved via referendum in 1946 and Belgium where a similar referendum was held in 1950, concerning the Monarchy of Belgium.

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- ***PARLIAMENTARY SYSTEM***

A parliamentary system or parliamentarism, is distinguished by the executive branch of government being dependent on the direct or indirect support of the legislative branch, or parliament, often expressed through a vote of confidence. Hence, there is no clear-cut separation of powers between the executive and legislative branches, leading to criticism from some that they lack checks and balances found in a presidential republic.

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Parliamentarism is praised, relative to presidentialism, for its flexibility and responsiveness to the public. Parliamentary systems usually have a clear differentiation between the head of government and the head of state, with the head of government being the prime minister or premier, and head of state often being an appointed figurehead with only minor or ceremonial powers. However, some parliamentary systems also have an elected president with many reserve powers as the head of state, providing some balance to these systems.

Cont'd

The term "parliamentary system" does not mean that a country is ruled by different parties in a coalition with each other. Such multiparty arrangements are usually the product of an electoral system known as proportional representation. Parliamentarism may also be heeded for governance in local governments.

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Features of a parliamentary system

Under the parliamentary systems, the executive is typically a cabinet, and headed by a prime minister who is considered the head of government. The prime minister and the ministers of the cabinet typically have their background in the parliament and may remain members thereof while serving in the cabinet. The leader of the leading party or group of parties, in the parliament is often appointed as the prime minister. In many countries, the cabinet, or a single member thereof, can be removed by the parliament through a vote of no confidence. In addition, the executive can often dissolve the parliament and call extra-ordinary elections.

Cont'd

Parliamentary systems vary as to the degree to which they have a formal written constitution and the degree to which the constitution describes the day to day working of the government. Also, depending upon the voting system, they vary as to the number of parties within the system and the dynamics between the parties. Relations between the central government and local governments vary in parliamentary systems; that may be federal or unitary states

Cont'd

Advantages of a parliamentary system

- It could be argued that a parliamentary system is more accountable than a presidential system, since power is not divided. In parliamentary system, it is easier for voters to tell who is responsible for inaction than in a presidential system. Also, in a parliamentary system the chief-or prime minister- is often questioned by the legislature. Such a procedure would ensure that the chief executive is held to account and would act as check on his power.

Cont'd

- Some believe that it is easier to pass the legislation within a parliamentary system. This because the executive branch is dependent upon the direct or indirect support of the legislative branch and is often comprised of members of legislature. In a presidential system, the executive is often chosen independently from the legislature. If the executive and legislature in such a system are comprised of members from differing political parties, then stalemate can occur.
- Parliamentarism also has attractive features for nations that are ethnically divided. In a unipersonal presidential system, all executive power is concentrated in the president, in parliamentary system, with a collegial executive, power is more divided. Parliamentarism is praised for producing serious debates, for allowing the change in power without an election, and for allowing elections at any time.

Cont'd

The fundamental mechanisms of the parliamentary systems

Any parliamentary system can be defined, for the main part, as a regime in which the government has to have at any time the confidence of the parliamentary majority. It is the basic element which explains all the mechanisms of the regime. Which are :

1. The dissociation of the executive organs
2. The political responsibility of the government (The government can dissolve the assembly and The collaboration of the government and the assemblies)
3.

The types of the parliamentary systems

Three distinctions are going to help us analyzing well and knowing really what is the parliamentary system.

- **The monistic parliamentary system and the dualistic parliamentary system**

It is under its dualist form that the parliamentary system was practical at first and we understand it better since the monarchic institution. King only reigns, he steers so partially.

Cont'd

- **The bipartite parliamentary system and the multipartite parliamentary systems**

They work more often in a very different way, being observed that the bipartisanship insures a much better functioning than the multiparty system. The bipartite parliamentary system is, as already evoked, practiced by Great Britain and by some Anglo-Saxon countries. It has for main characteristic to look to one of both parties in the presence of the absolute majority of seats to the assembly elected in the direct and universal vote. The multipartite parliamentary systems present less unity. Some work in a remarkable way and assure more governmental stability than those of the countries of bipartisanship. It is the case of German Federal Republic. But, there is the others which know different situations. Indeed, it is necessary to take into account not only the number of the parties but also their nature and their position in the national politics.

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- **The unorganized and the rationalized parliamentary systems**

At the rate of the conditions which even chaired in the establishment of parliamentary systems, these have begun to work without pre-established rules. We cannot forget that in Great Britain, first country having practiced this regime, there is no written constitution. The regime was thus set up of itself and it works even today according to its simplest plan. But we know that the functioning of certain multipartite parliamentary systems thus had not the same satisfactions. That is why the idea was been daylight, in States having to elaborate a new constitution to try to remedy to a possible governmental instability by trying hard to prevent, by institutional means, the ministerial crises. It involves, as matter of fact, of returning these more difficult crises to make them rarer.

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The rationalized parliamentary system is the one that organizes in a meticulous and detailed way the connections of the government and the assemblies and it by bigger complexity is always translated. It is after the First World War that the rationalized parliamentary system began to be practised, notably in the Germany of Weimar. It conquered numerous countries especially after the Second World War; such as federal Germany, Italy and France.

Cont' d

But the considerable inconveniences that contain this type of the parliamentary government made it to be quickly given up. In dualistic parliamentary system, the government is politically responsible not only in front of the assembly, or the assemblies, but also in front of the Head of State who participates thus actively to the exercise of power. It is clear that such a system can work correctly only if the Head of State and the parliamentary majority belong to the same political party. The authentic parliamentary systems are henceforth monistic, what means that the government is responsible only in front of the assembly elected in the direct universal suffrage, and exceptionally in front of the assemblies.

PRESIDENTIAL SYSTEM

A presidential system, or a congressional system, is a system of government of a republic where the executive branch is elected separately from the legislative. The defining characteristic of a presidential government is how the executive is elected, but nearly all presidential systems share the following features:

- The president is both head of state and head of government;
- The president has a fixed term of office. Elections are held at schedule times, and cannot be triggered by a vote of confidence or other such parliamentary procedures;
- The executive branch is unipersonal. Members of the cabinet serve at the pleasure of the president and must carry out the president's policies

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It is better to note that presidential system is often used in contrast to cabinet government, which is usually a feature of parliamentarism. There also exists a kind of intermediate, the semi-presidential system.

Types of presidents

Many countries with a president as head of state do not operate under what is describe as a presidential system. Many parliamentary nations have an office of president, but these presidents are merely heads of state, like constitutional monarchs, and not head of government. In a full-fledged presidential system, a president would be chosen by the people and be the centre of the executive branch. Presidential governments make no difference between the positions of Head of state and Head of government, both of which are held by the president. Most parliamentary governments have a symbolic head of state in the form of a “president” or monarch

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That person is responsible for the formalities of state functions as the figurehead while the constitutional prerogatives as head of government are generally exercised by the Prime Minister. Such figurehead presidents tend to be elected in a much less direct manner that active, presidential system presidents, for example by a vote of the legislature.

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Presidents in presidential system are always active participants in the political process, though the extent of their relative power may be influenced by the political make-up of the legislature and whether their supporter or components have the dominant position therein. In some presidential systems, there is an office of the prime minister or premier, but unlike in semi-presidential or parliamentary systems, the premier is responsible to the president rather than to the legislature.

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Perceived advantages of presidential systems

Supporters generally claim four basic advantages for presidential systems:

- Direct mandate;
- Separation of powers;
- Speed and decisiveness;
- Stability

Cont'd

- **Direct mandate**

In a presidential system, the president is generally elected directly by the people. To some, this makes the president's power more legitimate that that of a leader appointed indirectly. According to supporters of the presidential system, a popularly elected leadership is inherently more democratic than a leadership chose by a legislative body, even if the legislative body was itself elected. Through making more than one electoral choice, voters in a presidential system can more accurately indicate their policy preferences. It is also claimed that the direct mandate of a president makes him or her more accountable. The reasoning behind this argument is that a prime minister is "shielded" from public opinion by the apparatus of state, being several steps removed

Cont'd

- **Separation of powers**

A presidential system establishes the presidency and the legislature as two parallel structures. It is then claimed that this arrangement allows each structure to supervise the other, preventing abuses. The fact that a presidential system separates the executive from the legislature is sometimes held up as an advantage, in that each branch may scrutinise the actions of the other. In a parliamentary system, the executive is drawn from the legislature, making criticism of one by the other considerably less likely. It is said that the lack of checks and balances in that system means that misconduct by a prime minister may never be discovered.

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- **Speed and decisiveness**

Some argue that a president with strong powers can usually enact changes quickly, and that this is a good thing. Others argue that the separation of powers slows the system down, and that this is a good thing. Presidential systems can respond more rapidly to emerging situations than parliamentary ones. A prime minister, when taking action, needs to retain the support of the legislature, but a president is often less constrained.

Cont'd

- **Stability**

A president, by virtue of a fixed term, may provide more stability than a prime minister who can be dismissed at any time. Many people consider presidential systems to be superior in surviving emergencies. A country under enormous stress may be better off being led by a president with a fixed term than rotating premierships. The fact that elections are fixed in a presidential systems is likewise often held as a valuable "check" on the powers of the executive. While parliamentary systems often allow the prime minister to call elections whenever he sees fit, or orchestrate his own vote of no confidence to trigger one when he cannot get a legislative item passed, the president model is said to discourage this sort of opportunism, and instead force the executive to operate within the confines of a term he cannot alter to suit his own needs.

Perceived disadvantages of presidential systems

Critics generally claim three basic disadvantages for presidential systems:

- Tendency towards authoritarianism;
- Separation of powers;
- Impediments to leadership change.

Cont'd

- **Tendency towards authoritarianism**

The presidentialism is said not to be constitutionally stable. In a presidential system, the legislature and the president have equally valid mandates from the public. There is often no way to reconcile conflict between the branches of government. When president and legislature ate at loggerheads and government is not working effectively, there is a powerful incentive to employ extra-constitutional manoeuvres to break the deadlock.

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- **Separation of powers**

A presidential system establishes the presidency and the legislature as two parallel structures. Critics argue that this creates undesirable gridlock, and that it reduces accountability by allowing the president and the legislature to shift blame to each other. Presidential systems are said by critics not to offer voters the kind of accountability seen in parliamentary systems. It is easy for either the president or congress to escape blame by blaming the other.

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- **Impediments to leadership change**

It is claimed that the difficulty in removing an unsuitable president from office before his or her term has expired represents a significant problem. Even if a president is proved to be inefficient, even he becomes unpopular, even if his policy is unacceptable to the majority of his countrymen, he and his methods must be endured till the moment comes for a new election. Since there is no legal way to remove an unpopular president, many presidential countries have experienced military coups to remove a leader who is said to have lost his mandate. Presumably, in a parliamentary system, the unpopular leader could have been removed by a vote of no confidence, a device which is "pressure release valve" for political tension.

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Differences from a cabinet/parliamentary system

In many modern governmental systems, it is also important to distinguish between a parliamentary or presidential form of government. In order to distinguish between the two, one should look at the relationship between the legislative and executive authority in the relevant system.

In a presidential system, the head of government is also head of state but in parliamentary system, the two offices/positions are vested in two different persons. A presidential system further determines that the head of state is not a member of the national legislature while in parliamentary system, the head of state and his cabinet ate both members and accountable to the national legislature.

Cont' d

Furthermore, a number of key theoretical differences exist between a presidential and a cabinet system:

In a presidential system, the central principle is that the legislative and executive branches of government should be separate. This leads to the separate election of president, who is elected to office for a fixed term, and only removable for gross misdemeanour by impeachment and dismissal. In addition, he or she does not need to choose cabinet members commanding the support of the legislature. By contrast, in parliamentarism, the executive branch is led by a council of ministers, headed by a prime minister, who are directly accountable to the legislature and often have their background in the legislature (regardless of whether it is called a "parliament", a "diet", a "chamber");

As with the president's set term of office, the legislature also exists for a set term and cannot be dissolved ahead of schedule. By contrast, in parliamentary systems, the legislature can typically be dissolved at any stage during its term of office by the head of state, usually on the advice of either prime minister alone, by the prime minister and cabinet, or by the cabinet.

THE MIXED REGIMES

The mixed regimes combine elements taken from the parliamentary system and the elements borrowed in the presidential regime, what sometimes arises, as for their functioning, the problem of their coherence.

- **The loans to the parliamentary and presidential regimes**

It is always the same elements which are borrowed from these two types of regimes. In the parliamentary system, the mixed regimes borrow the existence of the government, collective, united and responsible in front of the assembly elected in the direct universal suffrage. To the presidential regime, they borrow the institution of an elected president in the universal and direct suffrage and disposing of not only the authority which confers this mode of name but also the often considerable powers. Among the mixed regimes existing today, let us quote Austria, Finland, Ireland and Rwanda doubtless.

Cont'd

- **The functioning of these regimes and the problem of their coherence**

This functioning gives satisfaction but for different reasons. In certain countries, the difficulties are evaded because the president gives up holding the driving role which could be his. It is the most frequent case, that of Austria, of Ireland, Iceland that; although electing the president in the universal and direct suffrage, have regimes getting closer, in diverse degrees, in the parliamentary system. In other countries such as Finland, harmonious functioning holds the rather surprising balance which characterizes the Scandinavian regimes.

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In France, where the president exercises completely his powers and also goes beyond, the functioning seemed satisfactory in the tour of the periods when it had a parliamentary, absolute or only relative majority, what is still sufficient. Between 1986 and 1988, when a president had to face a majority and a government the political convictions of which were opposite in his, he looked like leader of the opposition while letting Prime Minister steer but the political belief is not worried. Presidential or legislative elections, should take place two years later. It thought at first, rightly, that it would restore the harmony and that the periods of cohabitation, of relatively short duration, were only hitches.

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It remains that the functioning of these mixed regimes is printed by certain fragility. Indeed, the parliamentary system and the presidential regime contain each, according to their appropriate logic, solutions of the possible crises between the executive and legislatives. The mixed regimes, on the contrary, as far as they establish a government of parliamentary type and a president of presidential type, not only whom they do not foresee but still, due to the lack of coherence, increase the risk of conflicts, at least if every organ intends to use completely its powers. The risks of blocking of institutions are not thus unimportant.

SEMI-PRESIDENTIAL SYSTEM

The semi-presidential system is a system of government that features both a prime minister and a president who are active participants in the day to day functioning of government. It differs from the parliamentary system in that it has a popularly elected president who is not a ceremonial figurehead and it differs from the president system in that it has an executive prime minister who has some responsibility to the legislature.

Cont' d

How the powers between the president and prime minister are divided can vary greatly between countries. For example, the president can be responsible for foreign policy and the prime minister for domestic policy. In this case, the division of power between the prime minister and the president can be explicitly stated in the constitution, or evolved as a political convention.

Semi-presidential systems are sometimes typified by periods of cohabitation, in which the prime minister and president are elected separately, and often from rival parties. This can create an effective system of checks and balances or a period of bitter and tense stonewalling, depending on the attitudes of the two leaders, the ideologies of their parties, or the demands of their constituencies.

Cont'd

From all it follows that semi-presidentialism may be defined by three features:

- A president who is popularly elected;
- The president has considerable constitutional authority;
- There exists also a prime minister and cabinet, subject to the confidence of the assembly majority.

Semi-presidentialism is more closely related to presidential systems than parliamentary systems. The primary similarity is that both have a directly elected president (or at least a president not selected by a/or responsible to the legislature). The fundamental difference is that executive power is divided "in half" under semi-presidentialism between the elected publicly selected president and the prime minister selected by the legislature. This sharing of executive power is one of the key characteristics of the semi-presidential system, what constitutional layers refer to a "dual authority structure… a diarchy between a president who is head of state, and a prime minister who heads the government".

Cont'd

The semi-presidential system has potentially two forms:

1. A powerful president when there is a unified majority (legislative majority is of the same party or supportive of the President). The prime minister becomes secondary to the President in all legislative and diplomatic arenas.
2. A weakened president when the two majorities are of divergent or opposing parties. The prime minister takes on a primary role in most legislative arenas (generally excepting foreign policy) it claims that by being able to oscillate between these two forms the semi presidential system is able to avoid the possible shortfalls of the pure presidential systems.

Weaknesses of the system

The following are some weaknesses of the semi presidentialism identified by scholars:

- The semi-presidential system (like the presidential and parliamentary) requires well-developed ("fit") political parties;
- Assumes that internal party divisions will not prevent the president and prime minister from working effectively together; and
- Does not resolve problems of polarized pluralism or a fractured political party system (and inability to reach decisions or form stable coalitions within the legislature).