



جامعة أبي بكر بلقايد
كلية الحقوق والعلوم السياسية

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first-year law lecture in legal terminology

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I. Some basics of the Constitutional law

a. What is a constitution?

The vast majority of contemporary constitutions describe the basic principles of the state, the structures and processes of government and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act. This higher law is usually referred to as a constitution.

The content and nature of a particular constitution, as well as how it relates to the rest of the legal and political order, varies considerably between countries, and there is no universal and uncontested definition of a constitution. Nevertheless, any broadly accepted working definition of a constitution would likely include the following characteristics:

Constitutional law is a branch of legal studies that focuses on the interpretation and application of a country's constitution. The characteristics of constitutional law may vary somewhat depending on the legal system and the specific constitution in question, but there are some general characteristics that are commonly associated with constitutional law:

-Supreme Law of the Land: Constitutional law is often considered the highest law in a country; it is based on widespread public legitimacy; The constitution is typically supreme and takes precedence over all other laws and legal sources. In particular, the consequent of this characteristic that the constitution are binding on everyone in the state, including ordinary lawmaking (framers or legislative entities) institutions.

- Establishes Government Structure: Constitutions usually outline the structure and operation of the institutions of government, political principles; and defining the powers and functions of different branches such as the executive,

legislative, and judicial branches. It establishes the relationships between these branches and their respective roles.

- **Fundamental Rights and Liberties**: Constitutional law often includes provisions that protect fundamental rights and liberties of individuals. These rights can include for example: freedom of speech, religion, and assembly, as well as protections against discrimination and arbitrary government actions. as well as a minimum, meet the internationally recognized criteria for a democratic system in terms of representation and human rights.

- **Amendment Process**: Constitutions typically include a mechanism for their own amendment. This process is usually harder to change than the ordinary legislative process, (e.g. “A Presidential candidate must gain an absolute majority of votes” act 85 of the Algerian constitution.); this characteristic reflecting the significance and stability intended for constitutional principles.

- **Judicial Review**: Constitutional law often involves the power of courts, especially the highest court in the land, to review laws and government actions for their constitutionality. This process is known as judicial review and allows the courts to strike down laws that violate the constitution.

- **Limited Government**: Constitutional law often emphasizes the concept of limited government, meaning that government powers are not unlimited but are instead defined and constrained by the constitution.

- **Rule of Law**: Constitutional law contributes to the establishment and maintenance of the rule of law, ensuring that government actions are subject to legal constraints and that individuals are treated fairly and consistently under the law.

- **Separation of Powers**: Many constitutions incorporate the principle of the separation of powers, dividing governmental responsibilities among different branches to prevent the concentration of power in one entity.

Federalism (in Federal Systems): In countries with a **federal system**, constitutional law defines **the distribution** of powers and responsibilities between the **central (national) government** and **subnational entities** (such as **states** or **provinces**).

- **Historical and Cultural Context:** Constitutional law is often **influenced** by the historical and cultural context of a **nation**. It may reflect the **values, traditions,** and **experiences** of the people, **shaping** the **legal** and **political framework** of the country.

These characteristics collectively contribute to the unique nature of constitutional law and its central role **in shaping** and **governing** a **nation's legal and political landscape**.

Finally, as a **comprehensive (universal; inclusive) definition** we can say that the Constitution law is a body of policies, agencies, practices and doctrines developed and maintained by the state governments, **set out** how the state is structured, what its **major institutions** are? and what basic principles govern their relations with each other and with citizens; so, the Constitutional law can vary across nations. In the Algerian Constitution, it refers to two primary concepts:

- The structure of and roles within the executive, legislature and judicial power branches, and the power dynamics between them;
- The basic rights of all citizens,

The Constitutional law relates to the protection, interpretation and application of bill Rights. The Bill of Rights offers citizens a range of legal protections, including the right to freedom of speech and the right for a fair trial. The Supreme Court helps citizens and government determine how to fairly apply citizen rights in various situations set on the Rights and the Constitution.

b. The Functions of a Constitution

- Constitutions can **declare** and **define** the **boundaries** of the **political community**. These boundaries can be **territorial** (the **geographical borders** of a **state**) or **personal**, which has **the symbol** of the real meaning of **citizenship**.
- Constitutions can declare and define the **nature** and **authority** of the political community. They often declare **the state's fundamental principles and assumptions**, as well as where its **sovereignty lies**. For example, the Algerian Constitution declares that: **“Algeria is a Democratic People's Republic, and it is an indivisible unit; its religion is Islam, and that National sovereignty belongs to the people, who exercise it through their representatives and by means of referendums”** (Constitution of the Algerian Republic).
- Constitutions can express the **identity** and values of a national community. As **nation building instruments**; Constitutions may define **the national flag, anthem** and other symbols, and may make **proclamations** about the **values, history** and **identity** of the nation.
- Constitutions can declare and define the rights and **duties** of citizens. Most constitutions include a declaration of fundamental rights applicable to citizens. At a minimum, these will include **the basic civil liberties** that are necessary for an open and democratic society (e.g. the **freedoms of thought, speech, association** and **assembly**; due process of law and freedom from **arbitrary arrest** or **unlawful punishment**). Many constitutions **go beyond** this minimum to include social, economic and cultural rights or the specific **collective rights of minority communities**. And some rights may apply to both citizens and noncitizens, such as **the right to be free from torture or physical abuse**.

- Constitutions can establish and regulate the political institutions of the community— defining the various institutions of government; **prescribing** their composition, powers and functions; and regulating the relations between them.
- The Constitutional provisions typically provide mechanisms for **the democratic allocation and peaceful transfer of power** (e.g. elections) and mechanisms for **the restraint and removal** of those who **abuse power** or **who have lost the confidence of the people** (e.g. **impeachment procedures, motions of censure**).
- Constitutions can divide or share power between different **layers** of government or **sub-state communities**. Many constitutions establish **federal, quasi-federal** or **decentralized** processes for the sharing of power between **provinces, regions** or other **sub-state communities**. These may be geographically defined (as in most federations, such as Argentina, Canada or India), or they may be defined by cultural or linguistic communities (e.g. **the 1994 Constitution of Belgium, which establishes autonomous linguistic communities in addition to geographical regions**).
- Constitutions can declare the official religious identity of the state. This is particularly important in societies where religious and national identities are interrelated, or where religious law has traditionally determined matters of personal status or the arbitration of disputes between citizens.

Table of some legal terms in Arabic

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| Contemporary constitutions | الدساتير المعاصرة | Widespread public legitimacy | شرعية شعبية واسعة النطاق |
| The basic principles of the state | المبادئ الأساسية للدولة | Binding | ملزم |
| Government | الحكومة | Ordinary lawmaking | القانون العادي |
| Unilaterally | من جانب واحد | | |
| Rights of citizens Human rights. | حقوق المواطن | Establishes government structure | تأسيس هيكل الحكومة |
| Legal and political order | النظام القانوني والسياسي | Supreme law of the land | القانون الأعلى في البلاد |
| contested | متنازع عليها | Arbitrary government actions | الإجراءات الحكومية التعسفية |
| Assembly | التجمعات | Discrimination | |
| The constitutional amendment process | عملية تعديل الدستور | To strike down laws | إلغاء القوانين |
| Presidential candidate | المرشح الرئاسي | The concentration of power in one entity | تركيز السلطة في كيان واحد |
| Absolute majority | الأغلبية المطلقة | constrained | المقيدة |
| Review laws and government actions | مراجعة القوانين وإجراءات الحكومة | Treated fairly and consistently right for a fair trial | الحق في المحاكمة العادلة |
| Separation of Powers | الفصل بين السلطات | Incorporate | الدمج/ الإدماج |

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| Limited" constrained government | الحكومة المقيدة | Subnational entities | الكيانات غير الوطنية/الأجنبية |
| The legal and political framework | الإطار القانوني والسياسي | Central (national) government | الحكومة المركزية |
| Provinces | المقاطعات | Major institutions | المؤسسات الكبرى |
| Executive power | السلطة التنفيذية | Legislature power | السلطة التشريعية |
| Judicial power | السلطة القضائية | Bill of Rights | ميثاق الحقوق |
| Freedom of speech | حرية التعبير | Political community | المجتمع السياسي |
| Territory | الإقليم | Citizenship | المواطنة |
| The state's fundamental principles | المبادئ الأساسية للدولة | Have lost the confidence of the people | فقدان ثقة الشعب |
| Identity | الهوية | Duties | الواجبات |
| | | Freedoms of thought | حرية الاعتقاد |
| Freedoms of association | حرية تكوين الجمعيات | Impeachment procedures | إجراءات الإقالة |
| Unlawful punishment | عقوبة غير مشروعة | Sovereignty | السيادة |
| The basic civil liberties | الحريات المدنية الأساسية | Collective rights of minority communities | الحقوق الجماعية للأقليات |
| The right to be free from torture or physical abuse | الحق في عدم التعرض للتعذيب أو الإيذاء الجسدي | The democratic allocation and peaceful transfer of power | الانتقال الديمقراطي والسلمي للسلطة |

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| Arbitrary arrest | الاعتقال التعسفي | Freedoms of assembly | حرية التجمع / التجمهر |
| Abuse power | إساءة استخدام السلطة | Motions of censure | سحب الثقة |
| Sub-state communities | المجتمعات الفرعية للدولة | The official religious identity of the state | الهوية الدينية الرسمية للدولة |
| Establishes autonomous linguistic | التأسيس اللغوي المستقل | The arbitration of disputes between citizens | تحكيم المنازعات الناشئة بين المواطنين |
| Decentralized | اللامركزية | National identities | الهوية الوطنية |