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The Hyper-Presidential System: Organizational Specificity and National Structure

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Abstract

This study examines the organizational and structural specificity of Algeria's constitutional order, which embodies a model that may be described as the **"hyper-presidential system."** In this model, the Presidency of the Republic stands as the **"keystone of the political system"**: it concentrates all forms of power in a single institution, escapes constitutional and political responsibility (its criminal responsibility remaining purely symbolic), and monopolizes the constituent function, while the dual structure of the executive is emptied of substance and the government is reduced to an auxiliary body without an independent political existence. The study argues that this concentration prevents the President from performing the role of neutral political arbiter and guardian of the Constitution. Because he exercises governmental power exclusively and intervenes directly in matters of a social and political nature, he becomes, at critical moments, a party to the political conflict rather than an arbiter standing above it, as the institutional crises of 1992 and 2019 illustrate. Drawing on comparative constitutional experience (France and the United States) and on the debate between Hans Kelsen and Carl Schmitt over the guardianship of the Constitution, the study concludes that the 2020 constitutional amendment, by adding judicial regulation through the Constitutional Court and an arbitral role for the military institution, in effect entrenches constitutionally the duality of state power that characterizes the national political system.

Keywords: hyper-presidential system; concentration of power; presidency of the republic; neutral political arbiter; guardianship of the Constitution; separation of powers; Carl Schmitt; Algeria.

Introduction

The institution of the Presidency occupies a dominant position in Algeria's political and constitutional system at every level. The breadth and variety of its fields of intervention and powers make it the active political actor and the sole interventionist in the conduct of state affairs. This constitutional entrenchment has produced an organizational and structural specificity that embodies the model of the **"hyper-presidential system,"** marked by a conservative character and an excessive legal concentration of power in the hands of the President of the Republic as the **"keystone of the political system"** and of the institutional edifice as a whole.

This total concentration of power, however, is not free of deep structural contradictions. The institutional configuration deprives the Presidency of the possibility of exercising its constitutional functions in their proper form. Despite the extensive decision-making and executive powers the President enjoys, he cannot appear in the capacity of a **"neutral political arbiter"** and guarantor of the continuity of institutions. The reason lies chiefly in the fusion of his exclusive exercise of governmental power with his direct involvement in matters of a political and social nature, which makes him, at many decisive junctures, a participant and active party in the political conflict and the institutional deadlock rather than an arbiter standing above it.

On the basis of these observations, the study raises a central question: **To what extent does the hyper-presidential system in Algeria entrench an excessive concentration of power in the Presidency, and how does the fusion of the Presidency's exercise of governmental power prevent it from performing the role of neutral political arbiter and protector of the Constitution?** To address the various dimensions of this question, a two-part plan has been adopted, divided into two sections. Section One concerns the excessive legal concentration of presidential power; Section Two concerns the political protection of the Constitution.

Section One: The Excessive Legal Concentration of Presidential Power

The dominance of the Presidency over the entire institutional edifice emerges from a review of the successive Algerian constitutions beginning in 1976,[1] which make the President of the Republic the keystone of the political system. This dominance is achieved at the legal level through a distinctive adoption of the principle of separation of powers: all forms of power are

concentrated in the presidency of the state, which leaves the remaining constitutional institutions in a condition of complete dependence on it (Subsection One). Politically, the President's dominance reaches its full form when his will coincides with a supportive parliamentary majority, which makes him the guardian of the Constitution to the exclusion of any other (Subsection Two).

Subsection One: The Hyper-Presidential System and the Negation of the Principle of Separation of Powers

During the eighteenth century, the intellectual movements that swept Europe underscored the need to codify constitutions in order to secure the principle of separation of powers, the cornerstone of constitutionalism. Locke and Montesquieu argued that power should not be placed in the same hands or above the same head, so as to safeguard liberty and escape despotism. This principle inspired many European political systems in their first constitutions, and Article 16 of the Declaration of the Rights of Man and of the Citizen of 1789 is among the most prominent examples.[2]

At the beginning of the twentieth century, however, this approach underwent a change of content. States emerged that refused to adopt the separation of powers, coinciding with the appearance of political parties as a new element of political life. These political systems chose to gather powers in favor of the single vanguard party and to secure the complete dominance of its leading authority, a path from which Algeria did not depart.[3] More than that, even after the single party was abandoned and pluralism adopted, national constitutional development traced a course of ever greater concentration of power through the continuous reinforcement of the position of the President of the Republic. Its features appear constitutionally in the abolition of his responsibility, whether constitutional, political, or even criminal (Paragraph One), as well as in his monopoly of the constituent function (Paragraph Two).

Paragraph One: The Absence of All Forms of Legal Responsibility

Jurists and politicians often equate the presidential system with the hyper-presidential system, treating the latter as one model of the former, with direct universal suffrage as the criterion. From the standpoint of purely constitutional principles, however, the truth appears to be entirely different.

Returning to the original principle of separation of powers, we find that it distinguishes strictly between two forms. The first is a flexible separation, which entails a functional overlap of powers, including the exercise of the constituent function, together with direct mechanisms of influence that regulate and discipline it: the executive is answerable to the legislature even though it holds, at the same time, the right to dissolve it. The second is a rigid separation, which entails no overlap of functions and no direct mechanisms of influence among the powers, thereby establishing a functional specialization of their components. In the American system, for example, the initiative to amend the Constitution belongs exclusively to the legislature, while the executive is not answerable to it either.[4]

From this standpoint, it may be said that the hyper-presidential system represents neither of the two arrangements. It emerges instead from a philosophy contrary to the principle of separation, one that prescribes neither rigid nor flexible separation. It is a system concerned with concentrating and gathering power exclusively for the benefit of a single institution, namely the President of the Republic, together with the complete abolition of his responsibility, since he is the keystone of the political system.

For its part, comparative constitutional experience has treated the absence of responsibility of the head of state as the consequence of his holding no power capable of exerting social influence or of intervening directly in political life, his mission being essentially confined to regulating the activity of constitutional institutions and ensuring their continuity. Other examples, by contrast, accept the possibility of responsibility toward him, which arises only where he exercises a governmental function.[5]

Thus the French constitutional framer, from 1958 onward, organized the responsibility of the President of the Republic under Article 68 of the Constitution, which was amended in 2007 with regard to the possibility of removing the President without the prior requirement of recourse to the High Court of Justice, the President's responsibility being then confined to **"… a breach of his duties manifestly incompatible with the exercise of his term of office …"**. It should be noted, however, that this provision lacks precision. One group of researchers considers that the responsibility of the French President in the event of a breach of his duties does not rest on legal criteria and is merely a political or moral responsibility for dereliction.[6]

This is not the only view. Another group holds that the President's responsibility is engaged by a violation of Article 5 of the Constitution, which obliges him to ensure the regular functioning of institutions and to preserve national unity and national independence.[7]

The American experience, for its part, provides for the removal of any senior state official, including the President, and for the engagement of his responsibility through the procedure of **« l'empêchement »** (impeachment) in cases of high treason as well as misdemeanors and crimes relating to corruption. Its implementation requires the involvement of both chambers of Parliament: the House of Representatives exercises the power of accusation, while the Senate decides the matter in a criminal capacity where the President has engaged in functions and activities incompatible with the presidential mandate.[8]

In this regard, national constitutional transformation has not seen a genuine entrenchment of the responsibility of the President of the Republic. In the aftermath of independence, the framer adopted the possibility of the National Assembly engaging the President's responsibility, although this would compel the mandatory dissolution of the Assembly.[9] This provision was never activated, however, because the Constitution was suspended from 1965. The framer then abandoned this responsibility definitively in the 1976 Constitution, and in all subsequent constitutions political responsibility has been

confined to the President's governmental team.

From a criminal standpoint, the responsibility of the President of the Republic for acts that may be characterized as high treason was not recognized until 1996.[10] This recognition has not gone beyond the symbolic. There is no clear definition of the nature of the acts that would fall within the category of high treason, and these fall within the jurisdiction of a High Court of the State that has still not been established, because the organic law governing it and determining its functions has been absent for some thirty years.

The absence of a law on the functioning of the High Court of the State, which was established in 1996, is not a failing on the part of the organic legislator. It reveals plainly the framer's effective handling of the manner in which liberal concepts are adopted in the organization of national power, which is predominantly pragmatic in character: the framer adopts the techniques of constitutionalism, but in the service of an end different from, and even contrary to, their origin.

He thus adopts the major concepts of Western constitutionalism, such as the principle of separation of powers, and organizes and regulates them within the provisions of the Constitution, but only on condition that they be emptied of their content. He refers them to an organic or ordinary law that is then never enacted or, conversely, attaches to the same constitutional provision an exception that deprives it of its normative content.[11]

Paragraph Two: The Hyper-Presidential System as a Monopoly of Constituent Power

Without doubt, the various theories of constitutional law have identified two manifestations of sovereignty: sovereignty in its popular conception, and sovereignty as it relates to the nation. Sovereignty as absolute power rests, from the perspective of the idea of the nation, on the delegation of the power to decide on the organization of social life to an abstract, neutral, and indivisible entity, the nation, whose will is expressed by the various political institutions. Sovereignty thus appears as a unified metaphysical bloc that holds the collective general interest, as a historical continuity, present and future, of the successive generations. This is why it requires the adoption of a representative system to express its will under the regime of the national representative mandate.[12]

In its popular conception, by contrast, sovereignty is the idea that Rousseau grounded in the social contract. It belongs to the people as the sum of the individuals who form the social body, so that sovereignty is divided in equal measure among the citizens, each individual holding a share of it. Accordingly, suffrage is a right recognized for all members of the people who are subject to the law, since they contribute personally to its making through the mechanisms of direct democracy.[13]

On this basis, applying this criterion to the national experience, it can be affirmed with certainty that the course taken by the constitutional framer since the first Algerian constitutions has amounted to a complete abolition of the idea of popular sovereignty, retaining only the sovereignty of the nation, even after pluralism was proclaimed.[14]

Although the framer acknowledges that national sovereignty belongs to the people, according to the first paragraph of Article 7 of the various constitutions,[15] the framer excludes any possibility of exercising it outside the representative institutions, according to the same article. Moreover, if the referendum is regarded as the most important manifestation of direct democracy, in contrast with periodic election, which is the most salient feature of national sovereignty, it does not achieve its purpose in the Algerian experience. Any possibility of initiative by citizens has been abandoned, and neither its subject matter, nor its normative effects, nor even the date of its holding is under their control.[16]

This view finds further explanation in the course of the constituent process adopted by the framer himself, which has not changed since 1976 under the terms of Article 191 of the Constitution. Even where the principle of constituent power is acknowledged, the monopoly over the initiative to amend the Constitution has remained with the representative institutions, or rather with one of them, the President of the Republic, who usually exercises it through an appointed committee of experts with defined tasks. This is a national peculiarity that excludes any popular representation, since the referendum comes only as the final stage of the constituent process, with the aim of conferring a veneer of legitimacy on it and nothing more.

The proof appears in comparative experiences of the referendum, which adopted the idea of a combination of popular sovereignty and national sovereignty. They give effect to the idea of sovereignty primarily by recognizing the possibility of joint amendment of the Constitution among several constitutional institutions, in addition to guaranteeing the direct participation of citizens in the conduct of public affairs through the referendum initiative.

This is capable of performing a pedagogical role for their benefit, in promoting the spirit of citizenship as the framework that distinguishes the individual from the citizen, as well as a political role that consists in strengthening national social unity.[17]

In contrast, the approach Algeria has adopted since independence consists in establishing its constitutions **"from above"** through the executive, in addition to prescribing a domain forbidden to amendment and subjecting draft amendments to prior review by constitutional justice. These are criteria that empty the concept of popular sovereignty of its content, so that the presidency of the republic appears as the sole sovereign representative authority, monopolizing power, a fact further confirmed by the absence of any genuine responsibility toward it.[18]

It should be noted here that this orientation, which concentrates power at a single center, the head of the leading executive power, cannot secure the stability of the system over the long term. Its fragility is revealed precisely through the rigidity of its authority, a position that admits no possibility of conflict within it. According to one researcher, the fragility of the national political system and the institutional crises, whether those of the 1990s or of 2019, are due essentially to the continuous reinforcement of

the position of the President of the Republic, so that the fall of the system as a whole is threatened at electoral deadlines, above all presidential ones.[19]

As soon as this institution loses its neutrality, that is, when it becomes part of the political conflict, the entire institutional edifice trembles and the possibility of its deadlock appears very real, making a sound transfer of power difficult to secure, given the unstable nature of this institution and the absence of any responsibility toward it, whether political or criminal. This necessitated the adoption of a system of regulation by the Constitutional Court in order to give effect to another form of presidential responsibility, **a responsibility of a constitutional nature**, so as to avoid a repetition of the experiences of instability that Algeria has previously known.

Subsection Two: The Hyper-Presidential System and Representative Monism

Constitutional law distinguishes between two types of political systems: those that adopt representative monism and those that, on the contrary, prefer representative dualism. By **"representation"** is meant here the effect of adopting direct election as the source of legitimacy of political institutions.[20]

From this standpoint, there are systems in which only the power of Parliament derives from direct universal suffrage, such as Britain and Germany, and other systems that adopt representative dualism, such as France and Algeria, in which Parliament, or more precisely its lower chamber, and the head of state both enjoy general and direct electoral legitimacy.[21]

If we trace the emergence of the concept of this representative dualism in France, we find that it dates to the fourth year after the establishment of the Fifth Republic, that is, after the adoption of direct universal suffrage for the office of President of the Republic in 1962,[22] who before that was elected by Parliament. We observe that this shift in the democratic legitimacy of the President did not necessarily give him broader power compared with his counterpart in a system of representative monism.[23]

Despite this considerable transformation in the French experience, which strengthened the President's legitimacy, the constitutional provisions governing the distribution of the competences and functions of the various constitutional powers have, on the whole, not changed since 1958, including with regard to the management of executive power.

The provisions of the 1958 Constitution preserved the dual structure of the executive power. They provide for an independent government that holds priority in the exercise of executive and regulatory power, implements its national development strategy, and commands the armed forces.[24] The government is entitled to determine and implement its political programme and is answerable to Parliament. It differs from the President of the Republic, who cannot overthrow it, since he exercises a constitutional mission parallel to, and different from, that of the government: a regulating mission, external to the political interactions and party divisions that characterize Parliament, a competence that seeks to secure the continuity of the system, namely the function of arbitrating institutional conflicts. The President exercises it from his **"supra-partisan"** position through the right to dissolve Parliament and to submit his dispute with the government to the electorate.

It should be noted here that the provisions of the French Constitution have worked to establish the neutrality of the President of the Republic since the Third Republic, so that he could secure that arbitral function by being excluded from acts with social impact and scope and barred from participating in governmental activity. His field of intervention was confined within an institutional framework that went no further than a regulating function ensuring the continuity of the functioning of institutions. His intervention to the contrary was only the result of the aberrant constitutional practice seen in the Fifth Republic beginning with the legislative elections of 1986.

Since the emergence of the majority fact,[25] the possibility of cohabitation between differing political currents has become entirely real. So that the government would not remain a prisoner of the changeable decisions of the French Parliament,[26] the President of the Republic at that time showed his ability to counterbalance the power of Parliament and to participate directly in the exercise of executive power in place of the government.

This occurs in cases where the parliamentary majority is of the same political color as his own. The power of the President of the Republic, reinforced by direct universal suffrage, then eclipses that of his head of government, who becomes, in the words of one French president, merely **"a collaborator of the President."** On this basis, and invoking the same political orientation, the President can end the Prime Minister's functions whenever he wishes, though only in a personal capacity, without that termination extending to the members of the government.[27]

Without doubt, this **"presidentialist"** practice that France has witnessed since 1972 was not dictated by constitutional texts incidentally. It is the product of its political experience, which has always returned to a sound constitutional condition in conformity with the Constitution during the legislative elections that produce a majority different from the President. The latter is then forced to accept cohabitation with it and not to interfere in its executive domain, being bound only by what Article 5 of the Constitution assigns to his competences as arbiter among the various party currents that make up Parliament,[28] because, from a legal standpoint, the government remains in every case independent and not answerable to the President of the Republic; only Parliament has the right to overthrow it.

None of these possibilities, nor this orientation, exists in the national constitutional system. The dominance of the President of the Republic over the whole of the executive power in Algeria has been traced in a gradual, rising course since the first founding texts adopted in the aftermath of independence, which show the President's complete control over the conduct of both foreign and domestic political affairs, in addition to the functions of the Minister of Defence. This did not change even after the proclamation of the obligation to adopt a dual executive, which had previously been optional.[29]

Beginning with the constitutional transformation of 1989, in the wake of political opening, recourse to an official to manage domestic affairs became necessary for the President of the Republic. Despite the recognition of this duality, however, the national institutional and political situation saw no change in the philosophy of its operation, owing to the authoritarian character of the system of government, which, in the words of one researcher, rejects any possibility of participation in or sharing of power within a political institutional framework.

This is because state power remains a stake,[30] and those who hold it have not, since independence, succeeded in creating a solid institutional and legal framework that guarantees its durability. It is therefore a power that rejects the idea of separation and likewise excludes any possibility of genuine alternation in it.[31]

Moreover, while recognizing on many occasions the existence of the post of Prime Minister and Head of Government, the framer worked in parallel to empty the national executive duality of its content. Given the hierarchical, authoritarian subordination that the political system imposes, which requires that the equation of strength and power of competences always tilt in favor of the President, the framer tied the responsibility and fate of the government to the sole will of the head of state. This is so structurally, through his presidency of the Council of Ministers and the wide authority this gives him to issue the necessary instructions periodically and to accompany closely the work of the government and its various sectors, including the social and economic ones.

It is equally so with regard to the organic aspect of the government, through the power to terminate functions that the President holds, which may extend to all members of the government even where the parliamentary majority is on their side. It may thus be said that the government is answerable to the head of state before it is answerable to Parliament,[32] a situation that deprives it of any possible autonomy and thereby confirms the absence of its political existence.

We can affirm the same through a reading of all the powers the President holds, which go back in origin to the 1976 Constitution. He may legislate by ordinance during parliamentary recesses without any substantive restriction, and he may exercise regulatory power without the requirement of the countersignature of the Head of Government or the Prime Minister, even though the latter bears responsibility before Parliament for the consequences of these acts.[33]

To this may be added the President's ability to obstruct directly legislative initiatives he deems inappropriate by requiring a second reading by Parliament, and, through another, indirect form of intervention, by influencing the appointed third of the Council of the Nation,[34] in addition to his absolute power of appointment to all posts, including the governors (walis) of the Republic[35] and their executive instruments responsible for implementing public policy locally, which lies at the heart of the national governmental function.[36] On this account, the idea of a dual executive is reduced, whatever the political situation of Parliament, by the very provisions of the Constitution. The institution of the head of government thus appears, to say the least, as an institution like the other national constitutional institutions, lacking any content and left with an exceptional role.

For these reasons, the development of the national constitutional system has traced the exclusion of any possibility of a dual executive within it, any appearance of the contrary being regarded as a contradiction of the political system. This has been evident in the successive constitutional amendments that worked to reinforce continuously the position of the President of the Republic at the expense of the other institutions, including the government, since he is the keystone of the institutional system and the holder of power within it.

This makes him the active political actor and sole interventionist, holding powers that enable him, without rival, to influence all political, social, and economic levels. This situation is contrary in substance and essence to the exercise of the function of the regulating arbiter, which requires neutrality, particularly where the President's exclusive exercise of the executive function coincides with the competence to protect the Constitution.

Section Two: The Political Protection of the Constitution

The protection of the Constitution is among the old constitutional problems that have long been the subject of debate between the two most prominent jurists of constitutional law, Hans Kelsen and Carl Schmitt.[37] Schmitt, in several scholarly articles on the fourth, neutral political power, argued that the task of protecting the Constitution cannot belong to a judge. On the contrary, it must fall within the core competence of an authority of a political nature, more precisely the President of the Republic, who alone can override the will of the legislator[38] (Subsection One). This approach is not always suitable, however, particularly where the President is himself part of the political conflict (Subsection Two).

Subsection One: The Hyper-Presidential System and the President of the Republic as "Republican Monarch"

In the hyper-presidential system, the President of the Republic represents a modern image of the hereditary monarch, who may be considered a **"republican monarch."** This is especially so because the emergence of the republican system in the various political systems was not the product of a rupture with its predecessor but the result of the transformation that the liberal state underwent at the beginning of the nineteenth century. The republic essentially represents a rethinking of the mechanisms for organizing absolute monarchy and their adaptation to a dual political representative form: alongside the legitimacy of the king exists only a partial popular legitimacy embodied by Parliament.[39]

This situation was reflected directly in the former role, status, and competences of the king, which changed from the form of a particular political system, **"absolute monarchy,"** founded on the principle of heredity, into a mere defined function within a different political system that combines **"monarchy with democracy."** In systems where the monarchy could not emerge and

which ended by establishing a republican system, the President of the Republic thus becomes the principal recipient and heir of the powers of the traditional king[40] which are essentially confined to the following: pardon, dissolution of Parliament, and dismissal of the government.[41]

Accordingly, if the possibility of choosing the head of state according to a traditional principle or by Parliament secures for him a regulating role and the mission of ensuring the continuity of the state by resolving conflicts among its institutions, his election by the entire people directly, together with the separate definition of his competences from those of the government, aims essentially to preserve the head of state's existence as a political unit in the face of the threats arising from the continuous rise of Parliament, or rather of the political parties that compose it,[42] parties of multiple ideologies and regionally dispersed.

The question of the legitimacy of the President of the Republic as representative of all components of the nation makes him, in this respect, the representative of the general interest against changing and multiple party interests, a situation that grants him a positive neutral power that exceeds the power of regulation.[43]

In contrast to negative political neutrality, which requires no power of decision and presupposes non-intervention or withdrawal,[44] the meaning of positive political neutrality emerges directly from the competence to protect the Constitution. It represents the expression, through a decisive and unique decision, of the existence of a **coherent state power, distinct from democratic parliamentary power**[45], which through its neutral decision preserves the form of its national state despite the various conflicting and contradictory currents that compose it, currents that place the fate of the state and the government in the hands of political blocs and the effectiveness of their party agreements in the absence of a clear majority. This situation may threaten to give the state a different form: a **"party state,"** or rather a **"legislative state."**[46]

This entailed the imposition of protection of the core of the Constitution through the recognition of a state power of an institutional dimension, different from Montesquieu's triad of powers.[47]

The task of protecting the Constitution, in the political form that Schmitt advanced and that our national constitutions have established from 1976 to 2020,[48] is not limited to monitoring the procedural and substantive rules of the constitutional document, nor is it summed up directly and exclusively in states of exception.[49] It encompasses all the fields of intervention that could change the position of the President of the Republic and his institutional role and move him from a regulating institutional mission, resolving the conflict between Parliament and government, to the power to protect the state as a political existence.[50]

Even if it is necessary to go beyond the framework of the provisions of the Constitution, and even beyond the whole of existing legality, in order to protect the existence of the state itself, which precedes the existence of the Constitution,[51] the halting of the electoral process in 1992 and the cancellation by the President of the Republic of the presidential elections alleged to be held on 8 April 2019 are perhaps the two most prominent examples of this in the national political experience.

On the whole, the duality of the presidential mission, between conducting national policy and protecting the Constitution, is among the most prominent contradictions of the national political system. It appears plainly during decisive electoral deadlines and in cases where the President of the Republic is one of the parties to the political or institutional conflict, where the effects of the President's constitutional functions of a social dimension overlap with those that serve an institutional purpose.[52]

This is what deprives him of the neutrality of the political arbiter, despite the framer's recognition of his functional independence from the government and the political parties that form Parliament in the provisions of the Constitution. One researcher has stressed that recognizing specific fields of intervention for a President of the Republic elected by direct universal suffrage by all citizens, different from the fields of Parliament, is not sufficient to guarantee the President's neutrality.

As an institution of a political and social character, he seeks essentially to counterbalance the weight of the legitimacy of Parliament, and for this reason he is, in one way or another, close to it. He also seeks to achieve his own goals, which makes him one of the components that cannot secure regulation, since he himself requires regulation[53] when he is part of the political conflict.

Subsection Two: The Flaw of the National Hyper-Presidential System: The President of the Republic as Part of the Political Conflict

The first pluralist legislative elections Algeria experienced resulted in the total paralysis of the institutional system established by the 1989 Constitution, with a double vacancy of the Presidency of the Republic and of the National People's Assembly,[54] as a result of decisions issued by the President of the Republic to cancel the legislative elections, whose first-round results were far from satisfactory to him, plunging Algeria into a bloody crisis that lasted nearly ten years.

The preliminary results of the legislative elections resembled those revealed by the local elections held only a few months earlier, through the majority achieved by the Islamic Salvation Front (FIS), classified among the opposition parties. The Front called for a comprehensive transformation of the national state by seeking to dominate the legislative function and subsequently to paralyze the institutional system, by rejecting the various governmental acts and programmes. This placed this political force in direct confrontation with the President of the Republic, who did not succeed in his role as protector of the Constitution but, on the contrary, announced his resignation on 11 January 1992, having dissolved the National People's Assembly two days earlier.[55]

Even if it is accepted that the acts the President undertook in that period, which expressed the legal and institutional aspect of the conflict then under way, were not performed under duress, a view whose opposite many observers have long denounced, this carried no subsequent responsibility for the President. What happened was a precedent unknown in comparative

experience, characterized as a constitutional or legal coup d'état, through the removal of the two pillars on which the Constitution rests.[56]

It is true that national constitutional law at that time knew no form of responsibility toward the President of the Republic.[57] Even with the recognition of his criminal responsibility, and the grafting onto the representative system of a sub-system securing the continuity of institutions through the creation of the Council of the Nation from 1996, which was meant to guarantee the continuity of the presidential function, neither was sufficient to enable the political system to overcome its fundamental problem: the risk of the collapse of the institutional system in conflicts in which the Presidency is a party. The textual constitutional and functional guarantees reveal their inadequacy in defining a framework that draws the limits of the head of state's tasks in every case. This was confirmed anew at the end of the rule of the seventh president of independent Algeria.

On 22 February 2019, Algeria witnessed popular demonstrations covering the whole national territory that expressed rejection of the candidacy of President Abdelaziz Bouteflika for a fifth term. Bouteflika had been elected president at the beginning of the twenty-first century, and his rule over Algeria extended for twenty years. To understand the reality of the matter, it is not enough to stop at the events that accompanied 2019 and be content with analyzing them; it is necessary to return to certain earlier constitutional milestones, which are the fundamental cause of this crisis.[58]

The social explosion on the eve of the 2019 electoral deadline was not sudden or a product of yesterday. It was the result of a constitutional crisis that appeared after the numerous amendments the 1989 Constitution underwent, of which the 2008 amendment abolishing the limit on re-candidacy is the most important.[59] From this amendment onward, the national political experience entered a series of successive failures that resulted in the paralysis of the institutional system and social unrest on the eve of the fifth presidential election of the same President, on the premise that the fragility of the presidential system appears at decisive electoral stages. The presidential electoral deadline is the best moment for expressing rejection, of which the April 2019 elections were one example.[60]

Beyond its political impact and constitutional justifications, one researcher considers that what Algeria reached at the end of Bouteflika's rule expresses an essentially old social crisis, itself the result of an institutional rigidity preceding it, namely **the failure of the market to move toward modernity, institutionalization, and competition**. This situation stems from the inability of the national bourgeoisie to institutionalize its market. Although Algeria experienced significant economic development over the preceding twenty years, owing mainly to the substantial rise in oil prices, which was reflected in the various vital sectors within programmes of infrastructure reinforcement,[61]

this development did not allow the national bourgeoisie, in its various components, to achieve its independence as a class producing wealth and contributing to regulating the social and political sphere. Its emergence as a victorious class at the beginning of the 1990s did not erase its basic characteristics, namely its inability to preserve its interests in a stable manner.[62]

This is because of its disregard of the historical and traditional mechanisms that allow any bourgeoisie to achieve its independence and to contribute individually, as a fundamental actor able to offer solutions to political problems, to take part in securing the transfer of power, and to appear as a class carrying a particular orientation, namely reliance on investment and dependence on competition, both internally and externally, in order to live and to realize its autonomy.

The cause of this inability lies essentially in the reliance of most currents of this class on the state budget as the source of their wealth and their exploitation of national development programmes to serve their interests. This situation reflects the most important characteristic of the rentier state, which centers on an implicit agreement and strong shared acceptance among social actors regarding the role of the state budget in distributing wealth and meeting social needs. The inability of this class thus became clear as soon as hydrocarbon prices collapsed at the end of 2017, so that the crisis reached its peak at the beginning of 2019.

From a constitutional point of view, it may be said that the outcome of the social crisis and the institutional deadlock of 2019 resulted from tampering with the rigidity of the constitutional document and abandoning earlier democratic gains regarding alternation of power and the rationalization of its exercise. This could not have occurred without the passive participation and complete loyalty of the Constitutional Council toward the President of the Republic, in a manner contrary to the spirit of the fundamental law,[63] which reveals constitutional exploitation on two levels.

First, the Constitutional Council considered that the possibility of opening the number of presidential terms under the 2008 amendment was not contrary to the Constitution,[64] and then, in another opinion, it held the opposite when it came to redefining the possibility of the President of the Republic standing for re-election twice.[65] It thereby produced two legal effects contradicting one another, on the one hand, and contradicted its own earlier jurisprudence, on the other,[66] by which the Council had held: **« au nom de la souveraineté populaire tout élu doit remettre impérativement son pouvoir à l'échéance de son mandat »** (**"in the name of popular sovereignty, every elected official must imperatively hand over his power at the expiry of his mandate"**).

Furthermore, in addition to its traditional tasks, the Constitutional Council then took on the mission of securing the continuity of the institution of the Presidency of the Republic by establishing the cases of impediment and vacancy of the President by all available means. This was despite the alerts that reached it from various actors, who stressed the reality that the presidential function was being exercised by unconstitutional forces owing to the President's prolonged absence from 2013 onward.

However, given the nature of the appointment system, which rests on political friendship, and the absolute-majority quorum required to declare a vacancy, activating this mechanism appeared impossible, especially after the resignation of the President of the Constitutional Council on 16 April 2019.

In the face of this situation, it became evident that there was a national social gap, in addition to the inability of legal mechanisms to frame the exercise of power and competition for it since the proclamation of pluralism. The numerous institutional crises Algeria experienced followed a continuity that shows the fragility of the system in cases where the Presidency is an actor in the conflict, owing to the absence of another constitutional power that secures regulation and monitors the continuity and proper functioning of the system. This was apparent in the flagrant breach of the provisions of the Constitution by those holding power on several occasions.

On this basis, the 2020 constitutional amendment introduced two additional arbitral mechanisms to secure the continuity of the system in critical phases and to resolve the conflicts that affect it: judicial regulation, entrusted to the Constitutional Court to address its institutional problems, in addition to the recognition of an arbitral role for the military institution as the sole social and political regulator of the vital and strategic interests of the nation under Article 30,[67] which is in reality a constitutional foundation for the duality of state power that characterizes the national political system.

Conclusion

The findings of this research, in both its parts, confirm that the national institutional edifice has been entrenched according to an organizational and structural specificity that embodies the model of the **“hyper-presidential system.”** This system involves neither rigid nor flexible separation of powers but rests on a philosophy contrary to the principle of separation, one based on the gathering and excessive concentration of all forms of power in the Presidency of the Republic, as the **“keystone of the political system”** and its active and sole interventionist political actor. The duality of the executive power is correspondingly emptied of its content, and the institution of the government is reduced to an auxiliary and subordinate role lacking independent political existence. This follows from the constitutional and factual analysis presented, and the study accordingly reached a number of findings and legal conclusions, the most prominent of which are the following:

- **First: Excessive concentration, the veiling of responsibility, and the monopoly of constituent power.** It emerged that the hyper-presidential system rests on an effective representative monism in which all forms of constitutional and political responsibility of the head of state are abolished. His criminal responsibility for **“high treason”** remains symbolic and formal, because the organic law of the High Court of the State has not been issued since its establishment in 1996. This entrenches the framer’s pragmatic approach, which consists in adopting liberal concepts and emptying them of their normative content. It was accompanied by a complete monopoly of the initiative to amend the Constitution, exercised **“from above”** through appointed committees, by the exclusion of the direct exercise of popular sovereignty, and by confining the referendum to the role of conferring subsequent legitimacy.
- **Second: The contradiction of functions between conducting policy and protecting the Constitution.** The constitutional analysis has shown that the President of the Republic, as a **“republican monarch”** and heir to the powers of the traditional king, has been unable to appear in the capacity of **“neutral political arbiter”** or to exercise **“positive political neutrality”** in order to protect the existence of the state and the Constitution according to the Schmittian theory. The reason lies in the fusion of his exclusive exercise of governmental power with his intervention in matters of a social and political dimension, which has necessarily made him a **“part of the political conflict”** and a party to it rather than an arbiter above it. This structural contradiction triggered the institutional crises, notably those of 1992 and 2019.
- **Third: The impasse of fragility and the outcomes of constitutional regulation.** The rigidity of the power of the President of the Republic in reality reflected a fragility that emerges sharply during decisive presidential electoral deadlines. Tampering with the rigidity of the constitutional document, coupled with the complete loyalty of the Constitutional Council, revealed the inability of legal mechanisms to frame alternation and to rationalize power. The 2020 constitutional amendment’s adoption of two additional arbitral mechanisms, namely the judicial regulation entrusted to the Constitutional Court to resolve institutional conflicts, and the arbitral role of the military institution as regulator of the nation’s fundamental and strategic interests under Article 30, is therefore nothing more than an explicit constitutional foundation for the **“duality of state power”** that characterizes the national political system. It seeks to secure the continuity of the institutional edifice and to avoid its deadlock whenever the Presidency is a party to the political conflict.

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[2] Article 16 of the Declaration of the Rights of Man and of the Citizen of 1789 provides that any society in which the guarantee of rights is not secured or the separation of powers is not determined has no constitution. See the Constitutional Council website: https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789.

[3] Cherbi, “Comparative Constitutional Law Challenges the Algerian Constitution.”

[4] Ibid.

[5] Braun, previously cited work, 212. Full bibliographic details were not provided.

[6] Mohamed Imran Boulifa, “The Representative Character of the Council of the Nation and Its Role in Institutional Stability” (PhD dissertation, University of Constantine 1, 2015), 41.

[7] Article 5 of the French Constitution of 1958 provides: “The President of the Republic shall see that the Constitution is observed. He shall ensure, by his arbitration, the proper functioning of the public authorities and the continuity of the State. He shall be the guarantor of national independence, territorial integrity and respect for Treaties.”

[8] M. Cherbi, “Algeria: What the Constitution Amended in 2020 Changed in the Political and Legal Landscape,” talk presented on AlterNa TV, 27 January 2022, YouTube video. Accessed 3 February 2023.

[9] Articles 55 and 56 of the 1963 Algerian Constitution provide for the possibility of challenging the President of the Republic through a motion of no confidence and specify the majority required for its adoption. Official Gazette of the People's Democratic Republic of Algeria, no. 64, 10 September 1963.

[10] Article 158 of the 1996 Algerian Constitution provides for the establishment of a High Court of the State with jurisdiction to try the President of the Republic for acts that may constitute high treason. Official Gazette of the People's Democratic Republic of Algeria, no. 76, 8 December 1996.

[11] Article 34(2) of the 2020 Constitution sets out restrictions that may limit the exercise of fundamental rights and freedoms, including national constants, without precisely defining those constants. If Islam is considered one of these constants, the Constitution does not specify which interpretation of Islam is intended for the purposes of this restriction. The same ambiguity applies to public order and security, which remain imprecise legal concepts that may permit broader restrictions on fundamental rights. See M. Cherbi, “Algeria: What the Constitution Amended in 2020 Changed in the Political and Legal Landscape,” https://www.youtube.com/watch?v=TJCwLsDAqK8&t=424s. Accessed 1 August 2024.

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[13] Jean-Jacques Rousseau, The Social Contract, 2nd ed. (Algiers: E.N.G.A., 1992), 18–22.

[14] Cherbi, previously cited work.

[15] Article 7 of the 2020 Constitution provides that “national sovereignty belongs to the people.” The same principle appears in Article 27 of the 1963 Constitution, Article 5 of the 1976 Constitution, Article 6 of the 1989 Constitution, and Article 7 of the 1996 Constitution and subsequent versions. The relevant official gazette details for the later texts were not supplied.

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[20] Cherbi, “Comparative Constitutional Law Challenges the Algerian Constitution.”

[21] Ibid.

[22] The election of the French President of the Republic by universal suffrage was adopted four years after the 1958 Constitution, following the referendum of 28 October 1962 on the amendment of Article 6, which resulted in Constitutional Law No. 62-1169 of 1 November 1962. Researchers have also noted that the referendum was influenced more by Charles de Gaulle's personal popularity than by the constitutional question itself, reflecting his standing among the French electorate and earlier historical developments.

[23] Cherbi, “Comparative Constitutional Law Challenges the Algerian Constitution.”

[24] Article 20 of the French Constitution of 1958, as amended in 2008, provides that the Government determines and conducts national policy, has the civil service and armed forces at its disposal, and is accountable to Parliament. Article 21 provides that the Prime Minister directs the Government's actions, is

responsible for national defence, ensures the implementation of legislation, exercises regulatory powers subject to Article 13, and makes appointments to civil and military posts. Official Journal of the French Republic, no. 12.

[25] M. Cherbi, “The Fifth Republic in Question,” L’Interview France, broadcast on AlterNa TV, 6 April 2022, YouTube video. Accessed 12 April 2023. https://www.youtube.com/watch?v=Wwtp5u3X2qM.

[26] Braun, previously cited work, 212.

[27] French President Nicolas Sarkozy expressed this view following the formation of the first government led by François Fillon after the 2007 presidential election.

[28] Article 5 of the French Constitution provides that the President of the Republic ensures respect for the Constitution and, through arbitration, the proper functioning of public authorities and the continuity of the State.

[29] Cherbi, “Comparative Constitutional Law Challenges the Algerian Constitution.”

[30] Mohamed Harbi, “Algeria According to Mohamed Harbi,” broadcast on TV5Monde, 5 July 2021, YouTube video. Accessed 18 July 2024. https://www.youtube.com/watch?v=_GQc9st_zQQ.

[31] Ibid.

[32] Cherbi, “Comparative Constitutional Law Challenges the Algerian Constitution.”

[33] Ibid.

[34] Article 121(3) of the relevant Algerian Constitution provides that the President of the Republic appoints the remaining one-third of the members of the Council of the Nation from among national figures and individuals with expertise in scientific, professional, economic, and social fields.

[35] Article 92(10) provides that the President of the Republic appoints, among other officials, the provincial governors (walis).

[36] Cherbi, “Comparative Constitutional Law Challenges the Algerian Constitution.”

[37] Olivier Beaud, ed., The Controversy over the “Guardian of the Constitution” and Constitutional Justice: Kelsen versus Schmitt (Paris: Éditions Panthéon-Assas, “Colloques,” 2007), 36–39.

[38] Armel Le Divellec, “Carl Schmitt’s Guardian of the Constitution: Elements Concerning the Paradoxes of a Questionable Constitutional ‘Theory,’” in Beaud, The Controversy over the “Guardian of the Constitution” and Constitutional Justice, 35.

[39] Carl Schmitt, Constitutional Theory, translated by Lilyane Deroche (Paris: Presses Universitaires de France, 1993), 576.

[40] Ibid.

[41] Braun, previously cited work, 188.

[42] Carl Schmitt, “Legality and Legitimacy,” in Political Writings: “Legality and Legitimacy” and Other Essays (Puiseaux: Pardès, 1990), 41–47.

[43] Carl Schmitt, “An Outline of the Various Meanings and Functions of the Concept of State Neutrality in Domestic Politics,” in The Concept of the Political (Paris: Flammarion), 155–160.

[44] Ibid., 154.

[45] Ibid.

[46] The legislative state, or party state, is a form of state in which Parliament, representing the convergence of different political parties, holds decision-making power. Parliament is regarded as the sole source of legitimacy, and its laws acquire a privileged status. The model's weakness lies in its institutional imbalance, as Parliament can alter political rules and continually exceed its powers. This pattern appeared in the French Second and Third Republics and in the Weimar Republic in Germany, which existed from 1918 to 1933. See Le Divellec, “Carl Schmitt’s Guardian of the Constitution,” 79.

[47] Braun, previously cited work, 223.

[48] Algerian constitutions, both during the single-party period and after the adoption of political pluralism, have retained the President of the Republic's responsibility for safeguarding the Constitution. Article 84 provides that the President of the Republic embodies the State, protects the Constitution, and ensures respect for it.

[49] Braun, previously cited work, 205.

[50] Carl Schmitt, Constitutional Theory, 578.

[51] Ibid.

[52] Braun, previously cited work, 213.

[53] Braun, previously cited work, 455.

[54] Boulifa, “The Representative Character of the Council of the Nation,” 96.

[55] Executive Decree No. 92-01 of 4 January 1992 concerning the dissolution of the National People's Assembly. Official Gazette of the People's Democratic Republic of Algeria, no. 2, 8 January 1992.

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[57] Boulifa, “The Representative Character of the Council of the Nation,” 97.

[58] El Kadi, “Institutional Crisis in Algeria.”

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[60] El Kadi, “Institutional Crisis in Algeria.”

[61] Ibid.

[62] Boulifa, “The Representative Character of the Council of the Nation,” 44.

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[65] Constitutional Council, Opinion No. 01/16 R.T.D/C.C. of 28 January 2016 concerning the draft law containing the constitutional amendment. Official Gazette of the People's Democratic Republic of Algeria, no. 6, 3 February 2016.

[66] Constitutional Council, Decision No. 1-D.L.-C.C. of 20 August 1989 concerning the Electoral Law. Official Gazette of the People's Democratic Republic of Algeria, no. 36, 30 August 1989.

[67] Article 30 of the 2020 Algerian Constitution provides that the People's National Army is responsible for defending the country's vital and strategic interests in accordance with the Constitution.