

The Model of Political Oversight of the Constitutionality of Laws

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Abstract

This article examines the political model of constitutional review of legislation by explaining its concept, characteristics, advantages, disadvantages, and practical applications in selected European and Arab countries. It explains that political constitutional review is generally exercised before the promulgation of legislation to prevent the enactment of laws that violate the Constitution. This function is typically entrusted to a political body or committee established by the Constitution. The article discusses the main features of political review, including its preventive nature, its constitutional basis, and its exercise by a political rather than a judicial body. It also highlights the principal criticisms of this model, particularly its susceptibility to political influence, limited independence, and the possible lack of legal expertise among its members. Furthermore, the article reviews examples of political constitutional review in countries such as France, the former Soviet Union, Yugoslavia, Brazil, Sweden, and Yemen. It concludes that political review has generally proven less effective than judicial constitutional review and that safeguarding constitutional

Article info

Received

July 13;2026

Accepted

septembre 08;2026

Keyword:

- ✓ *Constitutionality of law*
- ✓ *Preventive review*
- ✓ *Constitutional council*
- ✓ *Separation of power*
- ✓ *Constitutional council*

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1. *Introduction*

The principle of constitutional supremacy constitutes one of the fundamental pillars of the rule of law, ensuring that all public authorities, including the legislative branch, remain subject to the Constitution and refrain from enacting legislation that conflicts with its provisions. To safeguard this principle, various systems of constitutional review have emerged, among which political constitutional review occupies a significant place. This model is generally exercised by a political body, often before the promulgation of legislation, with the aim of preventing the enactment of unconstitutional laws. While some countries have adopted this preventive mechanism as an effective means of protecting constitutional supremacy, others have preferred judicial constitutional review because of the independence and impartiality associated with judicial institutions. Consequently, political constitutional review has become the subject of considerable constitutional and legal debate regarding its effectiveness, particularly in light of concerns about political influence and institutional independence.

This study is based on the following central question:

To what extent is political oversight of the constitutionality of laws an effective means of ensuring respect for the Constitution and protecting the principle of its supremacy?

Chapter One: Definition of Political Review

At the outset, it is necessary to explain the concept of political review, followed by its main characteristics and disadvantages, as follows:

Section One: The Jurisprudential Definition of Political Review

Some legal scholars define political review as a form of constitutional review that takes place before a law is promulgated, thereby preventing its issuance if it violates any provision of the Constitution. This review is carried out by a political committee whose members are appointed by the legislative authority in cooperation with the executive authority.

Other scholars define political review as a review conducted by a committee or body established explicitly by the Constitution, whose members are appointed by political

authorities. Its review is likewise exercised before the law is promulgated.

Although the first definition is generally correct in most cases of political review, it lacks precision. Political review is not necessarily exercised before the enactment of a law; it may also be exercised after its promulgation, as was the case under the Constitution of the German Democratic Republic issued on 18 April 1968.

Likewise, judicial constitutional review is not always subsequent to the enactment of a law; it may also be preventive. An example is the Syrian Constitution, whose Article 122 provides that the Supreme Court shall examine and decide on the constitutionality of draft laws referred to it by the President of the Republic before their promulgation.

Some scholars argue that the protection and preservation of the Constitution should be entrusted to a political body, whose task is to investigate whether laws have been enacted by the competent authority and whether that authority has remained within the constitutional limits of its powers. Although this review is legal in nature, its effects are also political because it entails oversight of the legislative authority and, at

times, the executive authority that proposes draft laws.

Other scholars maintain that political review, despite being exercised by non-judicial bodies such as constitutional councils rather than constitutional courts, is essentially a judicial function. Still others define political review as the review exercised over draft laws before their promulgation to prevent constitutional violations. This has led some writers to regard it as superior to judicial review because it is preventive, stopping unconstitutional legislation before it comes into force and preventing the harm that would result from its application.

Section Two: Main Characteristics of Political Review

The principal characteristics of political review are as follows:

Preventive Nature: Political review is exercised before the Head of State promulgates a law, as was the case in all forms of constitutional review adopted in France prior to and under the Constitution of 1958. It aims to prevent the enactment of unconstitutional legislation by intervening after Parliament has approved the bill but before it is promulgated. Some scholars

argue that France's preference for political review in its earlier constitutions reflects the enduring influence of the principle of national sovereignty on French constitutional thought.

Constitutional Basis: *Political review requires an explicit constitutional provision establishing the reviewing body. The Constitution also determines its method of formation and its powers, foremost among them the review of the constitutionality of laws. It may also assign additional functions, as in the case of the French Constitutional Council established under the 1958 Constitution.*

Political Composition: *Political review is not exercised by judges but by a political body, sometimes including legal experts. Members of the reviewing body are generally appointed by political authorities, either solely by the legislature or jointly by the legislative and executive branches.*

Greater Preventive Effectiveness: *Since it prevents unconstitutional laws from being promulgated, political review is considered more effective than subsequent forms of constitutional review. In accordance with the principle that "prevention is better than cure," preventive review is regarded as*

preferable to review that occurs only after a law has entered into force.

Political Nature of Constitutional Oversight: *Political review is viewed as more compatible with the political consequences arising from constitutional review. The body entrusted with determining the constitutionality of laws acquires considerable authority over other public institutions, particularly the legislature. It can restrict the activities of those authorities, define the limits of their powers, and invalidate their acts whenever they conflict with constitutional provisions. Accordingly, given its political implications, it is considered logical by some scholars that such authority be vested in a political institution.*

Part 2: Disadvantages of Political Review and Its Applications in Some European Countries

Secondly: Disadvantages of Political Review

Despite its distinctive characteristics, political review has been criticized on several grounds. The main criticisms are as follows:

Political Bias: *The body entrusted with constitutional review has a political*

character, which may lead it to prioritize political considerations over legal ones when determining the constitutionality of laws.

Lack of Independence:

Since the members of the reviewing body are usually appointed by the legislative and executive authorities, the body may be inclined to favor the views and interests of the authorities responsible for its appointment.

Insufficient Legal Expertise:

Constitutional review is fundamentally a legal and technical task that requires specialized legal knowledge and professional competence to assess whether legislation conforms to constitutional provisions. Entrusting this responsibility to a political body whose members may lack sufficient legal expertise is therefore considered inappropriate.

Susceptibility to Political Influence:

Political bodies are not immune from political pressures or partisan interests. As a result, the purpose of constitutional review—to restrain legislative tyranny and prevent arbitrary political action—may be undermined if the reviewing body itself becomes influenced by political considerations.

Limited Practical Success:

Practical experience in countries that have adopted political review has demonstrated its shortcomings. In many cases, it has failed to provide an effective mechanism for ensuring the constitutionality of legislation and has not inspired confidence in its ability to fulfill its intended role.

Despite these criticisms, a number of countries, both historically and in modern times, have adopted the system of political constitutional review.

Section Two: Applications of Political Review:

First Branch: Political Constitutional Review in Some European Countries

First: The Soviet Union

One example of political constitutional review is found in the Soviet Constitution of 1936, prior to the dissolution of the Soviet Union. Under Article 14 of the Constitution, the Supreme Soviet itself was responsible for supervising compliance with the Federal Constitution and for taking the necessary measures to ensure that the constitutions of the Soviet republics conformed to the provisions of the Federal Constitution.

Second: Yugoslavia

Another example appears in Article 74(4) of the 1946 Yugoslav Constitution, which granted the Presidium of the People's Assembly the authority to verify that the laws enacted by the constituent republics did not conflict with federal laws or with the Federal Constitution.

Third: Brazil and Sweden

Another form of political review is found in constitutional systems that grant the Head of State the power to object to draft laws on the grounds of unconstitutionality.

For example:

The 1937 Constitution of Brazil, particularly Article 66, empowered the President to object to bills considered unconstitutional.

Similarly, under the 1809 Swedish Constitution, the Speaker of Parliament was authorized to prevent a vote on a bill deemed unconstitutional.

Fourth: France

One of the most significant examples of political constitutional review is found in France.

Historically, during the period of the French Revolution, the Constitution of Year VIII (1799) established the Conservative Senate (Sénat Conservateur), which exercised constitutional oversight.

Under the current 1958 French Constitution, constitutional review is entrusted to the Constitutional Council.

Article 61 provides that:

Organic laws, the draft laws referred to in Article 11 before being submitted to a referendum, and the rules of procedure of the parliamentary assemblies before their implementation must be referred to the Constitutional Council, which determines whether they conform to the Constitution.

In addition, Article 54 grants the Constitutional Council the authority to review international treaties. It provides that:

If the Constitutional Council, upon referral by the President of the Republic, the Prime Minister, or the President of either parliamentary chamber, determines that an international commitment contains a provision contrary to the Constitution, authorization for its ratification or approval may be granted only after the Constitution has been amended.

Part 3: Political Constitutional Review in Some Arab Countries

Second Branch: Political Constitutional Review in Some Arab Countries

An example of political constitutional review in the Arab world can be found in the Constitution of the People's Democratic Republic of Yemen, issued on 20 September 1954.

Article 27(3) of the Constitution granted the Political Assembly of the People's Deputies, which exercised legislative authority, the power to supervise the implementation of the Constitution. In other words, the Political Assembly (or Parliament) combined the powers of legislation and constitutional review.

Furthermore, under Article 47(1) of the Constitution, the same body was also empowered to amend the Constitution.

Conclusion:

From the foregoing applications of political constitutional review and the criticisms directed against this model, it can be concluded that political review has generally failed to provide an effective and reliable mechanism for safeguarding constitutional supremacy. In practice, it

has not succeeded in resolving the problem of the constitutionality of laws.

Constitutional review can achieve its objectives only when it is entrusted to an independent and impartial judicial body that is insulated from political and partisan influences. Such a body should be composed of members possessing the legal knowledge and expertise necessary to correctly interpret constitutional provisions and to address constitutional disputes in a sound and objective manner.

Many constitutional scholars also agree that preventive constitutional review, from a logical standpoint, is preferable to corrective (subsequent) review, since it is better to prevent unconstitutional legislation from being enacted in the first place than to wait until after it has entered into force and then invalidate it for violating the Constitution.

However, while preventive review is theoretically more desirable, many scholars argue that its effectiveness is best achieved when it is exercised by an independent judicial institution rather than by a political body, thereby ensuring both constitutional supremacy and the rule of law.

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