

Parliamentary Bicameralism in Light of Constitutional Requirements and Legislative Quality in Algeria

النظام البرلماني الثنائي في ضوء المتطلبات الدستورية وجودة التشريعات في الجزائر

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Abstract:

The Constitution guarantees the independence of the judiciary, legal protection, and oversight of public authorities in a society governed by the rule of law, aiming for transparency and equitable task distribution. To actualize these constitutional mandates, regimes adopted parliamentary bicameralism, authorizing and managing the legislative process via parliamentary councils that draft, monitor, and amend general rules and laws in accordance with constitutional legality to achieve participatory democracy .

Given the Constitution's limitations in detailing the legislative process's organization and the necessity to enhance its quality and productivity, it only established general operational guidelines, leaving the detailed legislative provisions to the bicameral system.

Key words: Parliamentary bicameralism - the initiative to draft laws - the work of parliament - constitutional and legal legitimacy.

Introduction:

The system of parliamentary bicameralism reflects the reality of Algeria's democratic transition. It aligns with developments at the parliamentary and legislative levels. It plays a crucial role in supporting the state's legal and security policy. This is achieved by facilitating the legislative initiative process. Furthermore, it opens avenues for networked interaction between parliament, individuals, and civil institutions. This aims to avoid conflicts and deviations from the rules of the Algerian Constitution.

This represents the structural and institutional transformation from the social base to the highest authority in the state. It shows how well it represents all individuals. It begins with the legislative authority, the backbone of legislative work within the bicameral system. This authority proposes, discusses, amends, and reformulates laws to ensure compatibility with the constitution. It reflects the will and priorities of society. The legislator embodies these in the form of general rules that govern interactions between individuals and organize their communal life. This happens in partnership with the executive authority, which legislates in specific and sensitive areas according to state priorities.

Research Question

To achieve legal and constitutional legitimacy, as seen in most Western and Arab systems, legislative institutions adhere to specific controls and procedures. These are represented by the two-chamber system, or parliamentary bicameralism. They are crucial for legislating laws, particularly in fulfilling social and oversight functions.

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These functions reflect the efficiency of representative bodies in achieving integrity, impartiality, and participatory decision-making. Additionally, they underscore the importance of drafting laws with a balance of independence between the parliament and the government. This balance ensures the legitimacy of legislative work.

Given these factors, we raise the following main research question:

How effective is the parliamentary bicameralism system in promoting and modernizing legislative work in Algeria? The following sub-questions arise from this main question:

- 1. What is meant by parliamentary bicameralism or the bicameral system in Algeria?**
- 2. How does parliamentary bicameralism serve as a method to promote and modernize the Algerian parliament?**

To understand the aspects of the topic and familiarize myself with all the legal and constitutional points related to it, I decided to adopt two sections, each including specific and essential elements in the work of parliamentary assemblies:

First section: Parliamentary bicameralism in Algeria as a mechanism for achieving constitutional and legal legitimacy.

Firstly: The definition of parliamentary bicameralism

Secondly: Legislative initiative in the bicameral system

Second Section: Methods of Developing the Formulation of Law in Algeria and Achieving Quality Legislation

Firstly: Legislation and the Need to Respect the Constitution

Secondly: Establishing Controls and Safeguards to Protect Rights and Freedoms

Thirdly: Modernizing Parliament and Enhancing Legislative Productivity through Networked Collaboration

First section: Parliamentary bicameralism in Algeria as a mechanism for achieving constitutional and legal legitimacy

The most significant achievement of constitutional systems, including those in Algeria, in practicing democracy is the creation of the system of representation. This system fundamentally relies on citizens exercising their political rights by presenting their concerns to deputies or members of representative councils in parliament. A deputy does not only represent his constituency; he represents the entire nation. Hence, he freely fulfills his role in the legislative institution, effectively and influentially contributing to the development of legislation that benefits individuals¹.

Parliamentary councils play a crucial role in achieving exemplary legislation. This depends on their integrity in initiating laws and ensuring impartiality and independence. Simultaneously, it involves achieving coordinated cooperation between the government and parliament. The National People's Assembly, the Council of the Nation, and the government are committed to this goal.

Firstly: The definition of parliamentary bicameralism

The parliamentary bicameral system has been recognized since the declaration of the Magna Carta by the King of Britain, aiming to establish rights and ensure justice in the distribution of tasks, promoting governmental work and ensuring the effectiveness of laws. This model was later adopted by many countries, including Algeria, through Organic Law No. 16-12, which defines the organization of the National People's Assembly and the functional relationships between it and the government². The Council of the Nation was established as a second chamber of Parliament under the 1996 Constitution. This legislative structure embodies the bicameral system, supporting the single chamber system. The adoption of the rules of procedure of the People's Assembly, subsequently amended in 1997 and 1998-2000, led to its independence at the functional and organic level³.

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1- Definition of Bicameralism

The system of parliamentary bicameralism arose for the first time in Western systems, that is, in foreign constitutions and then moved to the majority or most countries, so that the legislative authority is exercised by a parliament consisting of two chambers, the National People's Assembly and the Council of the Nation, which has sovereignty in preparing and voting on the law⁴. The system of legislative bicameralism, or the system of two chambers or two chambers, or what is called parliamentary bicameralism, is termed "bicameralism" and is considered one of the principles of contemporary systems.

In Algerian legislation, the legislative authority is entrusted to two chambers that share the primary task of legislating. According to constitutional practice in Algeria, the task of initiating legislation is assigned to the National People's Assembly and the National Assembly. Article 114 of the 1996 Constitution stipulates that the President of the National People's Assembly is elected for a five-year term. The committee of the bicameral parliament prepares the draft rules of procedure and proposes them to both chambers for approval, in accordance with Article 100 of Organic Law 29/02⁵.

The committee is also responsible for coordinating and finalizing the work and legislative procedure applicable in the bicameral system. This includes expanding the members of the legal affairs committees of both chambers of parliament when studying the draft constitutional amendment and submitting its report⁶. The two chambers of parliament meet in normal circumstances and when the position of the head of state becomes vacant. Additionally, parliament plays a role in approving constitutional amendments.

2- Advantages of the Bicameral System

The bicameral system, or parliamentary bicameralism, is a cornerstone of democracy in countries that adopt a participatory system of representation. It enhances parliamentary efficiency and ensures public access regardless of social status, making it more representative of public opinion⁷.

This system also helps achieve high-quality legislative work by minimizing errors in legislation. If the first chamber, such as the National People's Assembly, makes an error, the National Assembly can identify and correct it, preventing legislative deviations. Draft laws are thoroughly scrutinized to eliminate errors and defects⁸.

Furthermore, the bicameral system acts as a buffer between the legislative and executive authorities. It resolves conflicts by mediating and convincing or compelling one party to achieve legal stability.

Secondly: Legislative Initiative in the Bicameral System

The bicameral system was adopted to achieve dual representation of the people and diversify popular representation. It addresses the shortcomings of direct legislative elections, such as the marginalization of minorities and weak social groups, and the failure to represent the state's regional dimension. This system ensures better performance of parliament⁹, or the legislative body that initiates the process of issuing laws. According to Article 129 of the Constitution, the right to initiate laws is granted to the Prime Minister and deputies of the National People's Assembly. This encompasses the initiative to draft, prepare, and amend laws, as stipulated in Article 120, for both chambers¹⁰.

1- Legislative Initiative of the National People's Assembly

Article 119 of the 1996 Constitution stipulates that the Council, in conjunction with the Prime Minister, has the right to initiate laws. It is not unique to Parliament, as it shares this legislative task with the government. However, the National People's Assembly is considered the primary body in preparing and voting on laws through its deputies¹¹.

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The constitutional founder granted NPC deputies the power to initiate laws from the 1963 Constitution until the 1996 Constitution. The difference between these constitutions lies in the number required to accept the initiative¹².

Article 114 of the 2020 Constitutional Amendment designates both chambers of parliament as sovereign in preparing, voting on, and ratifying laws. The exception is found in Article 139, which specifies thirty areas of legislation governed by general laws¹³.

Article 129 of the Constitution grants the right to initiate laws to the President of the Government and the deputies of the National People's Assembly. Consequently, members of the National Assembly do not have the right to propose laws. Draft laws amended by the government are submitted by the President of the Government to the National People's Assembly. Any draft or proposed law must be accompanied by a statement of reasons and be written in the form of articles¹⁴.

2- The Legislative Initiative of the National Assembly

Article 98 of the 1996 Constitution outlines the legislative activities of the National Assembly. The Chamber of Parliament holds the same legislative powers by jointly preparing and voting on laws between the National People's Assembly and the National Assembly. It grants the initiative to legislate to the National Assembly in specific areas to achieve a balance between authorities, aligning with the concept of separation of powers¹⁵.

According to Article 137 of the Constitution, a proposal for a law or draft law submitted for discussion by the National People's Assembly or the Council of the Nation is not admissible until it is ratified. Moreover, the process of proposing laws is only debatable if it is submitted by 20 deputies from the first chamber or 20 members of the Council of the Nation¹⁶.

Returning to the text of Articles 140/141 of the 1996 constitutional amendment, we find that the constitutional founder contradicts the provisions of these two articles through the provisions of Article 137, which grants both chambers the right to initiate legislation, but restricts the National Assembly to specific cases only in the aforementioned article.

This is despite the fact that the members of the Council have the competence to develop laws that serve society, as well as the composition of the National Assembly members, which combines indirect election and appointment¹⁷.

Thus, the role of the members of the National Assembly will be limited to recommending and ratifying what has been approved by the National People's Assembly, i.e. the first chamber of parliament¹⁸, as the National Assembly receives a draft or proposed law by reading only, i.e. the role of the National Assembly Bureau in this case is to review only the drafts or proposals of the law, and this explains the Algerian legislator's retreat and contradiction, through the text of Organic Law 99/02, that a draft or proposed law that the committee referred to it has not prepared a report on it within two months from the date of the project in its study, upon request by the government and the approval of the National Popular Assembly Bureau or MNA Bureau¹⁹, is recorded in session's proceedings This means that the function of the National Assembly here is not just to be informed.

The government annually submits a general policy statement to the National People's Assembly, discussing the government's work. This discussion can conclude with a regulation under Article 84/50 of the Constitution. The Council plays a significant role in approving the government program, as the Constitution grants it expanded powers. The government's survival hinges on this approval.

The role of the National Assembly, however, is limited to issuing regulations, making its work more political than legal. A parliament member cannot sign more than one proposal for a regulation, and intervention in government matters is limited to requests²⁰. Consequently, the

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regulation has no legal effect on either the National People's Assembly or the National Assembly due to its political nature.

Second Section: Methods of Developing the Formulation of Law in Algeria and Achieving Quality Legislation

All countries, including Algeria, periodically review and amend their constitutional legislation to align with modern legal developments. These amendments aim to redefine the distribution of political power, resulting in a more democratic constitution that better responds to rights and freedoms. This process ensures that the constitution keeps pace with political, legal, and social changes. Additionally, it seeks to reform and modernize legal texts, creating legal rules consistent with the modern networked and participatory system. This aligns with the general standards of legal modernity.

Firstly: Legislation and the Need to Respect the Constitution

The issue of legislation's respect for the Constitution is a non-negotiable duty, as it represents the supreme rule within the legal system. This mandates respect from all state authorities and adherence to its provisions. The Constitution serves as a reference for legislators in all actions, both in content and procedures. Continuous reference to it is necessary when drafting legislative provisions, laws, and amendment proposals to ensure they do not violate its provisions and align with stipulated constitutional principles. Legislative initiatives must be conducted according to procedural rules that structure the legislative process. The Constitution requires that internal regulations conform to it, ensuring the constitutionality of legislative procedures. Procedural aspects inevitably impact the substance of legislative principles and the formulation of texts presented for ratification²¹. Additionally, it is essential to activate the role of the judge in the Constitutional Court. Public authorities, especially legislators, must respect this role, as it is intrinsically linked to ensuring judicial control over the constitutionality of laws.

Secondly: Establishing Controls and Safeguards to Protect Rights and Freedoms

If the Constitution is the supreme rule in the state, embodying the social contract, it must regulate the relationship between the state and individuals. This regulation is based on the core principles of rights and freedoms, which serve as a counterbalance to governmental authority, preventing any abuse of power. The Constitution's purpose and content aim to achieve the essence of the rule of law.

Article 49 of the Constitution introduces a new protection system for rights and freedoms. It serves as a fundamental reference for evaluating the constitutional enshrinement of these rights and the degree to which they are respected. Legislators must consider their compatibility with the Constitution when drafting or proposing laws. The concepts of rights and freedoms are critical determinants of legislative quality in a state that values human rights and dignity. Additionally, these concepts are essential in achieving the legitimacy of governance, which relies on the sovereignty of the people and the representative principle. This ensures protection from the dangers of poor lawmaking and disregarding social realities²².

Therefore, the competence of the law to clarify controls on rights and freedoms and ensure they are not violated depends on basic criteria, including:

- Not undermining the essence of the right and achieving public security by ensuring a proportionate number of controls and their requirements.
- Not retreating from the gains of rights
- Availability of cumulative conditions that represent the nucleus of a specific legal framework. This framework regulates the process of restricting rights and freedoms in a way that guides the legislator's authority in deciding or formulating them²³.

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Thirdly: Achieving Quality Legislation and Modernizing Parliament

Parliament is responsible for embodying constitutional provisions through its legislative activity and the ratification of laws. This implies that the Constitution cannot cover all details regarding the functioning of parliamentary councils. Therefore, it sets general rules, which are further defined in the internal systems of states. Parliamentary councils are tasked with achieving radical changes in the legislative process, ensuring it aligns with social, political, economic, and technological conditions²⁴. There is a need to amend the origins of legislative initiatives to secure rights and freedoms, achieving justice and stability for both citizens and the government. This includes developing new drafting schemes and digital technological programs that use technology and artificial intelligence in the legislative process. By doing so, the speed and flexibility of issuing laws are enhanced, relying on electronic media to facilitate the councils' work. This approach leads to the concept of an electronic parliament, which minimizes errors during the preparation of legislation until its publication in the Official Journal. Electronic monitoring means assist this process, especially in the field of censorship²⁵.

From the perspective of modernizing the parliament, it serves as the primary means for developing future laws and guiding constitutions towards participatory democratic construction and the rationalization of government policies. This includes enhancing quality performance by prioritizing technical and drafting aspects in legislative preparation. Procedural work development and legislative initiatives for members are critical, as is the development of methods to monitor the constitutionality of laws. There is a need to integrate electronic monitoring mechanisms. This new approach detects errors and violations, facilitating parliament's work from technical and procedural viewpoints²⁶.

Conclusion:

Despite developments in the Algerian parliament regarding the legislative process, it remains constrained by formal and substantive restrictions. These restrictions allow the government or executive authority to dominate legislation, weakening the parliamentary initiative of the bicameral system and undermining the interaction between parliament and individuals in addressing their needs through state laws. Additionally, many voters struggle to follow the activities of their representatives during the four or five-year parliamentary sessions. The presence of numerous deputies who do not engage in any parliamentary activity, often referred to as disguised unemployment, means they do not represent citizens in addressing their needs and concerns, focusing instead on personal interests. Moreover, the parliament still adheres to traditional methods of work, lacking modern technological practices that ensure the quality and validity of legislation. This also affects the implementation of electronic monitoring and evaluation.

After reviewing the aspects of the topic, we reached the following conclusions:

- The bicameral system is a critical topic in the development of parliamentary legislative work. The Algerian legislator adopted it in the 1996 Constitution through Article 98 to address shortcomings at the National People's Assembly level and other political and legal reasons.
- There are competencies unique to the National People's Assembly that the Council of the Nation cannot exercise. Although the two chambers are formed differently, they share some competencies.
- The bicameral system ensures equality in the legal status of parliament members. Both members of the National Assembly and deputies of the National People's Assembly have equal status regarding rights, duties, ineligibility for candidacy, and incompatibility with parliamentary membership. They also participate equally in questioning the government, submitting written and oral questions, and establishing investigative committees.

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• The parliamentary system in Algeria has evolved with the creation of the second chamber and the adoption of the dual parliamentary system. However, it still requires significant reforms, particularly in employing technical methods in the legislative process, including legal drafting and electronic oversight.

Considering all the findings, we recommend the following:

• Working with the bicameral system should no longer rely solely on cooperation in proposing and drafting laws traditionally. It must become an issue of activation and productivity within social and political realities, focusing on achieving constitutional and legislative legitimacy and advancing laws that align with the legal transformation of individual rights and freedoms.

• There is a need to realize the concept of a participatory parliament that genuinely embodies the principle of separation of powers. This involves striving for legislative independence from the executive authority or achieving a balance between parliament and the government without infringing on the rights and freedoms guaranteed by the Algerian Constitution.

• It is essential to modernize and enhance the productivity and quality of laws to reflect social reality. This involves the concept of a networked parliament that expands participation in legislation across various societal segments and civil actors, ensuring the credibility and transparency of legislative work.

• The bicameral system must balance the work of parliament and the government, avoiding conflicts of interest and activating oversight within the limits of respecting individual rights and freedoms.

• The constitutional legislator needs to re-establish constitutional laws that align with the idea of constitutionalizing rights to prevent violations and ensure protection. This can only be achieved by combating governmental dominance over parliament.

• Despite the many positives of the bicameral system, the Algerian parliament must grant more powers to the National Assembly and remove the restrictions in Article 137, allowing both chambers to employ the principles of participatory democracy equally.

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