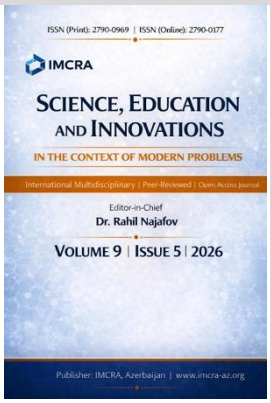

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RESEARCH ARTICLE

Legislative Exclusivity in the Regulation of Public Rights and Freedoms: A Constitutional and Analytical Assessment of the Balance Between Parliamentary Authority and Executive Intervention

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Abstract

The protection of public rights and freedoms constitutes a fundamental pillar of modern constitutional states and serves as a key indicator of democratic governance and institutional legitimacy. Historically, the evolution of these rights has been closely associated with the gradual limitation of executive authority and the emergence of representative legislative institutions. Within this context, the principle of legislative exclusivity has developed as a central constitutional mechanism aimed at safeguarding individual freedoms by entrusting their regulation primarily to elected parliamentary bodies. This study provides a comprehensive analytical examination of legislative exclusivity as a legal and constitutional doctrine, focusing on its theoretical foundations, historical evolution, and practical implications in contemporary governance systems. The research investigates the extent to which legislative authority can effectively ensure the protection of rights and freedoms while maintaining the necessary balance with executive power, particularly in matters related to public order, national security, and administrative regulation. Adopting a doctrinal and analytical methodology, the study explores key constitutional frameworks, with particular reference to the Algerian constitutional system, while drawing comparative insights from other legal traditions, notably the French model. The analysis distinguishes between absolute and relative legislative exclusivity, highlighting the transformation of parliamentary sovereignty under modern constitutional arrangements that increasingly allow for limited executive intervention. Furthermore, the paper critically evaluates the constitutional limitations imposed on legislative authority, including adherence to constitutional norms, the prohibition of total suppression of freedoms, and the principle of proportionality in restricting rights. Special attention is given to the role of judicial review, particularly constitutional courts, as a safeguard against legislative overreach and a mechanism for ensuring the supremacy of constitutional principles. The findings of the study reveal that while legislative exclusivity remains a vital instrument for the protection

of rights and freedoms, its effectiveness is contingent upon the broader political and institutional environment, including the strength of democratic institutions, the independence of the judiciary, and the existence of robust constitutional oversight mechanisms. The study concludes that a balanced and dynamic interaction between legislative and executive authorities, supported by effective judicial control, is essential for achieving an optimal equilibrium between individual freedoms and the requirements of public order.

Citation

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Introduction:

It is well known that humankind has always strived, since time immemorial, to break free from all constraints that shackled its will. These constraints intensified with the advent of the state, which compelled individuals to live within a system defined by its ruling authority, currently known as the executive branch.

Looking back at the various historical periods that the state has undergone in previous eras, we find that the issue of rights and public freedoms was not a priority for the ruling authority, which was always inclined to curb and curtail freedom in every way possible. This was because its view was always that freedom was a threat to the ruler's throne and a cause of state instability. However, global developments, which have influenced the evolution of the concept of the state, have played a positive role in achieving a balance between power and freedom. This has been accomplished by placing matters of rights and freedoms exclusively under the jurisdiction of the legislative authority, which is elected by the people—a concept known as legislative exclusivity in the realm of rights and freedoms. This has become evident in the constitutions of most countries, which stipulate that matters of freedom, whether in their specific forms or in regulating their exercise, remain within the purview of the legislature, as is the case in various Algerian constitutions. This highlights that the constitutional framers have prioritized freedom over authority in cases of conflict.

However, this victory for freedom had to be balanced with the requirements of public order, which the executive branch is responsible for safeguarding. Therefore, the legislature's exclusive authority to regulate public rights and freedoms is subject to intervention by the executive branch to protect national security on the one hand, and freedom itself on the other. Consequently, the discussion here revolves around the limits imposed on the legislature in this regard.

The subject of this study is of paramount importance, as it is a matter of daily life, considered vital to individuals' daily existence. Consequently, it is one of the most fundamental issues for the state for two reasons. The first is the possibility of striking a balance between freedom and public order to preserve the state's security and continuity. The second is the state's external image, as democracy in a country is now measured by the extent to which it respects the freedoms of its citizens.

The central question addressed in this research paper is: To what extent is the legislature's exclusive authority over public rights and freedoms effective in providing the necessary protection for these rights and freedoms? And to what extent is this exclusive authority absolute or relative?

To answer this question within a structured methodological framework, we outline the following two-part plan:

The concept of legislative exclusivity (first section), and the scope of the legislature's authority in regulating public rights and freedoms (second section).

Literature Review

The regulation and protection of public rights and freedoms have long occupied a central position in constitutional theory and democratic governance. The emergence of the modern state necessitated a reconfiguration of power relations, particularly between the legislative and executive branches, to ensure that individual freedoms are not subordinated to arbitrary authority. Within this context, the principle of legislative exclusivity has evolved as a normative mechanism aimed at safeguarding rights by allocating primary regulatory competence to democratically elected legislative bodies.

Classical constitutional theory, particularly as articulated by Montesquieu, established the foundational doctrine of the separation of powers, emphasizing the necessity of distributing state authority among legislative, executive, and judicial branches to prevent tyranny. This framework positioned the legislature as the primary law-making authority, entrusted with expressing the general will of the people. Subsequent legal theorists, such as Ronald Dworkin, further reinforced the centrality of rights within constitutional systems, arguing that rights function as "trumps" against governmental overreach, thereby necessitating strong institutional guarantees.

The doctrine of legislative exclusivity gained particular prominence in continental legal systems, especially following the constitutional transformations associated with the French Revolution. Early conceptions emphasized absolute legislative sovereignty, whereby parliament held exclusive authority to regulate all matters, including rights and freedoms. However, this absolutist approach gradually evolved into a more nuanced understanding of "relative legislative exclusivity," reflecting the practical necessity of executive participation in regulatory processes (Vile, 1998).

Modern scholarship highlights that legislative exclusivity is neither absolute nor self-sufficient. Jürgen Habermas conceptualizes law as a product of communicative rationality, wherein legitimacy arises from democratic deliberation rather than institutional monopolization. From this perspective, the effectiveness of legislative authority depends on procedural fairness, inclusivity, and institutional balance. Similarly, Robert Alexy emphasizes the principle of proportionality as a critical standard for assessing limitations on rights, arguing that any restriction must be necessary, suitable, and balanced in relation to competing public interests.

In parallel, the expansion of executive functions in modern administrative states has challenged the traditional boundaries of legislative exclusivity. Scholars such as Stone Sweet (2000) and Ginsburg (2003) demonstrate that executive authorities increasingly participate in norm-making through delegated legislation, regulations, and administrative acts. This shift has necessitated the development of robust judicial oversight mechanisms to prevent abuse of power and ensure constitutional compliance.

Judicial review has thus emerged as a cornerstone of contemporary constitutional systems. The establishment of constitutional courts, particularly in European and post-colonial contexts, reflects an institutional response to the risks associated with both legislative and executive overreach. Hirschl (2004) argues that the global expansion of judicial power represents a "juristocratic" turn, wherein courts play a decisive role in safeguarding rights and maintaining constitutional equilibrium.

In the Algerian context, constitutional developments reflect a hybrid model that incorporates elements of both absolute and relative legislative exclusivity. While the constitution formally assigns the regulation of rights and freedoms to the legislature, it simultaneously allows for executive intervention under specific conditions, particularly in matters related to public order and national security. This duality underscores the importance of institutional balance and highlights the limitations of legislative exclusivity as a standalone mechanism.

Overall, the literature indicates that while legislative exclusivity remains a foundational principle in constitutional law, its effectiveness is contingent upon complementary mechanisms, including judicial review, executive accountability, and adherence to constitutional norms. The contemporary challenge lies not in preserving absolute exclusivity, but in

achieving a dynamic equilibrium that ensures both the protection of individual freedoms and the effective functioning of the state.

Conceptual Model Framework

3.1 Theoretical Framework

This study proposes a multi-dimensional governance model for analyzing legislative exclusivity in the protection of rights and freedoms. The model is grounded in three core constitutional principles:

- Separation of powers
- Rule of law
- Judicial oversight

3.2 Model Components

1. Legislative Authority (Independent Variable)
    - Enacts laws regulating rights and freedoms
    - Defines scope, limitations, and guarantees
    - Represents the will of the people
2. Executive Intervention (Moderating Variable)
    - Implements laws through regulations and administrative acts
    - May impose restrictions in the interest of public order and security
    - Risks overreach without legislative and judicial constraints
3. Judicial Review (Mediating Variable)
    - Ensures constitutional conformity of laws
    - Protects against legislative and executive abuse
    - Maintains balance between authority and freedom
4. Outcome Variable
    - Level of Protection of Rights and Freedoms

3.3 Conceptual Model Structure (Textual Form)

Legislative Authority → (shapes) Rights & Freedoms Regulation

Executive Authority → (moderates) Implementation & Restriction

Judicial Review → (controls) Constitutionality

Balanced Protection of Rights and Public Order

3.4 Hypotheses (Optional – for stronger publication level)

- **H1:** Strong legislative exclusivity positively influences the protection of rights and freedoms.
- **H2:** Excessive executive intervention negatively affects the level of rights protection.
- **H3:** Effective judicial review enhances the relationship between legislative authority and rights protection.

Findings and Discussion

The analysis reveals that the principle of legislative exclusivity plays a significant role in shaping the legal framework governing public rights and freedoms. However, its effectiveness is neither absolute nor uniform across different constitutional systems. Instead, it operates within a complex institutional environment characterized by the interaction of multiple state authorities.

First, the study confirms that legislative authority remains the primary mechanism for defining and regulating rights and freedoms. By virtue of its democratic legitimacy, the legislature is better positioned to reflect societal values and balance competing interests. This supports the classical assumption that parliamentary regulation provides a stronger safeguard against arbitrary power compared to executive control.

Second, the findings indicate that executive intervention is both necessary and problematic. On the one hand, the executive branch plays a crucial role in implementing laws and responding to dynamic societal needs, particularly in areas such as public security and emergency governance. On the other hand, excessive or unchecked executive power can undermine the very freedoms that legislative exclusivity seeks to protect. This duality highlights the importance of clearly defining the limits of executive authority within constitutional frameworks.

Third, the role of judicial review emerges as a decisive factor in ensuring the effectiveness of legislative exclusivity. Constitutional courts act as guardians of fundamental rights by reviewing the constitutionality of legislative and executive actions. The transition from constitutional councils to constitutional courts, as observed in Algeria, represents a significant advancement in strengthening institutional oversight and enhancing the protection of individual freedoms.

Furthermore, the study demonstrates that the balance between freedom and public order is inherently dynamic and context-dependent. In democratic systems with strong institutional checks and balances, legislative exclusivity tends to function effectively as a protective mechanism. In contrast, in systems where institutional independence is weak, legislative authority may be compromised, either by executive dominance or by internal political constraints.

Finally, the findings suggest that legislative exclusivity should not be understood as an isolated principle, but rather as part of an integrated constitutional system. Its success depends on the interaction between legislative, executive, and judicial institutions, as well as on broader political and societal factors, including transparency, accountability, and public participation.

The first requirement: The concept of legislative unilateralism.

The passage of time has played a significant role in shaping the concept of legislative unilateralism to its current form. This principle emerged as a reaction to the monopoly previously exercised by the ruling authority (the executive branch in its current sense) in enacting laws.

The ideas of some thinkers and philosophers advocating for the separation of powers have had a profound impact on empowering the legislative authority to exercise its functions of enacting laws regulating rights and freedoms with complete sovereignty, unchallenged in principle. In this section, we will examine the historical development of legislative unilateralism in the first subsection, and then define this principle in the second subsection.

Subsection One: The Historical Development of Legislative Unilateralism

The concepts stemming from the French Revolution of 1789 had a profound impact on the emergence of the principle of absolute legislative sovereignty of Parliament. Following this revolution, the principle of distributing powers between the executive and legislative branches was established. The latter became sovereign in drafting and approving laws, as it represented the people who freely elected it. Previously, sovereignty had been entirely vested in the executive branch, which was itself concentrated in the hands of the monarch. This change, which impacted the balance of power, particularly between the legislative and executive branches, enabled Parliament to exercise its authority in addressing various issues without any constraints.(Abdul Rahman Azzawi, p. 154.)

This helped to bring to the fore the principle of absolute legislative exclusivity, the specific definition of the law according to the formal standard, which came as follows: “The work that was voted on by the body competent to legislate, i.e., the parliament, in accordance with the legislative procedures in force, and is issued by the President of the Republic.”(Abdul Rahman Azzawi, pp. 154-155.)

The jurist Montesquieu defined it as a statement officially issued by the administration that addresses a public interest and comes in the form of general and abstract rules, devoid of any specification of their scope.(Rais Muhammad, Ramdani Fatima Zahra, A, p. 85.)

Parliament, as the representative of the legislative authority, exploited this definition of law to extend its sovereignty without any constraints, intervening to regulate any matter in any way it deemed appropriate, especially in the absence of constitutional oversight of the laws it issue , Judicial review of the constitutionality of laws remained absent from French

constitutions until the promulgation of the Constitution of October 4, 1958, known as the Constitution of the Fifth Republic, which introduced this review. However, this constitution is criticized for limiting itself to prior review of the constitutionality of laws without stipulating subsequent review exercised by the Constitutional Court through annulment proceedings, which constitutes a genuine guarantee of individual rights and freedoms.

Parliament's absolute control over the legislative process was evident in various French constitutions, particularly those issued between 1791 and 1924, which clearly enshrined the principle of the legislature's exclusive power. This went so far as to prohibit Parliament from delegating legislative authority to the executive branch. This situation did not last long, however, as subsequent constitutions allowed Parliament to empower the executive branch to address certain matters through legislation referred to it by Parliament. This remained the case until the 1946 Constitution, which restored full legislative sovereignty, prohibiting any role for the executive branch in this regard. Article 13 of this constitution states: "Parliament alone makes laws and cannot relinquish this right".

One of the factors that reinforced the idea of absolute legislative authority for parliament was the principle of separation of powers, a demand made by many jurists and thinkers, particularly the French philosopher Montesquieu. Montesquieu distinguished between the functions exercised by the three branches of government: legislative, executive, and judicial. The executive branch is responsible for implementing the laws issued by the legislative branch, utilizing regulations, decrees, and administrative contracts, in addition to providing the necessary material and human resources to ensure the proper functioning of the state. The judiciary, on the other hand, is responsible for reviewing and resolving disputes and overseeing the actions of the administration through litigation. Therefore, it is natural that the legislative branch should have exclusive powers, allowing it to perform its legislative function without involving any other party except in specific cases and through delegation.

Many constitutional law scholars have justified the legislature's exclusive authority over these tasks, citing an important reason: that this branch represents the people, who are considered the true owners of power. Most of the world's constitutions have stipulated this principle, including the Algerian constitution, which states in the second paragraph of Article 7: "Sovereignty belongs to the people alone."

Which he was unable to exercise himself, so he delegated the matter to members of parliament on his behalf.

This legislative exclusivity enjoyed by the legislative authority during this period did not remain absolute. The developments in France that led to the promulgation of a new constitution in 1958 had a profound impact on the principle of absolute legislative exclusivity. Under the provisions of this constitution, the legislative role of parliament was reduced, while the executive branch was granted the right to address certain issues and matters. This reduction was further exacerbated by the emergence of a distinction between law and legislation, which resulted in several provisions that favored the executive branch at the expense of the legislative branch. Among the most important of these were:(Rais Muhammad, Ramdani Fatima Zahra, p. 86.)

- The decline of parliamentary sovereignty in legislation, as it is no longer the sole expression of the public will.
- The explicit definition of the legislative authority's powers in the constitution, leading to the emergence of the principle of relative legislative exclusivity.
- The emergence of another authority competing with parliament's power in lawmaking: the executive branch. In addition to its powers to implement laws passed by parliament, the executive now possesses the authority to decide on matters not reserved for parliament.

The power of decision is defined as the recognition of the executive authority, and especially the president of the republic, to enter the legislative process through which it competes with the competent legislative authority. In this regard, Professor Raafat Fouda says that recognizing the executive authority as having a general decision-making power means recognizing it as having a legislative power through which it competes with the legislative authority.(Raafat Fouda, p. 07.)

Following the significant reduction in parliamentary powers introduced by the 1958 French Constitution, another concept of legislative exclusivity emerged, which facilitated a degree of executive branch participation and intervention in legislative tasks. This concept, termed "relative legislative exclusivity," is defined as the legislature's sufficiency to regulate a subject in general terms without delving into specifics, leaving that task to the executive branch.(Rice Muhammad, previous reference, p. 87.)

Also included within the relative legislative exclusivity are those topics and issues that were left unsaid by the constitutional founder.(The issues left unaddressed by the constitutional founder have been the subject of a difference of opinion among constitutional law scholars, between those who saw them as an inherent prerogative of Parliament in which the executive authority does not share, and those who saw the possibility of the latter participating in preparing and organizing these issues, considering that they fall within the relative legislative exclusivity of the legislator and not the absolute one. For more details, see Abd al-Rahman Azzawi, Rules for the distribution of jurisdiction between the legislative and executive authorities, previous reference, p. 227 and following.)

From this perspective, constitutions now reserve certain topics specific to the legislative authority, which the executive authority may not infringe upon, foremost among them being those topics related to rights and freedoms.(This is what the Algerian legislator has done through the text of Article 139, which includes 30 areas reserved for Parliament, foremost among them issues related to rights and freedoms.)

As for the matters in which the executive authority is permitted to intervene and regulate, we find that the constitutional framer always accompanies these matters with the phrase "the law specifies the conditions and methods of exercising this right" or the phrase "the law specifies the methods of exercising this right." (Examples of this in the Constitution include the constitutional amendment of 2020, Article 52 relating to freedom of expression, freedom of assembly and peaceful demonstration, and also Article 55 relating to the right to access information, documents and statistics and the right to privacy.)

Section Two: Defining Absolute Legislative Unilateralism.

While the principle of legislative unilateralism was initially a political concept, it has, thanks to the interpretations of constitutional scholars and courts, transformed into a constitutionally enshrined legal principle found in the constitutions of most countries worldwide.

Among the most important definitions offered in this regard by constitutional law scholars is that of Professor Eid Ahmed Al-Ghafloul, who defined absolute legislative unilateralism as: "The obligation of Parliament, and no other body, to enact comprehensive legislation on matters within its jurisdiction, without the executive branch having any significant role in this matter." (Eid Ahmed Al-Ghafloul, p. 79.)

Professor Ahmed Fathi Sorour offered a more comprehensive definition, stating: "The legislature alone has the authority to address matters within its jurisdiction. This principle means that the executive branch cannot, through regulations, address matters that fall exclusively under the legislature's purview. Furthermore, this principle means that the legislature cannot evade its responsibility to address these matters and provide guarantees for the exercise of rights and freedoms. However, this principle does not preclude the executive branch from regulating and implementing, through regulations, what the legislature has approved." (Ahmed Fathi Sorour, p. 400.)

The primary objective of the jurisprudence that establishes the principle of absolute legislative exclusivity is to prevent the executive branch from interfering in certain matters reserved for Parliament, as the representative of the people, foremost among them being the issue of rights and freedoms. On this basis, this principle can also be defined as a preventative measure that stands in the way of the executive branch should it wish to intervene to regulate a right or freedom without obtaining prior approval from the legislature.

Professor Ahmed Fathi Sorour further stated in this regard that: "When it comes to defining the limits within which rights and freedoms are exercised, there is only one authority in the state that is inherently competent to do so, and this authority is the legislative authority." (Ahmed Fathi Sorour, 2000, p. 401.)

This view is supported by the jurisprudence of the Supreme Constitutional Court of Egypt, which ruled on January 2, 1999, in Case No. 31, that the legislature's authority in regulating rights and freedoms is inherently absolute. That is, it must exercise sole legislative jurisdiction in this matter, considering that the essence of this authority lies in the legislature's choice between alternatives related to the subject of the legislative regulation. The legislature weighs these alternatives, favoring what it deems most suitable to the subject matter, most likely to achieve its intended objectives, and most likely to safeguard the most significant interests in its implementation. There is no restriction on the legislature exercising this authority unless the constitution has imposed specific controls regarding its exercise.

Given the importance of this principle in protecting rights and freedoms against the excesses of the executive branch, some legal scholars have argued that legislative intervention in regulating and protecting these rights and freedoms is obligatory. From this perspective, some constitutional law scholars have defined the principle of absolute legislative exclusivity as follows: "If rights and freedoms are exercised against the executive branch, then the legislative branch is entrusted, by virtue of the constitution, with guaranteeing these rights and freedoms. This is for the obvious reason that legislative power is exercised by representatives of the sovereign. Therefore, it is natural that legislation issued by this branch should exclusively guarantee rights and freedoms, which is known as the principle of legislative exclusivity." (Azawi Abdul Rahman, previous reference, pp. 183-184.)

The French Council of State followed the same approach, as evidenced in its decision of November 28, 1973, which affirmed the strong link between rights and freedoms and the absolute legislative prerogative of Parliament. This decision included the following phrase: "La Privation de la liberté relève de la loi" (The privacy of freedom is linked to the law). (It was mentioned by Ahmed Fathi Sorour in his book, Constitutional Protection of Rights and Freedoms, previous reference, p. 400.)

This implies that the curtailment or complete deprivation of freedom under specific circumstances can only be based on a law issued by the legislative authority.

The principle of absolute legislative exclusivity has evolved to encompass numerous subjects that were previously outside the legislature's purview, even though subjecting these subjects to legislative authority is relative and not to the same extent as addressing matters related to rights and freedoms, which do not permit any other body to participate in their regulation.

The second requirement: The scope of the legislature's authority in regulating public rights and freedoms.

In accordance with the principle of separation of powers, the legislative authority holds the original jurisdiction to enact and establish general legal rules that shape the state's public policy in various political, social, and economic fields.

Granting this authority to the legislative authority, to the exclusion of other authorities, stems from the principle of popular sovereignty, represented by Parliament in its two chambers, as previously mentioned. This is in accordance with Article 7 of the Constitution, which states: "The people are the source of all power." Similarly, Article 8, paragraph 1, states: "The people exercise their sovereignty through the constitutional institutions they choose."

Given that the issue of public rights and freedoms is directly related to the people, the Algerian constitutional framers entrusted the regulation of these rights and freedoms exclusively to the legislature. Article 139 of the Constitution, paragraph one, states: “Parliament shall legislate in the areas designated for it by the Constitution, as well as in the following areas:

The fundamental rights and duties of persons, in particular the system of public freedoms, the protection of individual freedoms and the duties of citizens.”

This could lead the constitutional body to deviate from its constitutional mandate regarding the regulation of rights and freedoms, making it imperative to establish limits that the legislature must adhere to.

These limits consist of: the legislature's adherence to the constitutional framework (Section 1); the prohibition of the total suppression of freedoms (Section 2); and the obligation to prioritize rights and freedoms when they conflict with the authority of the state (Section 3).

First Branch: The Legislator's Commitment to the Constitutional Framework:

The legislator bears the responsibility of enacting laws related to rights and freedoms within the framework of their constitutionally mandated duties. However, this responsibility is limited by the provisions of the constitution, such that the legislator cannot disregard these provisions and enact legislation that contradicts them.

In reality, the legislator's authority to enact laws regulating public rights and freedoms is sometimes restricted by the constitution, thus negating the legislator's discretion in drafting laws related to rights and freedoms. At other times, it is a discretionary power, where the constitution grants the legislator the authority to enact laws regulating a particular right or freedom without setting specific limits, except those related to public order.(This issue has created a difference of opinion among jurists, as we find that many of them objected to granting discretionary power to the legislator in setting laws regulating rights and freedoms, arguing that enabling the legislator to have this power contradicts the idea of guaranteeing freedom. Muhammad Asfour, Protecting the social order as a restriction on public freedoms, PhD thesis, Faculty of Law, Cairo University, 1961, p. 80.)

In most constitutions around the world, we find that they restrict the legislature's power to regulate public rights and freedoms for several reasons. This is what the Algerian constitutional framer did as well, restricting the legislature's power in this area for reasons related to maintaining public order and security, in addition to protecting national constants and the necessity of protecting other rights and freedoms enshrined in the constitution.(This was stated in the first paragraph of Article 34 of the 2020 constitutional amendment, which stipulated: “Rights, freedoms and guarantees may only be restricted by law, and for reasons related to maintaining public order and security, protecting national constants, as well as those necessary to protect other rights and freedoms enshrined in the constitution.)

Moreover, the constitutional founder unilaterally regulated certain rights and freedoms definitively, leaving no role for the legislature, as he did with freedom of the press in all its forms—written, audio, visual, and electronic—through Article 54 of the Constitution, which left no role for the legislature in regulating this type of freedom. (The constitutional founder did not limit himself to freedom of the press, but followed the same approach with several other rights and freedoms, including what is related to the sanctity of the home, which was stipulated in Article 48 of the 2020 constitutional amendment, and the freedom to choose a place of residence and movement, which was stipulated in Article 49 of the same constitutional amendment.)

These rights, which the constitutional framers codified in the articles of the constitution and did not leave to the ordinary legislator, were termed "absolute rights and freedoms" by the Egyptian jurist Abd al-Razzaq al-Sanhuri. He stated regarding them: "Besides the constitutional rights and freedoms that may be regulated by law, there are other freedoms and general rights that the constitution does not permit to be restricted, even by legislation passed by parliament. The constitution has not granted the legislator any authority over these; rather, they are freedoms and rights that may be called absolute rights and freedoms. The legislator may not intervene in defining them through legislation; otherwise, the legislation would be invalid due to its violation of the constitution."(Abdul Razzaq Al-Sanhuri, 1952, pp. 53-54.)

It is noteworthy that the Algerian constitutional framer, despite restricting the legislature's power in regulating certain rights and freedoms due to their paramount importance, allowed the legislature discretionary power regarding other rights and freedoms by granting Parliament independence in enacting laws it deems appropriate to regulate these rights and freedoms, whether through ordinary laws or organic laws. (Some constitutional law scholars argue that the constitutional framers' reliance on organic laws, beginning with the 1996 Constitution, restricts the legislature's discretionary power in

matters reserved for it, particularly rights and freedoms. They reason that this type of law requires special procedures, most importantly subjecting it to conformity review by the Constitutional Court, which diminishes the legislature's independence in its legislative function. For further details, see Mouloud Didane, p. 414.)

Here, the legislator undertakes to establish all the details pertaining to the right or freedom to be regulated, beginning with its definition and the legal basis upon which it rests. This includes specifying the administrative bodies responsible for granting licenses for its exercise, if any, and for overseeing its implementation, while also ensuring guarantees for its exercise within a framework that maintains public order stability. Thus, when exercising its discretionary power to regulate a freedom or right, the legislator leaves no room for the executive branch to interfere in its regulation except with regard to establishing the framework through which it is made public.(Abdul Rahman Azzawi, previous reference, p. 46.)

Among the freedoms that the constitutional framers left to the legislature to regulate through its discretionary power are the freedoms of assembly and peaceful demonstration, which are stipulated in the Algerian Constitution in Article 52, which states:

"Freedom of expression is guaranteed.

Freedom of assembly and freedom of peaceful demonstration are guaranteed and are exercised upon declaration.

The law shall determine the conditions and procedures for their exercise."

Thus, we find that the constitutional framers established the general framework for the freedoms of assembly and peaceful demonstration, leaving the specific details of the conditions and procedures for their exercise to the legislature, which undertook this task through Law 89-28 of December 31, 1989, as amended by Law 91-19 of December 2, 1991.

Granting the legislature discretionary power in regulating public rights and freedoms has led to a division in constitutional jurisprudence into two main schools of thought. The first, represented by the jurist Abd al-Razzaq al-Sanhuri, argues that granting the legislature this power does not enable it to diminish these rights and freedoms or deviate from the path prescribed by the constitution. Such deviation would constitute legislative transgression, occurring when the public right stipulated in the constitution becomes nullified by legislative intervention, failing to achieve its intended purpose.

Al-Sanhuri identifies the objective criterion for identifying legislative transgression. This criterion reveals whether a right or freedom established by the constitution and entrusted to the ordinary legislature for regulation has been diminished after such regulation, without considering the legislature's intent. This is based on the premise that the legislature, representing the people, is expected to be impartial, objective, and entirely free from personal biases in the performance of its duties, particularly in the realm of rights and freedoms, in order to achieve the public good and the common interest of society. To support his view, the jurist Sanhouri adds: "The legislator must use his legislative authority to achieve the public good and nothing else; otherwise, the legislation is invalid."

The second view holds that the legislator has the right to impose restrictions he deems appropriate when regulating rights and freedoms, because these are stipulated in the articles of the constitution in general terms and cannot be left unrestricted. Rather, restrictions must be imposed on them in consideration of the public order that must be maintained. According to proponents of this view, restricting any freedom or right can only be done by diminishing it. What the legislator must adhere to in this task is not to abolish the right or freedom he seeks to regulate. However, diminishing it by imposing restrictions is something that a legislator subject to public scrutiny may do. By examining the constitutional founder’s position on these theories, we find that he did not succumb to any of them, but rather chose to adopt all of them according to the freedom that was to be regulated. For example, we find that he adopted the first opinion regarding press freedoms and the right to the inviolability of the home, while he leaned towards the second opinion regarding other freedoms such as the freedom to establish political parties and the right to union work.

Second Branch: The Inadmissibility of Total Prohibition of Freedoms.

The legislature's possession of discretionary power in restricting public rights and freedoms does not mean that this power should remain absolute. Granting the legislature absolute discretion in matters of rights and freedoms could lead to the prohibition or abolition of certain freedoms under the guise of maintaining public order. Therefore, the legislature, in undertaking the task of regulating rights and freedoms, must observe the limits that ensure their preservation without resorting to total prohibition. As for partial prohibition, the constitution authorizes the legislature to do so in the interest of the public good.

The judiciary has permitted this type of prohibition if its motives aim to maintain public order within society.(Abdul Rahman Azzawi, previous reference, p. 67.)

Examples of this type of prohibition include banning large vehicles from near hospitals to ensure patient comfort, restricting movement in certain areas to protect public safety and security, and prohibiting the disposal of household waste at specific times to safeguard public health and the aesthetic appeal of cities.

However, while respecting the constitutional provisions defining its jurisdiction, the legislature must adhere to other conditions that prevent it from completely restricting freedoms. Firstly, it must support and guarantee freedom, not curtail it. This can only be achieved if legislation issued by the legislative authority mandates respect for freedom by the executive authority, which constantly seeks to limit freedom to maintain public order. The legislature can only succeed in this endeavor if its legal texts supporting rights and freedoms are free of loopholes and ambiguities that regulatory authorities could exploit to their advantage at the expense of individual freedoms and rights.(Adel Al-Saeed Muhammad Abu Al-Khair, p. 340.)

The second condition is that the legislator must include in his legislation relating to public freedoms guarantees that ensure their exercise and give them a character of legitimacy that grants individuals the right to resort to the judiciary if they are prevented from exercising their right to freedom.

The legislator's fulfillment of these conditions makes the administrative regulatory authority bound by the guarantees that ensure freedom, whether these guarantees were established by the constitutional founder or by the legislator in the laws he enacted to regulate freedom within the framework of the principle of balance between individual freedom and the public order of the state.(Public order has always played an important role in restricting freedom, to the point that public rights and freedoms have become subject to the mercy of public order. This is not limited to exceptional cases only, but even in normal cases. In the face of this situation, which always gives the advantage to public order at the expense of freedom, the principle of prioritizing freedom must be activated, especially if there is a conflict between its enactment and public order.)

Within this framework, regulatory authorities, when issuing decisions aimed at maintaining public order, must limit themselves to interpreting the legal texts regulating freedom issued by the legislator and refrain from exercising discretionary power in regulating any freedom, given that they do not possess any discretionary authority in this regard.(Raghib Jibril Khamis Raghib Sakran, p. 335.)

Legal scholars agree that, regardless of the extent of administrative discretion, the objective remains outside the scope of this discretionary power, which is always limited and subject to the oversight of the administrative judiciary.(Mustafa Abu Zaid Fahmy, p. 843.)

It is worth noting that the prohibition against the total suppression of freedom is no longer limited to domestic legal texts, whether constitutional or ordinary, but extends to international legal texts stipulated in international treaties and conventions, including the Declaration of the Rights of Man and of the Citizen. Articles 1 and 2 of this Declaration state that all people are born free and remain equal in rights, and that the aim of the political community is to safeguard these inherent and inalienable natural rights.

This Declaration grants the legislature the authority to set limits on rights and freedoms through Article 4, which states: "No limits may be imposed on freedoms except by law." However, despite this grant and recognition of this authority to the legislature, we maintain that the intention here is to regulate freedom, not to deprive it of it. This is for the simple

reason that the fundamental principle is that a person is free and is only restricted by compelling necessities. Many jurists have affirmed this, emphasizing that just as an absolute ban on freedom cannot be imposed, so too, absolute freedom does not exist; otherwise, we would be in a state of chaos where freedom would cease to exist. Therefore, the legislature must intervene not to suppress freedom, but to regulate it.(Muhammad Asfour, previous reference, p. 28.)

The Algerian constitutional founder followed the same direction, as the text that came in Article 139 of the 2020 constitutional amendment, which authorized the parliament to legislate in the field of people's rights and fundamental freedoms, does not mean that this legislative institution has this power without restrictions, but rather this power remains limited by what is required to balance the freedoms of individuals and the public interest of society, which requires maintaining public order.

Third Branch: Prioritizing Freedom When It Conflicts with Public Order.

The principle of prioritizing freedom means that legal texts, whether those stipulated in the constitution or future legislative texts issued by the parliamentary authority, should be interpreted in favor of freedom as much as possible. This is achieved by avoiding restricting freedom with limitations that burden it and restrict its exercise, except to the extent necessary to balance the interests of individuals, who always strive for freedom from all constraints, with the public interest of society, which is represented in maintaining the state's public order. (Abdul Rahman Azzawi, previous reference, p. 101.)

Interpretation is not limited to legislative texts, whether fundamental or ordinary, but extends to regulations and bylaws issued by the executive authority. While these bylaws often serve to interpret legal texts issued by the legislature, particularly those related to public rights and freedoms, the principle of prioritizing freedom necessitates imposing limitations on the legislative authority, which is constitutionally mandated to regulate public rights and freedoms, as stipulated in Article 139 of the 2020 constitutional amendment. This is to prevent legislation from excessively restricting freedom to the point of making its exercise difficult for individuals.

Some legal scholars have established two conditions for laws issued by the legislative authority regulating rights and freedoms. The first condition pertains to the legislation itself, which must support freedom, not restrict it. The second condition requires that this legislation include a set of safeguards that act as a protective shield for rights and freedoms against any potential abuse of power by the authorities. (Munib Muhammad Rabi', pp. 282-283.)

Fourth Branch: Judicial Review of the Constitutionality of Laws.

The constitution, as the supreme law of the land, empowers the legislative authority to regulate the exercise of individual rights and freedoms through the laws it enacts. However, granting the legislature this power without any oversight can lead to violations of constitutional principles if the legislature oversteps its authority, thus becoming tyrannical in regulating rights and freedoms. In this regard, Professor Ali El-Sayed El-Baz states: "While tyranny can arise from any branch of government, it becomes a devastating threat to freedom when it originates from a tyrannical legislature. In such cases, tyranny will masquerade as freedom, and freedom will be violated in the name of the law. Furthermore, the transgressions of the legislative authority are more stable, persistent, and dangerous than those of the executive authority, given that the former are enacted in the form of laws characterized by their generality and abstract nature." (Ibn Tayfur Nasr al-Din, previous reference, p. 73)

In order to keep legislative power within its defined scope and prevent it from exceeding it, the idea of judicial review of the constitutionality of laws was introduced. This idea arose from the hierarchy of legal rules in the state, with higher rules prevailing over lower ones, which inevitably leads to ensuring the supremacy of constitutional rules. (In order to keep legislative power within its defined scope and prevent it from exceeding it, the idea of judicial review of the constitutionality of laws was introduced. This idea arose from the hierarchy of legal rules in the state, with higher rules prevailing over lower ones, which inevitably leads to ensuring the supremacy of constitutional rules.)

This prevents legislative instability by ensuring the legislature respects rights and freedoms.

The concept of judicial review of the constitutionality of laws emerged in the constitutions of European countries, such as the 1958 French Constitution, which entrusted this task to a Constitutional Council. This council was largely political in nature due to its composition.

World Experience and Comparative Analysis

The principle of legislative exclusivity in regulating public rights and freedoms has been shaped by diverse constitutional traditions across the world. While its theoretical foundation remains rooted in the doctrine of separation of powers, its practical application varies significantly depending on the legal system, political structure, and institutional maturity of each country. A comparative analysis of selected jurisdictions—particularly France, the United States, Germany, and Algeria—reveals both convergences and divergences in how legislative authority interacts with executive power and judicial oversight in safeguarding fundamental rights.

The French Model: From Absolute to Relative Legislative Exclusivity

The French constitutional system represents one of the earliest and most influential models of legislative exclusivity. Following the French Revolution of 1789, the legislature was regarded as the sole expression of the general will, reflecting the ideas of Montesquieu and revolutionary constitutionalism. This led to the establishment of absolute legislative sovereignty, whereby Parliament exercised exclusive authority over lawmaking, including the regulation of rights and freedoms.

However, the adoption of the 1958 Constitution of the Fifth Republic marked a significant transformation. Legislative authority became constitutionally limited, with specific domains reserved for Parliament and others assigned to the executive branch. This shift introduced the concept of relative legislative exclusivity, allowing the executive to participate in norm-making through regulations and delegated legislation.

Additionally, the establishment of the Constitutional Council strengthened judicial oversight, although initially limited to ex ante review. Over time, reforms expanded its role, enabling individuals to challenge laws through constitutional review procedures. The French model thus evolved into a balanced system, where legislative authority remains central but operates within a framework of executive participation and judicial control.

The United States: Judicial Supremacy and Constitutional Rights

In contrast to the French model, the United States adopts a system where legislative authority is constrained by a strong tradition of judicial supremacy. The Constitution establishes a clear separation of powers, but the ultimate authority in interpreting and protecting rights lies with the judiciary, particularly the Supreme Court of the United States.

Through landmark decisions such as *Marbury v. Madison* (1803), judicial review became a foundational mechanism for ensuring constitutional supremacy. Unlike systems that emphasize legislative exclusivity, the U.S. model places constitutional rights above legislative authority, allowing courts to invalidate laws that infringe upon fundamental freedoms.

Moreover, the presence of a comprehensive Bill of Rights limits legislative discretion, ensuring that freedoms cannot be easily restricted by ordinary legislation. While Congress plays a significant role in defining the scope of rights through statutory law, its authority is consistently subject to judicial scrutiny. This results in a system where legislative exclusivity is secondary to constitutional and judicial guarantees.

The German Model: Constitutional Supremacy and Proportionality

Germany provides a distinctive model characterized by strong constitutional safeguards and a sophisticated system of judicial review. The Federal Constitutional Court of Germany plays a central role in protecting fundamental rights, which are enshrined in the Basic Law (Grundgesetz).

Unlike purely legislative systems, the German model emphasizes the principle of constitutional supremacy, where all legislative acts must conform to constitutional standards. A key feature of this system is the doctrine of proportionality, extensively developed by Robert Alexy. According to this principle, any restriction on rights must meet criteria of necessity, suitability, and proportional balance.

In this framework, the legislature retains the authority to regulate rights and freedoms but operates under strict constitutional constraints. Judicial review ensures that legislative and executive actions do not exceed permissible limits. Consequently, the German system represents a highly balanced model, integrating legislative authority with strong judicial oversight and constitutional protection.

The Algerian Model: Hybrid Constitutional Approach

The Algerian constitutional system reflects a hybrid model that incorporates elements of both legislative exclusivity and executive participation. As indicated in the constitutional provisions, particularly Article 139, the legislature is granted primary authority to regulate rights and freedoms. This aligns with the classical notion of legislative exclusivity as a mechanism for democratic representation.

However, in practice, the executive branch retains significant powers, particularly in areas related to public order, security, and emergency governance. This reflects the broader trend observed in many developing legal systems, where executive authority plays an active role in law implementation and regulation.

The introduction of the Constitutional Court in the 2020 constitutional reform represents an important step toward strengthening judicial oversight. This development enhances the protection of rights by providing mechanisms for both prior and subsequent constitutional review. Nevertheless, the effectiveness of this system remains dependent on the independence of institutions and the broader political context.

Comparative Evaluation

A comparative assessment of these models highlights several key observations:

- Legislative exclusivity is not absolute in any modern system; it is consistently balanced by executive functions and judicial review.
- Systems such as the United States and Germany prioritize constitutional supremacy and judicial oversight, limiting legislative discretion more strictly.
- The French and Algerian models illustrate a transition from absolute to relative legislative exclusivity, reflecting the realities of modern governance.
- The effectiveness of rights protection depends not only on legal frameworks but also on institutional strength, democratic culture, and rule of law principles.

Ultimately, the global experience demonstrates that the protection of public rights and freedoms cannot rely solely on legislative authority. Instead, it requires a multi-institutional approach, where legislative, executive, and judicial powers operate in a coordinated and balanced manner.

In Algeria, the constitutional framers established a system of judicial review of the constitutionality of laws with the first constitution of the Algerian Republic in 1963. Despite the constitutional framers' inclusion of this system in the 1963 Constitution, it was not implemented due to the constitution's short lifespan, as it was suspended shortly after its promulgation, lasting only 23 days. Article 64 stipulated: "The Constitutional Council shall rule on the constitutionality of laws and legislative decrees at the request of the President of the Republic or the President of the National Assembly." While this type of oversight of the legislative branch's work regarding the regulation of rights and freedoms was expected to be enshrined in the 1976 Constitution, the constitutional framers did not include it in its provisions. This left the situation unchanged from the 1963 Constitution until the promulgation of the 1989 Constitution, which stipulated the existence of a Constitutional Council tasked with ensuring respect for laws. Article 153 states: "A Constitutional Council shall be established, tasked with ensuring respect for the Constitution." It is clear that the constitutional framers followed the model of their French counterparts in establishing the Constitutional Council. However, the difference between the two lies in the composition of the two councils. While the French Constitutional Council, as previously mentioned, is purely political, this is not the case for the Algerian council due to its mixed composition, which includes both political and judicial members, although the political members constitute the majority. Similarly, the 1996 Constitution also

established a system of judicial review of the constitutionality of laws, exercised by a Constitutional Council entrusted with ensuring respect for the provisions of the Constitution.

According to the previous form of this oversight, which is mandatory for organic laws and the internal regulations of each chamber of Parliament, and optional for other ordinary laws, regulations, and texts, the era of immune legal texts issued by the legislature, as was the case before the 1989 Constitution, has ended. Thus, any law issued by the legislative authority, whether resulting from a bill submitted by the government or a proposal from members of the National People's Assembly, is subject to annulment if it is found to be contrary to the provisions of the Constitution, by a decision of the Constitutional Council. Article 169 of the 1996 Constitution stipulates: "If the Constitutional Council deems a legislative or regulatory text unconstitutional, that text shall cease to have effect as of the date of the Council's decision." This decision is considered final and has absolute authority, not subject to appeal in any way, according to Article 49 of the regulations governing the work of the Constitutional Council, dated June 28, 2000, which states: "The opinions and decisions of the Constitutional Council are binding on all public, judicial, and administrative authorities and are not subject to any appeal." (The specific system for the rules of operation of the Constitutional Council, dated June 28, 2000, Official Gazette of the People's Democratic Republic of Algeria, No. 48, issued on: August 6, 2000.)

Starting in 2016, and on the occasion of the constitutional amendment of that year, the oversight of the constitutionality of laws in Algeria witnessed a remarkable development that positively impacted public rights and freedoms by empowering members of parliament with a parliamentary notification mechanism, while litigants were given the right to challenge the constitutionality of the laws intended to be applied to them. (Articles 187-188 of the 2016 constitutional amendment have already been referred to.)

In an effort to strengthen the process of reviewing the constitutionality of laws, the constitutional framers gave this review a judicial character. This occurred with the recent constitutional amendment of 2020, which transitioned from the Constitutional Council system to the Constitutional Court system. The establishment of the Constitutional Court was stipulated in Article 185 of the 2020 constitutional amendment, which stated: "The Constitutional Court is an independent institution tasked with ensuring respect for the Constitution." Its composition differed somewhat from that of the Constitutional Council, both in terms of the number of members and their qualifications. It comprised twelve members: four appointed by the President of the Republic, including the President of the Court; one elected by the Supreme Court from among its members; one elected by the Council of State from among its members; and six elected by universal suffrage from among professors of constitutional law. The constitutional framers retained the system of prior and subsequent review in this amendment, while obligating the Constitutional Court to issue a ruling regarding the review, unlike the 1996 constitution, which stipulated an opinion rather than a ruling (Article 190 of the aforementioned 2020 constitutional amendment).

In conclusion, we say that imposing oversight on the work of the legislature with regard to the regulation of rights and freedoms is a necessity, and the Algerian constitutional framer has kept pace with the development of this oversight by diversifying the sources of notification when he stipulated the possibility of notification to the Constitutional Court by members of Parliament, because leaving notification limited to the officials of the authority, headed by the President of the Republic, may not yield the desired results, especially if we know that most of the laws regulating public freedoms come through projects from the executive authority represented by the government appointed by the President of the Republic, and therefore it is unreasonable for the officials of the latter to submit a notification about a law submitted by someone affiliated with them, unlike the parliamentary notification which comes from the representatives of the people and always seeks to remove the legal obstacles that restrict individuals' exercise of their freedoms and their enjoyment of their constitutionally enshrined rights.

Conclusion:

In conclusion, this study yields the following results and recommendations:

First, the results:

- The principle of legislative exclusivity, as a mechanism, was necessitated by the urgent need to provide a degree of protection for public rights and freedoms, following the restrictions and deprivations imposed upon them, particularly under monarchical rule, which did not recognize freedom on the grounds that the ruler was considered a representative of God and his orders could not be questioned or refused.
- The principle of legislative exclusivity has achieved several positive outcomes for freedom, given that the legislator is a representative of the people and will therefore be more inclined towards the popular will than anything else.
- Granting the legislature the authority to regulate public rights and freedoms does not mean excluding the executive branch from regulating these rights and freedoms, nor does it mean allowing individuals to do as they please. Rather, it means that the legislature establishes the general framework for freedom, while the executive branch undertakes the task of implementing these laws in accordance with the public interest of the state, which guarantees the integrity of public order. The political system plays a significant role in the success or failure of the principle of legislative autonomy. The more democratic the system, the greater the success, and the opposite is true for authoritarian regimes.

Secondly: Recommendations: Among the most important recommendations stemming from this study are: - The necessity of creating a balance between the executive and legislative branches in the field of rights and freedoms, such that the work of one is incomplete without the other, thus achieving the desired balance between public order and freedom.

- The constitutional framers should strive harder to define the scope of executive intervention in the field of rights and freedoms, ensuring that such intervention remains an exception and does not become the general rule, as is the case with intervention in parliamentary affairs.
- Restricting the mechanisms by which the president interferes in legislative work through decrees concerning individual rights, limiting such intervention to matters of urgent necessity.

Ethical Considerations

This study adheres to internationally recognized ethical standards in academic research and publication. The research is based exclusively on doctrinal and analytical examination of legal texts, constitutional provisions, and scholarly literature. No human participants, personal data, or sensitive information were involved in the research process.

All sources have been properly acknowledged and cited in accordance with academic integrity principles. The authors confirm that the manuscript does not involve plagiarism, fabrication, falsification, or misrepresentation of data. The study complies with general ethical guidelines consistent with international standards such as those promoted by the Committee on Publication Ethics.

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- Literature review and theoretical framework: All authors
- Analysis and interpretation: All authors
- Writing – original draft preparation: All authors
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The authors confirm that this manuscript is original, has not been published previously, and is not under consideration for publication elsewhere. All sources have been appropriately cited, and the manuscript complies with standard plagiarism thresholds.

AI Use Statement

The authors declare that no generative artificial intelligence tools were used in the development of the research content, analysis, or conclusions. Any language editing tools used were applied solely to improve clarity and readability and did not influence the intellectual content of the work.

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