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HANDOUTS

INTRODUCTION TO THE LEGAL SYSTEM (MODULE 2)

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It is a useful tool for studying the subject, but does not guarantee preparation as exhaustive and complete as the material recommended by the University.

Introduction to the Legal System II

General Exam - Attending Students

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What is a Legal System?

When humans coexist in social groups, legal systems naturally emerge. These systems are inherently social, as expressed by the Roman maxim ***ubi societas, ibi ius*** (where there is society, there is law). Key elements of legal systems include:

- **A plurality of individuals coexisting**: A social group is formed by individuals united by common goals or interests.
- **Shared criteria to evaluate behaviour**: **Relationships** within the group are governed by **norms**, leading to the establishment of rights, obligations, and other legal situations.
- **Rules making some behaviors illicit and redrawing others**: **Authority** is legitimized within the group, with **power** structures based on the group's complexity. Political power can take the form of traditional, charismatic, or legal-rational authority (as classified by Max Weber).
- **An authority within the group with some form of law making power and power to enforce rules**: To ensure compliance, authority employs means of coercion, including sanctions, which vary by time and place, reflecting the system's complexity.

These elements collectively form the basis of legal systems in any social group.

Throughout the 20th century, public law scholars debated the nature of legal systems, resulting in two major classifications:

- **Hans Kelsen** and the Vienna School emphasized a **normative approach**, classifying legal systems based on the types and structures of laws, their validity, effects, and hierarchical positioning. This is known as the "normativistic" concept.
- **Santi Romano and Maurice Hauriou** emphasized a **institutionalistic approach**, focused on sociological aspects, including the structure of the group, its members' roles, and authority.

Classification of Legal Systems

- **Fluidity**:
  - **Fluid**: no central authority (international law)
  - **Concentrated**: strong central authority (last decider, the State)
- **Specialization**:
  - **Specialist**: rules governing only specific sets of relations (WTQ the Church)
  - **General**: pursuing general aims, aspiration to govern all spheres of life (the State, The EU)
- **Voluntarity**:
  - **Voluntary**: people come together out of common will, interest, need or belief (political parties, associations, professional organizations)

  - **Necessary**: people cannot opt out of the system, mostly territorial (residents in a town, citizens in a Nation State)

- **Sovereignty**:
  - **Non-Sovereign**: require authorization and legitimation by a sovereign to exercise power (regions, local councils, government agencies, but also EU, their power is not sovereign because it is derived from the State)
  - **Sovereign**: sovereign power is self-sufficient, it doesn't need external legitimation (The State)

The State

- **Objective**: the State legal system is founded to actively pursue general goals or ends
- **Concentration**: it is concentrated and necessary
- **Distinguishability**: the State as an original or non-derived entity can be distinguished from derivative entities.
- **External sovereignty**: independence from sovereignty of other states and actors
- **Territorial jurisdiction**: each state has its own territorial area of jurisdiction.
- **Internal sovereignty**: the sole existence of a single political power to which all in that territory are subject to, becomes the unifying element. Binding together the participants in a given legal system.

Montevideo Convention 1933:

- **Art 1**: the state as a person of international law should possess the following qualifications:
  - A **permanent population**
  - A **defined territory**
  - A **government**
  - **Capacity** to enter into **relations** with the **other states**
- **Art 2**: the federal state shall constitute a sole person in the eyes of international law.
- **Art 4**: states are juridically equal, enjoy the same rights and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

Characterizing elements of the State Legal System:

Territory

- The authority of the State is exercised over geographically defined state borders, a distinct territory, normally contiguous.

NB difference with medieval organization, fuzzy borders, frequently changing (acquired through marriage or inheritance), overlapping authorities

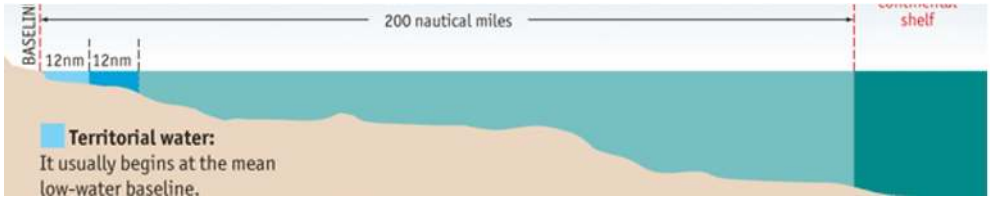
- Role of international law and international conventions in determining state borders

The elements that constitute the territory itself are:

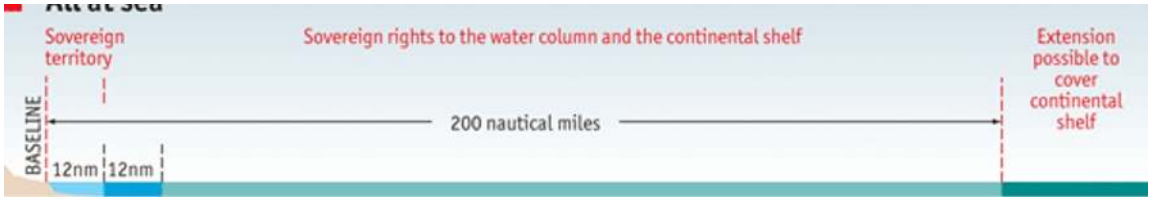
- **Dry Land**:

- **Territorial seas** (maritime waters): Montego Bay Convention, 1982 - sea miles, beyond-open sea

- **Continental shelf**: outside of territorial seas, Geneva Convention 1958, a depth of 200 meters.



- **Areal space**:



- **Subsoil**: no definition asked

Sovereignty

Sovereignty is the ultimate form of political authority

- **External dimension**: each sovereign state has equal rights and recognizes no superior authority - Westphalian paradigm
- **Internal dimension**: the state has supreme authority over subjects/citizens/other entities or legal systems that may claim authority within it. This sovereign power is chiefly exercised through Law - it is **law-making power**.

The concept of sovereignty profoundly changes with Constitutionalism, with the ideas of Rule of Law, Human Rights, and with International Law.

The legitimization of sovereign power is based on:

1. **Theocratic theories**: divine nature of authority
2. **Legitimization theories**: historical roots of royal institutions
3. **Contractualist Theories**: a social contract is at the basis of State authority, this consent of the governed
4. **Theories basing sovereignty upon the idea of the Nation - Nationalism**: coincidence of ethnically or culturally defined nations with the State
5. Theories that attribute **sovereignty** to the **public legal personage** of the **State**
6. **Democratic constitutionalist theories**: it is the will of the people that grants power to the State

People

Doctrinal debate that has led to the formulation of 4 separate theories regarding the nature and the content of the concept of the "people" itself:

- The theory of the people as a **constitutive element of the State**
- The theory of the people as the **object of State sovereignty**
- The theory of the people as **subject of rights toward the State**
- The theory of the people as **creator of the State's will**

Contemporary constitutions conceive the people as **holders of sovereignty who exercise it through the institutions of representative and direct democracy**.

Italian constitution, art I: Sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the constitution

Citizenship is a concept identifying the condition of being bound to a given State, from which the individual:
receives certain rights => to which he or she owes certain obligations => is forced to respect certain duties

For EU citizens there is also the European citizenship.

2 criteria are used as distinctive elements to differentiate citizens from aliens:

- Ius sanguinis
- Ius soli

Citizenship can be:

- acquired by **birth**
- Acquired **later** in life
  - Ius connubii
  - Obtained by law
  - Naturalization by the President of the Republic
- **Revoked**

Historical Evolution

Forerunners of the State: Greek polis, roman civets and medieval kingdoms. However, the State system as we know it only affirms itself with the end of the Middle Ages.

Conventional date is the Peace of Westphalia ending the religious wars and solidifying dynastic states across Europe. "Cuius rex, eius religio"

These states become sovereign in the modern sense. Here the difference:

Medieval states:

- **Complex** and **overlapping**, **jurisdictions** of towns, lords, kings, emperors, popes and bishops, professional organizations
- **No clear hierarchies**, **nor** an **ultimate political authority**, or a **unitary system of law**.

Modern states:

- State has **continuity in Time and Space** - States survive changes in leadership and last over time.
- **Centralization** of **power** administered through different institutions
- **Sovereignty**: the state has the ultimate authority.

Beyond the State

- **Classical constitutionalism**: focuses on the idea of the Nation State
- **Globalization**: a new phenomenon that creates a world marketplace where goods, workers and capital move freely across national borders.
- Due to interconectedness more and more **activities** are **regulated** at the **supranational level**.

Multi-level governance:

- Transfer of powers to supranational organizations (EU,IMF,WTO,NATO,UN)

- Supranational organizational are involved in the exercise of public power and the production of norms at the supranational level.

NB these norms apply to individuals as much as States and they coexist and interact with national law.

Multi-level constitutionalism:

- Supranational organizations are subject to checks and balances as much as the State and have to respect human rights.
- Supranational diffusion of judicial review and international courts.

Forms of State and Government

On the one hand the **FORM OF STATE** refers to the **relationship between** the **State** (the sovereign) and its **citizens**. This is described as a **vertical** relationship, illustrating the connection between authority and liberty, as noted by political theorist ***Costantino Mortati***. In this sense, the **holder of power** (the State) governs the **subjects of that power** (citizens). Notable examples of democratic pluralistic states include both the UK and Italy.

On the other hand, the **FORM OF GOVERNMENT** describes **how power is distributed among different branches of government**. This is a **horizontal** relationship between constitutional bodies (such as the parliament, head of state, and head of government), which share sovereignty and independence. Understanding the distinction between these two concepts is crucial, as it reflects the structural organization of a state and the interaction of its institutions.

Forms of State (FoS)

We need to make 2 observations before examining the various forms of state.

- First, **the rules governing the relationship between the central government and sub-national entities are included in the concept of the form of state**, though this is debated. Some scholars view this relationship as part of the form of government, while others argue it influences both state-citizen interactions and relationships between constitutional bodies.
- Second, the concepts of ***form of state*** and ***form of government*** are distinct in **Italian public law** but are often **treated as synonyms in English-speaking countries**, where ***form of government*** is used more broadly to refer to the entire state structure. This difference arises from the English term ***government*** encompassing all branches of power, unlike the Italian ***governo***, which refers specifically to the executive. Similar linguistic variations exist in other countries, such as France using ***régime politique*** and Spain employing ***forma política,*** which blends the two notions, as seen in Article 1.3 of the Spanish Constitution.

There are two primary methods used to classify forms of state:

1. **Diachronic Method**: This **historical** method classifies forms of state based on their **evolution over time**. It highlights the stages a state goes through, from earlier to more developed forms, including: Feudal State, Absolutist State, Liberal State, Democratic Pluralistic State, Welfare State, Totalitarian and Authoritarian States, Socialist States
2. **Synchronic Method**: This **contemporary** method focuses on the **territorial organization of a state** and **how power**, particularly legislative power, **is allocated** between the central government and sub-state entities. It provides a current snapshot of how states are structured.

Forms of Government (FoG)

Classifying helps organize different government forms by naming and distinguishing them, allowing for analysis of their advantages and disadvantages.

Examples:

- Debates about the virtues of **parliamentarism** versus the perils of **presidentialism**.
- Studies on **Constitutional Design** try to determine the optimal form of government based on specific socio-political contexts.
- These debates often focus on balancing **government effectiveness**, **political representativeness**, and respect for the **Rule of Law**.

Viktor Orbán, Prime Minister of ***Hungary*** and leader of the Fidesz party, leveraged a two-thirds parliamentary majority after 2010 to pass laws and amend the constitution, favoring his party. He approved an electoral law that redrew districts to benefit Fidesz and, in 2011, promoted a new constitution. This constitution centralized power, revised the judiciary, and altered electoral laws, further entrenching Fidesz's control. These reforms sparked national and international criticism, with many accusing Orbán of undermining democracy and consolidating authoritarian rule. Ultimately, Orbán's actions have made Hungary's political system increasingly centralized under his leadership. Switching to presidential system would mean introduction of term limits.

"Presidentialization" of parliamentary systems.

To classify Forms of Government we use the approach of political scientist **Robert Elgie**.

- **Dispositional Properties**: formal rule that divide power between various constitutional bodies:
  - We find them in the written constitution or in constitutional conventions/practice
  - Related to the government's own disposition, its morphology or internal organization
  - External factors (politics, electoral system9 or political circumstances do not influence this classification.

  Triangle: political system, electoral law, form of government.
- **Relational Properties**: concern the exercise of power, influenced by external factors like the electoral system.
  - They concern the actual exercise of power
  - Beyond formal rules
  - We find them by observing the political system and the practice of government
  - Elgie does not think relational properties are a good basis for classification and he prefers to resort to dispositional properties.

DIACHRONIC Method

Ancient Greece: In early classifications of political power, **no distinction was made between the form of state and the form of government**. Aristotle categorized governments into three "good" types: **monarchy** (rule by one), **aristocracy** (rule by the few), and **polity** (rule by the many), which he believed could degenerate into **tyranny**, **oligarchy**, and **democracy**. Notably, Aristotle viewed democracy negatively, associating it with disorder and lawlessness caused by rule by the masses.

Early thinkers like **Machiavelli** in ***Il Principe*** distinguished between **principalities and republics**, while **Montesquieu** in ***L'esprit des lois*** categorized **governments** into **republics**, **monarchies**, and **despotisms**. Historically, **monarchy and republic** were key in **defining political systems**.

- **Monarchies** were characterized by kings claiming transcendent legitimacy and personifying the state
- **Republics** featured heads of state legitimized by popular vote and considered representative.

This distinction blurred with the shift to parliamentary monarchies and the rise of republican principles, as **modern democratic forms of state and government are no longer defined by whether the head of state is a monarch or an elected leader**.

The **concept of the form of state** emerged with the rise of **nation-states**, which some historians trace to the **late 14th century**, while others pinpoint the **Peace of Westphalia** (1648) as the key moment. This treaty marked a new European order, introducing principles like ***cuius regio, eius religio*** (the ruler's religion determines that of the people).

Over time, 5 main forms of state have been identified: the **feudal society** (patrimonial state), the **absolute state**, the **liberal state**, the **totalitarian state**, and the **democratic pluralistic state**.

1. **FEUDAL SYSTEM (8th-12th Centuries)**: The feudal society, also called the **patrimonial state**, dominated Europe from the 8th to 12th centuries, originating with the **Carolingian Empire** (and some argue the Merovingian Empire after the fall of the Western Roman Empire in 476). It cannot be considered a state in the strict sense, as the **feudal lord or king fully identified with the land and wielded power over its inhabitants primarily to serve their own needs**, not the public interest. Feudal societies were organized through **private agreements among lords**, with the primary goal of **protecting land and its possessions**, including peasants, from external threats. **Land ownership conferred rights over everything on it**, including **justice administration and tax collection**. This system prioritized the lords' interests, reflecting its patrimonial nature.
2. **ABSOLUTE STATE:** The transition from feudalism to the absolute state began in the 14th century with the **centralization of power under monarchs in countries like England, France, and Spain**, alongside the shift from a land-based to a **money-based economy**. This process varied across regions; for instance, **England is often considered to have bypassed full absolutism, while France epitomized it under monarchs like Louis XIV**. Key characteristics:
    - The king held **supreme authority** (sovereignty), ruling without restrictions. However, in England, the Magna Charta introduced limitations on personal freedoms.

- Absolutist states aimed to **fulfill the general interest of the people**.
- **centralized bureaucracy**,
- **Expanding colonial aspirations** requiring a **standing army** funded through a **uniform taxation system**.

Monarchs like ***Louis XIV*** **weakened noble power**, **expanded state control**, implementing economic policies like **mercantilism** under figures such as Jean-Baptiste Colbert, though these efforts were sometimes undermined by overspending on wars.

Enlightened absolutism emerged as a **variant**, where rulers influenced by Enlightenment principles upheld their divine right to rule but **aimed to improve their subjects' lives**. Some rights were recognized, such as:

- **Freedom of speech**,
- **Property rights**,
- **Religious toleration**.

However, these rights were revocable, and no permanent constitutions were granted. Enlightened monarchs included Frederick II of Prussia, Catherine the Great of Russia, and Maria Theresa of Austria.

3. **The Crisis of Absolutist State** arose from **financial strain** due to **expanding bureaucracies and militaries**, socio-economic changes driven by the **Industrial Revolution**, and the **rise of the middle class seeking greater political power**. The transition to the liberal state varied significantly across countries:
   - **England**: The liberal state emerged relatively **early and gradually**, following Parliament's victories in the ***English Civil War*** (1649) and the ***Glorious Revolution*** (1688), which limited royal power and established a constitutional monarchy.
   - **US**: The liberal state was established after the ***War of Independence*** (1776) and the adoption of the ***1787 Constitution***, with a focus on individual rights and property, free from aristocratic influences.
   - **France**: The transition was **violent** and marked by the ***French Revolution*** (1789), where the bourgeoisie fought against the nobility and clergy, oscillating between liberal and radical ideologies.
   - **Germany and Italy**: The liberal state emerged through ***top-down*** **processes** driven by Prussia and the Kingdom of Sardinia, resulting in more centralized systems due to the weak bourgeoisie and strong aristocratic landowners.

   The **LIBERAL STATE** was characterized by **limited government functions**, **individualism**, and the **rule of law**. It **separated state and society**, **emphasized representative government**, and adhered to the **principle of separation of powers**. Unlike absolutism, **power was legitimized by popular or national sovereignty** rather than divine rights. However, it remained a mono-class system with **limited suffrage based on wealth**, excluding large portions of the population,

including women. This exclusion contributed to the liberal state's eventual crisis, paving the way for the democratic pluralistic state or other alternatives.

4. **The Democratic Pluralistic State (20th Century)** emerged from the transformation of the liberal state into a **multi-class society**, recognizing and protecting a plurality of groups, interests, ideas, and values. Key historical developments included the extension of voting rights, culminating in **universal suffrage**. Its main features are:

   - The rise of **mass political parties** involving millions of voters.
   - **Elected bodies** as platforms for **representing** and **debating** diverse **interests**.
   - Recognition of both **first-generation** (civil and political) **rights** and **second-generation** (social and economic) rights.

   The transition to the democratic pluralistic state varied across countries. In Italy and Germany, it was marred by the interlude of Fascism and Nazism, while in GB and the US, it occurred more gradually.

   After WWII, some European nations adopted the ***Welfare State***, notably Britain with its landmark ***National Health Service (NHS)***, guided by the Beveridge Report's principles of state and individual cooperation for social security. Over time, many post-war welfare states evolved into liberal democratic states, characterized by privatization and adherence to the principle of subsidiarity, particularly within the context of the EU. The **Nordic model** offers a parallel example, characterized by universal welfare provisions and a focus on labor market policies, supported by higher taxation to sustain an extensive social safety net.

Alternatives to the Democratic Pluralistic State

1. The crisis of the liberal state did not always lead to democratic pluralism; some nations transitioned into **TOTALITARIAN OR AUTHORITARIAN STATES**. Totalitarianism, as defined by ***Friedrich*** and ***Brzezinski*** in their 1956 work **Totalitarian Dictatorship and Autocracy**, meets 6 criteria:

   - An official ideology
   - A single political party
   - A centrally directed economy
   - Party control of mass communications
   - Party control of the military
   - A secret police

   In contrast, ***Juan Linz*** (1964) defined authoritarian regimes as systems with limited political freedom, where the regime justifies itself as a ***necessary evil*** capable of addressing societal problems like poverty or insurgency. Such regimes limit the powers of other state institutions and suppress political opposition.

Key features of both authoritarian and totalitarian states include:

- Weakening or elimination of checks and balances.
- Suppression of judicial independence and parliamentary powers.
- Domination of the executive over the bureaucracy and military.
- Widespread use of force and intimidation.
- Significant limitations on basic individual rights.

The **difference** between the two lies in the **role of political parties**.

- **TOTALITARIAN states** are ideologically driven **one-party systems** that aspire to control all aspects of life (Hitler, URSS, Mussolini). Think about the Minculpop. There is **no pluralism**.
- **AUTHORITARIAN regimes** often have **weak party systems** driven by the ambitions of **individual leaders** or juntas (Franco, Pinochet)

Fascism emerged as a response to the failure of the Liberal State, which was seen as too fragmented to defend national interests. Fascist regimes:

- Suppressed political pluralism and **concentrated power in specific party institutions**, such as the Grand Council of Fascism in Italy.
- **Centralized** both executive and legislative **powers** in the HoG.
- Sought to **control all aspects of social and private life**, leading to a return to command economies and corporatism.
- Notably, Italy's Fascist state promoted the slogan: "Everything within the state, nothing outside the state, nothing against the state."
- We must remark that Mussolini (as well as Hitler in Germany) didn't changed the constitution, as it happens in a socialist state.

Other examples include **Nazi Germany** (1933–1945) as a **totalitarian** state, while **Franco's Spain** (1936–1975) and **Salazar's Portugal** (1926–1974) are generally considered **authoritarian** due to **weaker ideological systems**, though their classification is debated.

2. **SOCIALIST STATE**: first established in Russia after the October Revolution (1917), was rooted in **Marxist-Leninist theories**. It aimed to **eliminate the bourgeoisie**, **abolish private property**, and create a **classless society without social conflict**. The economic model replaced the market economy with a **collectivist system**, where the **state monopolized the means of production**.

   Initially, the Proletarian Dictatorship was meant to be **transitional**, but **the need for a state structure persisted**, especially due to perceived threats from bourgeois states. This led to a strong **central government**, exemplified by the Stalinist Constitution of 1936, and later evolved into the ***state of all the people*** under the Soviet Constitution of 1977.

   However, not all socialist states followed the same path. A notable example is **Yugoslavia**, under the leadership of ***Josip Broz Tito***, who claimed an autonomy from Stalin that the Soviet leader

found intolerable. Tito frequently emphasized that the Yugoslav resistance had played a decisive role in defeating the German forces in the Balkans, independently of Soviet support. Yugoslavia thus represented an alternative model of socialism, less planned and centralized compared to the Soviet system. The country positioned itself as a leader of the **Non-Aligned Movement**, a group of nations seeking to remain independent from both the US and the USSR during the Cold War. This made Yugoslavia's approach to socialism distinct from the Soviet Bloc, as it pursued a unique path of non-alignment and less rigid economic control.

Waves of Democratization

Samuel Huntington (1991) identified three waves of democratization:

1. **First Wave (1828–1926)**:
   - Began in the 19th century, driven by the American and French revolutions.
   - Spread mainly across Europe and North America, introducing broader voting rights and parliamentary systems.
   - Key countries: **United States**, **United Kingdom**, **France**.
   - **Reverse wave**: In the 1920s-30s, the rise of fascism and communism led to democratic backsliding.
2. **Second Wave (1943–1962)**:
   - Post-World War II democratization, spurred by the defeat of the Axis powers.
   - Democracies established in **Germany**, **Italy**, **Japan**, and newly independent countries in Asia and Africa.
   - **Reverse wave**: The 1960s and 70s saw coups and authoritarian regimes in parts of **Latin America**, **Africa**, and **Asia**.
3. **Third Wave (1974–Present)**:
   - Started with the **Carnation Revolution** in Portugal (1974), followed by transitions in **Spain**, **Greece**, and **Latin America**.
   - Accelerated after the fall of the Soviet Union, with democratization in **Eastern Europe** and former communist states.
   - **Recent backsliding**: Regressive trends in countries like **Russia**, **Turkey**, and rising populism globally challenge democratic norms.

Huntington also raised the question of whether the 2010s marked a **Fourth Wave** with the collapse of several dictatorships during the Arab Spring or if the world was experiencing democratic backsliding in response to global events like the Great Recession.

Protests and Democratic Backsliding:

- In **Belarus**, protests erupted following the 2020 presidential elections, where A. Lukashenka, in power since 1994, faced significant opposition.
- In **Iran**, protests in 2022 called for the overthrow of the Supreme Leader following the death of Mahsa Amini in police custody, sparking widespread demonstrations under the slogan "Woman, Life, Freedom."

Liberalism and Democracy, while often intertwined, are distinct concepts:

- **DEMOCRACY**: refers to the rule by the people, typically through representative institutions where sovereignty rests with the populace.
- **LIBERALISM**, by contrast, refers to limitations on government power to protect individual liberties, as outlined in constitutions.

Countries can be democratic without being liberal. Fareed Zakaria's 1997 concept of **Illiberal Democracy** describes regimes that conduct free elections but fail to build the liberal institutions necessary to protect individual rights. Hungary under Viktor Orbán is a prime example, where Orbán's government has promoted an "illiberal democracy," focusing on national competitiveness and rejecting Western liberal models.

In a liberal democracy, constitutional limitations on state power are central, but in an illiberal democracy, these safeguards are often undermined. This erosion of liberalism can lead to a form of autocracy.

Destruction of Democracy: Democracies can be destroyed not only by military coups but also by elected leaders who gradually subvert democratic processes. This erosion is often subtle, with leaders rejecting democratic rules, denying the legitimacy of their opponents, tolerating or encouraging violence, and curtailing civil liberties. Political parties play a critical role in preventing the rise of authoritarianism by keeping extremists out of power and resisting alliances with anti-democratic forces.

Germany: alternative for Deutschland case. Gobbels and voltaire.

Modern Authoritarianism: Russia's Legal Transformation: The rise of "Ruscism" or Russian fascism under Vladimir Putin is an example of how authoritarian regimes manipulate legal frameworks to suppress dissent and centralize power. Key characteristics include historical revisionism, centralized executive power, suppression of civil liberties, and state control over mass communication.

SYNCHRONIC Method

Forms of state can also be classified based on territorial organization, focusing on the division of powers between the central government and sub-state entities (e.g., regions, Länder, provinces, states). These structures vary significantly across countries, making classification complex. Broad categories include **unitary states** (e.g., France), **fully federal states** (e.g., Germany), **regionalized unitary states** (e.g., Spain), and **devolving unitary states** (e.g., the UK).

Key Distinctions:

- **Unitary States**: **Legislative power** resides exclusively with the **central government**. Sub-state entities (e.g., departments in **France**) are administrative and lack legislative authority.
- **Decentralized States**: **Legislative power** is **shared between the central government and sub-state entities**, representing a **vertical separation of powers**. These states are further divided into:
  - **Federalism**: Sub-state entities (e.g., U.S. states, German Länder) have **significant autonomy**, often including **their own judicial systems**, **representation in a second chamber of parliament**, and **involvement in constitutional amendments**.
  - **Regionalism**: Sub-state entities have more **limited legislative powers** compared to federal states, with **variations in fiscal and judicial autonomy**.
  - **Devolution**: Power is transferred from central government to regional governments, but the central government retains ultimate authority.

Italy presents **unique classification challenges**, especially after the reforms of Title V, Part II of its Constitution, which redefined the relationships between the state and its regions. Constitutionally described as ***one and indivisible*** (Art. 5), Italy operates a complex **multi-level system of territorial autonomy** comprising Municipalities, Provinces, Metropolitan Cities, Regions, and The State, all of which are integral components of the Republic. Italy has **15 Ordinary Regions** and **5 Special Regions** with varying levels of autonomy. Special Regions, such as Trentino-Alto Adige, enjoy greater powers, often linked to **international treaties or specific historical agreements**. For example: ***Trentino-Alto Adige/Südtirol*** benefits from enhanced autonomy due to agreements addressing its unique cultural and linguistic diversity. The ***Lateran Pacts*** between Italy and the Vatican established historical arrangements, including the recognition of Catholicism as Italy's state religion, which was later modified to reflect the secular nature of the modern Italian state.

The **reforms of 1999 and 2001** significantly **redefined the allocation of legislative powers**:

- Strengthened the statutory powers of ordinary regions.
- Expanded the legislative competences of regions in areas previously reserved for the State.
- Introduced a more decentralized governance structure while maintaining national unity.

These reforms underscore Italy's ongoing evolution towards balancing national unity with regional autonomy within a complex constitutional framework.

Federal and Regional Systems

FEDERALISM: comes from the Latin word ***foedus*** (meaning "treaty" or "agreement"). Friedrich describes federalism as a ***federalizing process*** traditionally seen as a **bottom-up approach** to unification. In this model, federalism results from the unification of smaller, independent states or regions. The intermediate stage before forming a federal system is a **confederation**. Thus, in its original form, federalism can only arise through the union of independent entities.

However, ***Belgium*** provides a clear **counterexample** to this view. Although federalism is typically seen as a bottom-up process, Belgium demonstrates that federalism can also develop **top-down**. Historically a **unitary state**, Belgium transitioned to a federation due to internal conflicts between its **Flemish-speaking** and **French-speaking** populations. This shift to federalism helped maintain balance in the country, avoiding both full separation and the continuation of a purely unitary system.

Differences Between Federal and Regional Systems:

- **Constitutional Competence/Allocation of Legislative Power**:
  - **Federal System**: The constitution defines a list of subject matters that are under the **exclusive competence** of the **central** government. All **residual subject matters** fall under the competence of the **member states**.
  - **Regional System**: The constitution assigns specific subject matters to the **exclusive competence** of the **regions**, while the **residual subject matters** remain under the **central government's authority**.

  Shared or Concurrent Legislative Powers: Many federal systems include **shared legislative powers** between the central government and the member states. Typically, the **central government** approves a **framework law** that sets broad guidelines. The member states must **legislate within** these **boundaries**. Any law enacted outside these guidelines is considered **ultra vires** (beyond legal authority). It is similar to an **EU directive**.

  In both systems, the role of the **Constitutional court** is crucial in reducing conflicts between the central government and the regions or member states, ensuring that neither oversteps its legal boundaries.

  Exceptions include:

  - **Canada** (a federal state): Residual powers are assigned to the central government rather than provinces (Art. 91 of the 1867 Constitution Act).
  - **Italy** (a regional state): Residual powers are given to regions (Art. 117.4).

  Despite these exceptions, Canada remains a federal state, while Italy is a highly devolved regional system.

- **Allocation of Judicial Power**:
  - **Federal System**: Member states have their own judiciary systems, creating two distinct levels of courts: **federal courts** and **state courts**. **Judicial Models**:
    - **Separated Model (US)**: Judges are elected, and criminal law differs between states, leading to different penalties for the same crime depending on the state.

    - **Integrated Model (Canada)**: There is one **unified criminal code** across all regions, with differences only in legal interpretation, not in the law itself.
  - **Regional System**: Regions do not have their own judiciary systems. For example, in Italy, while there are regional administrative courts (like the **TAR,** which is NOT an exception), they follow the same legal code across all regions. Appeals are handled by the **Consiglio di Stato**, ensuring uniform application of the law.

  Thus, federal systems may exhibit varying degrees of judicial independence, while regional systems like Italy's retain centralized legal structures.

- **Parliamentary Representation**:
  - **Federal System**: The **second chamber** of parliament represents the **sub-national entities** (member states). There are two forms of representation:
    - **Equal representation**: as in the US, where each state has two senators.
    - **Weighted representation**: as in Germany, the Bundesrat members are appointed by the Länder executives, with representation weighted by population (e.g., Baden-Württemberg has six members, while Saarland has three). Similarly, in Austria, members of the Upper House are elected by Länder legislatures with weighted representation
  - **Regional System**: The **second chamber** does NOT represent sub-national entities. In Italy, the system is ***bicameralismo paritario***, meaning both chambers have equal powers and do not reflect regional or territorial representation even if in Italy the Senate is elected on a regional basis but represents the nation as a whole.

- **Amendment Procedure**:
  - **Federal System**: member states take part in the constitutional amendment procedure
    - In the **US**, a constitutional amendment requires not only a two-thirds majority in both houses of Congress but also ratification by **¾ of the state legislatures**. This ensures that both the federal government and the individual states are involved in the process.
    - In **Germany**, amendments require approval from ⅔ of both the **Bundestag and the Bundesrat**, where Länder are represented. Additionally, Germany's Basic Law (Art. 79.3) prohibits amendments affecting the federal structure or fundamental principles.

    This process ensures that the division of powers and autonomy of member states are maintained, preventing unilateral changes by the central government that could undermine the federal structure.
  - **Regional System**: regions do NOT take part in the constitutional amendment procedure. The central government has the exclusive authority to amend the constitution, and regional governments do not have the formal power to influence or block amendments.
    - In **Italy**, constitutional amendments are passed by the national parliament and do not require input or approval from regional governments. While regional councils can request a referendum on amendments (Art. 138 It. Const.), they cannot propose or modify amendments.

Their role is limited to accepting or rejecting proposals, highlighting their lack of constituent power.

  - The **United Kingdom** follows a similar approach: while there are devolved governments (e.g., Scotland, Wales, Northern Ireland), they do not have a formal role in amending the constitution (which is largely unwritten and based on statutes).

- **Statues of Autonomy or Constitution**:
  - **Federal System**: Member states typically have their own constitutions. For example, in the **US**, the states retained their constitutions from the Confederation era (pre-1787). These state constitutions are subordinate to the U.S. Constitution and federal law but take precedence over state laws. The development of federal systems often involves a "federalizing process," as described by Carl Friedrich, where autonomy evolves dynamically
  - **Regional System**: Sub-state entities, like Italian regions, have **statutes of autonomy** instead of constitutions. Even if these statutes were renamed "constitutions," it would not make Italy a federal state, as their legal status and role remain limited compared to federal systems.
- **Financial resources**: there is no system of decentralization.
  - **Federal System**: there is typically a **system of decentralization of financial resources**. Both the central (federal) government and the member states have the power to raise revenues, make budgetary decisions, and manage their financial affairs.
    - In the **US**, both the federal government and the states have independent powers to collect taxes (e.g., income tax, property tax, sales tax). Additionally, states have their own budgets and can allocate resources as needed.
    - In **Germany**, the Länder (states) also have significant control over their budgets, and there are complex mechanisms for redistributing resources between the central government and the states.
  - **Regional System**: there is **less decentralization** of financial resources compared to a federal system. Regions are often financially dependent on the central government, and they have limited or no authority to raise their own revenues.
    - The central government typically retains control over major sources of revenue, such as national taxes, and allocates funds to regional governments based on central priorities. Regions depend on **transfers** from the central government for their funding, which limits their financial autonomy.
    - In **Italy**, regions have limited fiscal powers. Most tax revenues are collected by the central government, and regions receive funding through transfers. Although some regions, especially those with special autonomy (e.g., Sicily), may have more financial control, the central government still plays the dominant role in financial matters.
    - In the **UK**, devolved governments (e.g., Scotland, Wales) have some control over spending but rely heavily on funds allocated by the central government through mechanisms such as the Barnett Formula.

FoG 1: Parliamentary Executive

The parliamentary form of government originated in **GB**, where its structure evolved through **political practice** rather than codified law, given the absence of a written constitution. The development of the Prime Minister and Cabinet as autonomous bodies was marked by key historical moments:

- The resignation of Lord North in 1782 established that the King had to appoint a Prime Minister who could command a parliamentary majority.
- In 1835, the dismissal of Lord Melbourne and the reappointment of a Prime Minister with majority support further diminished the monarch's executive powers.
- By the mid-19th century, the Prime Minister and Cabinet operated independently from the Crown.

In a **parliamentary** executive system, the roles of the **Head of State** (HoS) and the **Head of Government** (HoG) are clearly **distinguished**, each playing a pivotal role in maintaining the balance between the executive and legislative branches.

The **HoS** typically represents the **broader political consensus of the nation**. The HoS:

- Is **elected** by **parliament** in **republics** for a fixed term (e.g. Italy) or serves for **life** in **monarchies**.
- Holds formal powers, such as the **dissolution** of **parliament**.

The **HoG**, usually the Prime Minister (PM), is the **political leader of the executive branch**, responsible for the day-to-day running of the government. PM is not an Italian name. It is inappropriate to call the Presidente del Consiglio dei Ministri PM because he doesn't have the same power as the one from the UK: **he cannot dismiss the ministry;** if the minister doesn't want to resign the president cannot do anything. The HoG:

- In most parliamentary systems, is **appointed by the HoS** following parliamentary elections
- must maintain the **confidence** of the legislature to remain in office. The HoG serves **without a fixed term**, staying in power as long as they have the support of the parliamentary majority.
- Unlike in the UK, the Italian PM cannot unilaterally dismiss ministers, reflecting a more limited executive authority.

Parliament is the only institution with **direct popular legitimacy**, elected by the citizens. Depending on the country, it can be either **unicameral** or **bicameral**, as in Italy, where the Chamber of Deputies and the Senate both play roles in governance. The relationship between the parliament and the government is central to the functioning of the parliamentary system. The government's legitimacy rests on maintaining the confidence of the parliament. Should the HoG lose that confidence, the government faces two options:

- The **HoG** can **resign** to allow **a new majority to form within the current parliamen**t.
- The **HoG** can request the **HoS** to **dissolve parliament**, triggering **new elections**.

In **confidence mechanisms**, countries with parliamentary executives exhibit distinct variations.

- In the **UK**, confidence in the government is often presumed based on election results, with the PM forming a government by appointing ministers and securing majority support. Since World War II, only one British government has fallen due to a no-confidence vote. However, the PM may still request the monarch to dissolve parliament, particularly if they seek to strengthen their majority or avoid political deadlock. For example, recent events under Boris Johnson highlighted how internal party struggles can complicate requests for dissolution, although the monarch typically dissolves parliament when formally asked by the HoG.
- In **Germany**, the Chancellor is elected through a secret ballot in parliament, and given the country's multi-party system, coalition-building is often necessary. Germany employs a constructive vote of no-confidence, meaning that the chancellor can only be replaced if the parliament is ready to elect a new one. This system creates stability, as it prevents governments from collapsing unless a clear alternative leadership is already in place.
- **Italy's** confidence mechanism is more complex. The government must secure confidence votes from both the Chamber of Deputies and the Senate to function. While losing confidence usually results in the government's resignation, Italy has also witnessed governments falling due to broader crises, such as the economic challenges that led to Silvio Berlusconi's resignation in 2011. After parliamentary elections, if no clear majority emerges, an explorative mandate may be granted to a political figure tasked with attempting to form a government, though the 2022 elections, with the right-wing coalition's majority, were more straightforward.

Dispositional Properties of Parliamentary Systems

1. **Presence of both HoS and HoG**: Countries like Italy and the UK have both a HoS and a HoG, ensuring a division between ceremonial/formal and executive powers.
2. **Election of HoS and HoG**: **Neither** the HoS **nor** the HoG is **directly elected** by the people. The HoS is elected by parliament in republics like Italy and Germany, while the HoG is appointed by the HoS. In the **UK**, while the HoG is not directly elected, there is a **constitutional convention** that the leader of the majority party in parliament becomes the PM.
3. **Term of the HoG**: The HoG serves without a fixed term and remains in office as long as they have the confidence of parliament. This creates a flexible tenure, highly dependent on political support within the legislature.

Dissolution Power

The **dissolution** of **parliament** is a critical tool in this system.

In the **UK**, it is typically the **PM** who **requests the monarch to dissolve parliament,** a power that can be used strategically to call early elections, as seen in June 2022. However, internal conflicts within the ruling party, such as those experienced by Boris Johnson, can complicate the process.

In **Italy**, the dissolution process is equally important, though the coalition dynamics within the parliament are often more pronounced. Coalitions, in particular, are formed to contest opposition groups, but internal tensions within the coalition can also lead to instability.

Historical Evolution of Parliamentary Executive

The historical evolution of parliamentary executive systems is shaped by key developments in Great Britain and continental Europe.

- In **Great Britain**, the relationship between the Prime Minister and the monarch gradually shifted. Initially, the **PM** was **appointed** by the **King**, but over time, the **PM needed to command a majority in Parliament**. For instance, King George III appointed Lord North, but by 1782, the Marquess of Rockingham was appointed based on parliamentary support. The turning point came in ***1834***, when King William IV dismissed the PM, leading to the **recognition that the Prime Minister must have the confidence of Parliament to govern**.
- In **continental Europe**, parliamentary systems evolved through **written constitutions**, often as a response to absolutism. In France, parliamentarism was seen not just as a system of government, but as a **principle of democratic legitimacy**. ***Carl Schmitt***, a controversial constitutional theorist, criticized parliamentarism as a product of 19th-century liberalism rather than democracy. He argued that the President of the Reich should defend the constitution, a view that has sparked considerable debate.

  In Europe, parliamentary systems developed through written constitutions. In France, parliamentarism was linked to **democracy**, not just as a form of government but also as a principle of legitimacy, in response to absolutism. Carl Schmitt criticised parliamentarism, associating it with 19th-century liberalism rather than democracy. He is an important scholar, a constitutionalist who is controversial. It was the president of the reich who should defend the constitution.

Relationship Between Parliament and Executive

Governments must secure and maintain the confidence of parliament to remain in power. It could be:

- **Explicit confidence**: Some countries, like Italy, require a **formal vote of confidence** for a new government to assume office.
- **Implicit confidence**: In countries like the UK, **confidence is presumed** unless explicitly withdrawn through a vote.

1. **Motions of No Confidence**: If a motion of no confidence is passed, the government must either resign or face the dissolution of parliament, leading to new elections.

   In countries like **Germany** and **Spain**, a **Constructive Vote of No Confidence** is required, meaning parliament can only dismiss the government if it simultaneously elects a successor. This system, established by the German Basic Law (Art. 67), promotes **stability by preventing frequent changes in government without an alternative in place**.

2. **Motion of Confidence**: Governments often call for a motion of confidence **over specific bills to ensure that dissident members within the majority cannot vote against them**. While this practice can help **speed up the legislative process**, as all amendments are set aside, it can also

stifle parliamentary debate. This approach is **not illegal**, but it can be seen as a manipulation of parliamentary procedures to bypass opposition.

3. **Consequences of Losing Confidence**: If a government loses a motion of confidence, it must **resign**, leading to the **formation of a new government** or **parliamentary dissolution** and **elections**.

4. **Constructive Vote of No Confidence**:

   - **Germany** introduced this mechanism to ensure governmental stability. The **Bundestag** can only **express a lack of confidence** by **electing** a **successor** and requesting the Federal President to dismiss the chancellor. This mechanism has been used twice, but successfully only once, when ***Willy Brandt*** was replaced by ***Helmut Schmidt*** in the 1980s.

   - Similar provisions exist in countries like **Spain**, **Hungary**, and **Israel** to **prevent instability** through frequent government changes.

Functions of the Parliament

The functions of the Parliament are central to the functioning of a parliamentary system, covering several key areas:

- **Making and Unmaking Governments**: Parliament has the power to approve the formation of a government and, through votes of no confidence, to dissolve it. This ensures that the executive remains accountable to the legislative body.

- **Legislative Function**: Parliament is responsible for debating, amending, and passing laws. This is its most recognized role, and in bicameral systems, like in Italy, both chambers must pass legislation in identical form for it to become law.

- **Control and Oversight Function**: Parliament oversees the activities of the executive. The Prime Minister or ministers regularly report to Parliament on critical issues, such as international engagements (e.g., the UN), allowing parliamentarians to hold the government accountable.

Bicameralism

Rooted in British tradition, bicameralism emerged as a system to balance the interests of different societal groups, initially aristocratic elites and democratic representation. It has since evolved to address broader governance needs, particularly in federal and decentralized systems.

Key Features and Advantages

- **Balancing Interests**: In federal systems, bicameralism ensures representation at both national and sub-national levels. Typically:

  - **One chamber** represents the **federation** (e.g., the House of Representatives in the U.S.).

  - **The other** represents the **individual states** or regions (e.g., the Senate in the U.S. or the Bundesrat in Germany).

- **Checks and Balances**: By dividing legislative authority, bicameralism reduces the risk of power concentration in a single chamber, acting as a safeguard against potential abuses.
- **Broader Representation**: Bicameral systems incorporate diverse perspectives, ensuring that a wide array of regional, social, or political interests are considered in the legislative process.
- **Deliberative Decision-Making**: The need for approval from two chambers often leads to more rigorous scrutiny and debate, resulting in more thoughtful and balanced legislation.

Italy's bicameral system, comprising the **Chamber of Deputies and the Senate**, is an example of **perfect bicameralism**, where both chambers hold equal powers:

- **Legislative Approval**: Both chambers must pass legislation in identical form for it to become law.
- **Impact on Process**: While this ensures thorough review, it often slows down the legislative process, especially in cases of political deadlock or disagreement between the chambers.

Italy's approach contrasts with systems like the U.S., where bicameralism involves unequal powers between chambers, or Germany, where the Bundesrat plays a specialized role representing Länder interests.

The Government

The Government and the Prime Minister play a key role in directing national policy:

- The Prime Minister leads the government, represents it publicly, and coordinates its activities.
- The Council of Ministers collectively determines general policy under the leadership of the Prime Minister.
- The government sets the legislative agenda, introduces bills to Parliament, directs the administration, and determines executive policies.

The ***Italian President of the Republic*** performs both formal and substantive functions:

- **Formal Functions**: Issuing laws passed by Parliament.
- **Substantive Functions**:
  - Appointing constitutional judges.
  - Granting pardons.
  - Appointing the Prime Minister: According to Article 92 of the Italian Constitution, the President appoints the Prime Minister and, based on the Prime Minister's advice, other ministers.
  - The President has the power to **dissolve Parliament early**, but this is constrained by constitutional norms and conventions, ensuring that this power is exercised only when necessary.

FoG 2: Presidential Executive

A Relationship of **Checks and Balances**: The Legislative Branch, Judicial Branch, and Executive Branch each serve to check and balance the powers of the others.

- **The Legislative Branch (Congress)**: controls budget, can override President's veto and can impeach President.
- **The Executive Branch (President)**: can veto laws of the parliament.
- **The executive Branch (President)**: appoints judges
- **The Judicial Branch (Supreme Court and lower courts)**: can declare acts by President unconstitutional.
- **The Judicial Branch (Supreme Court and lower courts)**: can declare laws and acts by Congress unconstitutional.
- **The Executive Branch (Senate)**: approves President's court appointments and can remove judges.

In the US, the president has veto power over legislation passed by Congress, which is different from the power given to the Italian president to send laws back to Parliament for reconsideration.

Historical Evolution

1787 - American Constitution:

- The debate between Hamiltonian (strong executive) and Jeffersonian (weaker executive) visions shaped the office of the president.
- Initially, Congress had more power, and the president was not directly elected; the system relied on the Electoral College.
- Throughout the 20th century, presidential powers expanded, reducing Congress's relative power.

1830 - Expansion of Presidentialism in Latin America:

- This period saw the rise of Caudillismo, a form of personalistic rule where the president dominated other branches of government (e.g., Porfirio Diaz in Mexico, Jose Gaspar de Francia in Paraguay).
- Political scholar Juan Linz has analyzed this trend, noting the risks of personalistic governance over democratic institutions.

Post-WWII:

- In newly decolonized countries in Africa, nation-building required strong executive leadership, as seen in Ghana.

Dispositional Properties of Presidential Systems

1. **HoS and HoG Combined**:

- The president serves as both **Head of State** (HoS) and **Head of Government** (HoG), consolidating the roles into one individual.
- Unlike parliamentary systems, the **president** is **completely separated from the legislature** and **does not depend on parliamentary confidence** to remain in office.
- There is a strong separation of powers between the executive and the legislature.
- **Difference Between Confidence and Impeachment**:
  - **Confidence**: In parliamentary systems, losing a confidence vote forces the government to resign.
  - **Impeachment**: In presidential systems, a president can only be removed if they commit a crime, such as abuse of power.

2. **Is the HoS/HoG Popularly Elected?**:
   - Yes, but in the US, the president is **elected indirectly** through the ***Electoral College***.
   - Voters elect presidential electors who then vote for the president. The winner-take-all system in most states can influence the outcome, and while electors usually follow the popular vote, they are not always legally bound to do so. This is why we say it is a popular election: if a presidential candidate obtains the majority in the electoral college then it is a foregone conclusion that he/she will be elected President. Still, it is **not a direct election**: Art. II, Sect. 2 US Const. states that if no presidential candidate has the absolute majority (270 great electors) then it will be the House of Representatives that will choose the President.
   - Historically, in the colonies, there was debate about counting slaves as part of the population for representation, which was a significant factor during the formation of the Electoral College system.
3. **Fixed Term**: The US president serves for a fixed term of four years with a maximum of two terms, as set by the 22nd Amendment.

Powers of the President (US)

- **Veto power** over legislation.
- **Commander**-in-chief of the **armed forces**.
- Power to make **treaties**.
- Power to **appoint ambassadors**, **officers**, and **judges**.
- Power to **issue pardons**.
- Power to **call Congress for special sessions**.
- Power to **initiate legislation**. In practice, most legislation passed by Congress originates from the executive.

Relationship Between Parliament and Executive

- In a presidential system, there is no relationship of confidence between the president and parliament.
- The **president is not responsible to Parliament** but has tools like the **veto** to influence the legislative process.
- **Parliament**, however, holds the power of **impeachment**, not confidence. This means the president cannot be removed for political reasons, only for criminal actions (e.g. treason, bribery, or other high crimes and misdemeanors as per Art. 2 Sec. 4 of the US Constitution).

Veto Power (US):

- The president has 10 days to sign or veto a bill passed by Congress.
- If vetoed, the bill is returned to the chamber where it originated with the president's explanation.
- A veto can only be overridden by a two-thirds majority in both the House and Senate.

Impeachment Procedure (US):

- The **House of Representatives** acts as the **prosecutor**, and the **Senate** acts as the **jury**.
- A ⅔ **vote** in the **Senate** is required to **remove** the **president from office**.

Virtues and Perils of Presidentialism:

Virtues:

- Stability through fixed terms.
- Strong checks and balances.
- Clear democratic legitimation of the executive.
- Governability due to decisive leadership.

Perils:

- Inflexible terms of office can lead to political paralysis.
- Divided or minority governments may lead to ineffective governance.
- The winner-take-all approach can encourage personalistic rule and concentration of power.

FoG 3: Semi-Presidential Executive

Dispositional Properties

1. **Both the Head of State** (HoS) and **Head of Government** (HoG) **share executive powers,** forming a bicephalous executive system. This system balances power between the two offices to avoid concentration in one institution.
2. **The HoS is directly elected by popular vote** (e.g., in France). The **HoG is appointed by the HoS** but requires the confidence of parliament to serve.
3. **The HoS has a fixed term** (e.g., 5 years in France with a 2-term limit since 2008), while the **HoG does not serve for a fixed term** and remains in office based on parliamentary confidence.

Key Features of the System

- **Double Popular Legitimation**: The president is **directly elected by the people**, as is the **parliament**, but **the government needs parliamentary approval** to function.
- **Collective Responsibility**: In France, the PM and cabinet are responsible to parliament. In other countries, they may also be accountable to the president.

In all semi presidential system the confidence is between the government and one of the 2 chambers if it is bicameral. Romania has a bicameral parliament and There is a vote of the 2 chambers. The confidence here is done collectively in a joint session.

Origin

The concept of **semi-presidentialism** was theorized by ***Maurice Duverger*** as a **hybrid form of government**, combining elements of **both parliamentary and presidential systems**. France, a consolidated democracy, has had **2 constitutions since WWII**. The first, adopted in 1946, established the 4th Republic, which functioned as a **parliamentary system**. During the period from 1946 to 1958, **France faced political instability**, with short-lived governments and a high degree of fragmentation, similar to Italy at the time. The **system** was **weakened** by several crises, notably the **Algerian War of Independence**, as Algeria was part of France, and the **Suez Crisis** of 1956, where tensions escalated between France, the UK, and Egypt, eventually leading to U.S. intervention.

Duverger defined a semi-presidential regime as a system in which:

- The **President** is **elected** by **universal suffrage**.
- The **President holds considerable powers**.
- The **Prime Minister** and the **cabinet**, though holding **executive power**, can **only govern with the confidence of the parliament**.

Though semi-presidential elements existed earlier in countries like Weimar Germany (1919), Finland (1919), and Austria (1929), Duverger's formalization in the 1980s led to its adoption in various nations,

including Portugal (1975) and post-Soviet states like Poland and Russia after the breakup of the Soviet Union.

The **5th Republic** in France was established by the Constitution of **1958**, marking a transition to a **semi-presidential regime**. The key constitutional amendment in 1962, specifically to Article 6, introduced the **direct election of the president by universal suffrage**, significantly enhancing the president's legitimacy and consolidating the semi-presidential system.

France operates under an executive dyarchy, also referred to as a hierarchical dyarchy, where executive power is shared between the President and the Prime Minister:

- The **Prime Minister** is responsible for **guiding** and **coordinating** the **immediate governance** of the country, focusing on day-to-day domestic policies and government administration.
- The **President**, in contrast, is entrusted with the responsibility of overseeing the **long-term interests of the nation**, particularly in areas like foreign policy and national defense, ensuring a balance between strategic oversight and operational governance.

Cohabitation

A scenario in which the **president** and the **majority in parliament** come from **different political parties**. This can happen due to:

- **non-concurrent terms**
- **different voting behaviors** for the president and parliament.

Historical Examples in France:

- 1986-88: Mitterrand (President) and Chirac (Prime Minister).
- 1992-95: Mitterrand and Balladur.
- 1997-2002: Chirac and Jospin.

Effects: During cohabitation, the system behaves more like a **parliamentary system.** The president is fired to appoint a PM of a different political camp. The **PM holds more executive power**, while the **president** retains authority **mainly in defense and foreign policy**.

Relationship President Parliament

Dissolution of Parliament: According to Article 12 of the French Constitution, "The President of the Republic may, **after consulting the Prime Minister and the Presidents of the assemblies**, declare the National Assembly dissolved." However, **the President cannot exercise this power of dissolution during the year following a parliamentary election**.

Impeachment of the President: The **possibility of an impeachment process**, similar to the U.S., was **introduced** in the **2014** reform with Article 68 of the French Constitution.

Relationship Between President and Prime Minister

In all forms of semi-presidentialism, **the President appoints the Prime Minister**, but:

- In some countries, **the President can dismiss the Prime Minister if supported by Parliament** (this is known as president-parliamentarism, e.g., Russia). The **Prime Minister and Cabinet are accountable to both Parliament and the President**.
- In other countries, **the President cannot dismiss the Prime Minister** (this is known as premier-presidentialism, e.g., France), where the **Prime Minister and Cabinet are accountable only to Parliament**.

Sub-Types of Semi-Presidentialism

- **Prime Minister Prevails**: In some semi-presidential systems, the **Prime Minister holds more power and control**.
- **Executive Dyarchy**: Some systems feature a **clear separation of competences between the Prime Minister and the President**. The Prime Minister leads the government, while the President oversees national interests like defense and foreign policy.
- **President Prevails**: In other systems, the **President plays a central role and dominates the executive powers**.

Problems of Semi-Presidentialism

- **Coordination Problems**: Difficulties in defining and **dividing responsibilities** between the President and the Prime Minister.
- **Dual Legitimacy Problem**: **Both** the President and Parliament are **elected** by the people, leading to **potential conflicts** over which institution holds the superior mandate.
- **Accumulation of Power in One Institution**: In some forms of semi-presidentialism, the President amasses considerable power, **often more than in a pure presidential system**. The President might combine executive authority with the power to dissolve parliament, which can be dangerous in contexts with authoritarian tendencies.

Poland

Poland has experienced coordination problems between the President and Prime Minister, primarily due to overlapping responsibilities in foreign policy:

- **Article 133**: The President is designated as the **representative of the State in foreign affairs**.
- **Article 146**: The **Council of Ministers** is responsible for both **internal** and **foreign policy**.

This division has created conflicts over who should represent Poland's foreign policy at the **European Council**, leading to a notable dispute between **President Lech Kaczyński and Prime Minister Donald Tusk**.

Russia

The **Russian Constitution of 1993**, modeled after the French system, established a strong **presidential office** with the **power to dissolve Parliament** under specific conditions, notably without the need for the Prime Minister's approval. This centralized executive power was further expanded through the **2020 Constitutional Amendments**:

The approval process was:

- Endorsed by a two-thirds majority in the State Duma.
- Ratified by 85 state legislatures.
- Reviewed and approved by the Constitutional Court on March 16, 2020.
- Officially passed through an All-Russian vote from June 25 to July 1, 2020, with 77.92% in favor.

The provisions were:

- **Article 81** limits the President to two consecutive terms. However, an additional clause allows the reset (or "**zeroing**") of these **term limits** for any sitting president, meaning Vladimir Putin could potentially run for more terms.
- **Paragraph 3.1 of Article 81** enables the resetting of term limits for the current officeholder, effectively bypassing the previous two-term limit for Putin.

Breaking Presidential Term Limits

This "zeroing" of presidential terms, as seen in Russia, is part of a broader global trend where leaders modify constitutions to extend their rule:

- **Egypt**: President Abdel Fattah el-Sisi enacted constitutional reforms that could allow him to remain in power until 2030.
- **Bolivia**: In 2017, a court ruling eliminated presidential term limits entirely, despite earlier constitutional limits on consecutive terms.
- **Kazakhstan**, **Belarus**, **Azerbaijan**: These countries also employed "zeroing" strategies to reset or extend presidential terms, similar to Russia.

Between 1945 and 2017, 94 presidents worldwide extended their terms through legal or constitutional changes. The average term length:

- In democratic regimes, leaders served an average of 4.8 years.
- In non-democratic regimes, the average was 7.2 years.

Evasion Strategies for Term Limits

World leaders have employed various strategies to bypass or evade term limits:

- **Amendment of Constitutions**: Amending the constitution to remove or extend term limits (63% success rate).
- **Blank Slate**: Creating a new constitution that resets the term count (100% success rate).
- Legal Reinterpretations: Courts reinterpret constitutional term limits (83% success rate).
- **Placeholder President**: A close associate is installed as a temporary president, while the leader retains de facto control (33% success rate).
- **Election Delays**: Postponing elections when a leader's term expires (100% success rate).

FoG 4: Directorial Executive – Switzerland

The directorial executive is a unique system of government found only in Switzerland, with some historical parallels in Uruguay (1951–1966). It combines elements of presidential and parliamentary systems while reflecting Switzerland's specific political and cultural context.

Key Features of the Swiss Directorial Executive

- **Collegial Leadership**: The **Federal Council** (Conseil fédéral, Bundesrat, Consiglio federale) serves as both the **HoS** and the **HoG**. Unlike the monocratic presidency of the U.S., the Federal Council is a collective body of 7 members, **each of equal rank**.
- **Election and Terms**: Members are **elected by the Federal Parliament** (House of Representatives and Senate) for a fixed 4y term. The **President of the Confederation is chosen annually from among the seven members**, serving only as a chairperson without additional powers.
- **No Confidence Relationship**: Similar to the presidential system, there is no relationship of confidence between the Federal Council and Parliament. The Council cannot be dissolved prematurely by Parliament.
- **Consensus Government**: The "magic formula" allocates Federal Council **seats proportionally among major political parties** to ensure a government of consensus: Initially, two seats each for the Social Democrats (SP), Free Democrats (FDP), and Christian Democrats (CVP), with one seat for the right-wing Swiss People's Party (SVP). Adjustments, such as in 2003 and 2007, reflect changes in party strength but have occasionally strained Switzerland's tradition of consensual governance.
- **Historical and Cultural Roots**: The system originated from the ***French Constitution of 1795*** and was brought to Switzerland by the French Army in 1798. **It suits Switzerland's multi-ethnic, linguistic, and religious diversity**, reflecting a political rather than ethnic definition of the nation.

The Swiss directorial system exemplifies a unique governance model rooted in inclusivity, shared leadership, and stability, tailored to the country's distinct federal and pluralistic society. However, recent political shifts have tested its traditional consensus-driven approach.

FoG 5: Neo-Parliamentary Executive

Also known as **Prime Ministerial Executive,** it is debated as a potential fifth form of government alongside parliamentary, presidential, directorial, and semi-presidential systems. This concept draws particular attention from scholars analyzing the Israeli model between 1992 and 2001, when the **Prime Minister was directly elected**. While this model initially aimed to enhance governance, it ultimately failed, leading Israel to revert to a conventional parliamentary system.

Key Features and Challenges

- **Direct Election of the Prime Minister**: Unlike parliamentary systems, the PM was directly elected by voters in a **separate ballot alongside parliamentary elections**. This created a **split-voting phenomenon**, where voters often supported one party for the Knesset (Parliament) and another candidate for PM, leading to legislative fragmentation.
- **Lack of Parliamentary Majority**: Unlike Italian sub-state elections, where the winning candidate's coalition is awarded a seat premium to ensure a parliamentary majority, the Israeli system did not guarantee this, weakening the Prime Minister's ability to govern effectively.
- **Special Elections**: Israel held special elections for the Prime Minister without dissolving the Knesset. This disrupted governance, as the Prime Minister's legitimacy could be challenged without a corresponding parliamentary realignment.
- **Term of Office and the "Aut Simul Stabunt Aut Simul Cadent" Rule**: A significant distinction is the aut simul stabunt aut simul cadent rule ("we stand together, we fall together"), applied in Italian sub-state systems. If the executive loses confidence or resigns, both the executive and the legislative assembly are dissolved, triggering fresh elections. In Israel, this rule was absent, leading to instability as the Prime Minister's term was not necessarily tied to the Knesset's term.

While some argue the Israeli system constitutes a unique form of government, others view it as a subtype of parliamentary or semi-presidential systems. Using Robert Elgie's dispositional properties:

- **HoS and HoG**: Both existed, consistent with parliamentary systems.
- **Popular Election**: The PM was directly elected, but this feature is not unique, as many parliamentary leaders are chosen via popular mandates (e.g., U.).
- **Fixed Term**: Unlike parliamentary executives, the Israeli PM's term was not implicitly tied to the legislature, creating a potential distinction.

If the Prime Ministerial Executive is considered a distinct form of government, its defining feature would be the ***aut simul stabunt aut simul cadent rule***, rather than direct election. This framework ensures synchronized terms for the executive and legislature, enhancing stability. However, scholars disagree on its classification, with terms such as "neo-parliamentary," "semi-parliamentary," or "parliadential" proposed. Despite its theoretical interest, the Israeli experiment demonstrated the challenges of implementing this system in practice.

Electoral System

An electoral system is a **set of rules governing elections** and the process by which **votes are translated into seats** in the legislature (or executive). The components of an electoral system include **electoral laws** and **electoral formulas**.

Active Suffrage/Political franchise: defines **who can vote**, with limitations often based on factors like age, citizenship, and legal capacity.

Passive Suffrage: determines **who can stand for election**, with specific requirements differing by office. For example, the Italian Constitution sets distinct qualifications for Senate and Chamber of Deputies candidates.

Regulations of other aspects of elections: includes guidelines for electoral campaigns, campaign financing, media coverage, voter registration, and voting methods. A problem could be funding:

- **Public funding**: vulnerable to misuse, where funds may be allocated ineffectively or unethically.
- **Private funding**: risk of donor influence, where political decisions might be shaped by the interests of private funders.

Electoral Laws

These encompass all **rules governing elections**, including who can vote (franchise), election timing, oversight, and campaign regulations.

POLITICAL RIGHTS

- **Right to vote**: ensures eligible citizens can participate.
- **Right to stand for office**: allows qualified individuals to seek election.
- **Freedom of expression**: ensures open debate and diverse views.
- **Freedom of association (right to form a political party)**: protects the right to form political parties.
- **Freedom of peaceful assembly**: allows peaceful gatherings and political expression.

The **relationship between democracy and elections** is foundational, as **elections are essential to democracy**. However, **without these rights, elections lose their democratic value and may not genuinely represent public choice**.

ELECTORAL INTEGRITY

Quality elections are a **global standard**, with few countries entirely forgoing elections. Elections that meet **international electoral standards** encompass all stages:

- Candidate and voter registration.
- Campaign period.

- Voting and vote counting.

ELECTORAL MALPRACTICES

Violations of electoral integrity can occur at various stages, including:

- **Ballot box manipulations**: Ballot box stuffing and vote tampering.
- **Vote buying**: Made easier with technological advancements.
- **Voter intimidation and pressure**: Pressuring voters to influence outcomes.
- **Misuse of public resources**: Using state assets for campaign purposes.
- **Media bias**: In Italy, RAI's politicization reflects issues with media impartiality; current laws often conflict with EU directives.
- **Restrictive ballot access**: Limiting who can run for office.
- **Unfair campaign/campaign finance rules**: Rules that favor certain candidates or parties.

Electoral Formula

The electoral formula is the **mechanism** through which **votes** are **translated into parliamentary seats**. Different systems, including **majoritarian**, **proportional**, and **mixed systems**, produce various effects on representation and political dynamics.

MAJORITARIAN System

The candidate with the majority of votes wins. Typically applied in single-member (uninominal) districts with only one seat per district, this system is **selective** and often results in a **bipartisan political environment**. Majorities can be defined in several ways: simple, plurality (relative), absolute, or qualified.

Voters tend to adapt to the electoral system in place, often voting strategically rather than purely on preference to prevent undesired outcomes. Majoritarian systems generally encourage two-party systems due to their winner-takes-all approach.

PLURALITY

- A **Relative majority** (the most votes, though not necessarily more than half) is sufficient to win a seat. This system is typically used in **single-member constituencies** where each constituency elects only one Member of Parliament (MP). Each party presents **only one candidate per constituency**.

A. **First-Past-the-Post (FPTP)/Single-Member-District-Plurality (SMDP)**: Candidates win by simply obtaining a **relative majority**. This system, used in the UK, has several notable features:

   - **Strategic Voting**: Encourages voters to support candidates likely to win over those who best represent their views.
   - **Disproportional Representation**: The translation of votes into seats often overrepresents larger parties and underrepresents smaller ones.

- **Encouragement of a Two-Party System**: Favors two dominant parties and discourages multi-party representation.
- **Disadvantage to Minority Parties**: Minority parties with widespread but diluted support struggle to win seats.
- **Resistance to Extreme Parties**: Limits extreme parties' chances of winning unless they have concentrated support in specific areas.

B. **Single non transferable vote (SNTV)**: SNTV, similar to SMDP but used in multimember districts, allows multiple candidates to be elected per district. Here, each party can nominate a list of candidates, and each voter selects one candidate.

- **Proportionality**: SNTV produces a more proportional outcome than SMDP, as several candidates can be elected per district, allowing candidates to win seats without having the majority vote.
- **Party Dynamics**: SNTV weakens party cohesion since candidates not only compete with other parties' candidates but also with their own party members.

The plurality system can lead to a **wrong winner outcome**, where a party wins the popular vote but secures few or no seats: in the **UK's multiparty system**, it's possible for a party to **win a significant portion of the popular vote yet receive no seats** in the House of Commons if they consistently place second across constituencies. It is also common for parties to **win a parliamentary majority with only 35-36% of the popular vote** (e.g., Labour in 2005 and Conservatives in 2015), while in previous decades, winning parties averaged around 47%. For example, in 2005, the Liberal Democrats won 22% of the vote but only 62 seats (under 10% of the total). In 2015, UKIP received 3.9 million votes, around 13% of the total, but secured only one MP.

ABSOLUTE MAJORITY

In an absolute majority system, candidates must secure more than 50% of the vote to be elected. If no candidate achieves this in the initial round, different mechanisms are applied to determine a winner.

- **Two-Round Runoff**: If no candidate obtains an absolute majority in the first round, the election proceeds to a runoff. There are 2 **options**:

  1. All candidates above a threshold (e.g., 12.5% in France for legislative elections) advance to the second round.
  2. The two candidates with the most votes face off in a second round (e.g., France's presidential elections).

  Advantages:

  - **Second Voting Opportunity**: Voters can re-evaluate their choice if their first-round candidate does not advance.
  - **Reduced Strategic Voting**: Voters are encouraged to vote sincerely in the first round.

  Disadvantages:

- **Increases administrative costs** due to the need for two rounds of voting.

- **Instant Runoff/Alternative Vote**:

  Voters rank candidates. If no candidate has an absolute majority, the lowest-ranked candidate is eliminated, and their votes are redistributed to the voters' next preferences. This process continues **until one candidate has more than half the votes.**

  Unlike a two-round system, the instant runoff is a **single-round system with sequential elimination**.

  Ballots assigned to the eliminated candidate are recounted and assigned to those of the remaining candidates who rank next in order of preference on each ballot.

  Advantages:

  - **Single Round**: Reduces the administrative burden by avoiding multiple election rounds.
  - **Minimizes Strategic Voting**: Voters can rank based on preference, knowing that lower-ranked candidates will be eliminated if necessary.
  - **Encourages Majority Support**: Ensures the elected candidate has broad backing.

- **Supplementary Vote System**: NOT TO BE CONFUSED WITH Single Transferable Vote used in multi-member districts. It's used in **single-member districts**, where **voters rank a maximum of two candidates.** If no candidate wins an absolute majority, all but the top two candidates are eliminated, and votes are reassigned based on second preferences.
  - **Simplicity**: Offers straightforward ranking of just two preferences, making it easy for voters.
  - **Clear Majority Link**: Ensures candidates are broadly supported by the constituency.
  - **Supports Pluralism**: Discourages purely sectoral divisions and extreme parties, supporting broader representation.

Advantages:

- Simplicity
- Governability
- Strong link of the MP with the territory (geographical representation)
- Coherent parliamentary opposition
- It encourages plural political parties (discourages sectorial divisions)
- Excludes extremist parties (unless they are territorially concentrated)

Disadvantages:

- Excluding minority parties from fair representation
- Far less likely to go give representation to racial or ethnic minorities

- Regional fiefdoms, wasted votes
- Open to the manipulation of electoral boundaries: gerrymandering

PROPORTIONAL SYSTEM

The **number of seats allocated to each party list** is **directly proportional to the votes received**. These systems are typically used in **multi-seat constituencies** to ensure broader representation and reduce wasted votes.

List Proportional Representation (PR)

Each party nominate a list of candidates:

- **CLOSED party lists**: Parties determine the order of candidates; voters cannot influence individual candidate selection.
- **OPEN party lists**: Voters can select a preferred candidate within a party list, affecting the order of candidates.
- **FREE party lists**: Voters have multiple votes that they can distribute across candidates from different party lists or within one list.

A. **Methods based on dividers**: total number of votes divided by a series of divisors to allocate seats.

Total seats to be assigned: 12

Divider:	Party A	Party B	Party C	Party D	Party E
1	250.000	100.000	85.000	130.000	31.000
2	125.000	50.000	42.500	65.000	15.500
3	83.333	33.333	28.333	43.333	10.333
4	62.500	25.000	21.250	32.500	7.500
5	50.000	20.000	17.000	26.000	6.200
Seats	5	2	2	3	0

Note that dividers are always odd and the distance between each divider may vary. One could even begin with a divider other than one.

Divider:	Party A	Party B	Party C	Party D	Party E
1	**250.000**	**100.000**	**85.000**	**130.000**	**31.000**
3	**83.333**	**33.333**	**28.333**	**43.333**	10.333
5	**50.000**	20.000	17.000	26.000	6.200
7	**35.714**	14.285	12.142	18.571	4.428
9	**27.777**	11.111	9.444	14.444	3.444
Seats	5	2	2	2	1

I. **d'Hondt**: Often **benefits larger parties** due to a lower divisor.

II. **Sainte-Laguë**: Tends to favor **smaller parties** and usually includes a **minimum threshold** (e.g., 5%).

Rarely systems are purely proportional: growingly common are majoritarian correctives such as majority bonuses.

B. **Methods based on quota**: Seats are allocated based on quotas, calculated by dividing the number of seats by total votes. Different quota types include:

I. **Hare**: $\frac{\text{Total Votes}}{\text{Total Seats}}$

Party	Yellows	Whites	Greens	Reds	Pinks	Blues	Total
Votes	47,000	16,000	15,800	12,000	6,100	3,100	100,000
Seats							10
Hare Q							10,000
Votes/Q	4.70	1.60	1.58	1.20	0.61	0.31	
Automatic seats	4	1	1	1	0	0	7
Remainder	0.70	0.60	0.58	0.20	0.61	0.31	
LRS	1	1	0	0	1	0	3
Total seats	5	2	1	1	1	0	10

II. **Droop**: $1 + \frac{\text{Total Votes}}{1+\text{Total Seats}}$

III. **Hagenbach-Bischoff**: $\frac{\text{Total Votes}}{1+\text{Total Seats}}$

Party	Yellows	Whites	Greens	Reds	Pinks	Blues	Total
Votes	47,000	16,000	15,800	12,000	6,100	3,100	100,000
Seats							10+1=11
H-B Q							9,091
Votes/Q	5.170	1.760	1.738	1.320	0.671	0.341	
Automatic seats	5	1	1	1	0	0	8
Remainder	0.170	0.760	0.738	0.320	0.671	0.341	
LRS	0	1	1	0	0	0	2
Total seats	5	2	2	1	0	0	10

IV. **Imperiali**: $\frac{\text{Total Votes}}{2+\text{Total Seats}}$

The largest remainder method (LRM) solves the issue of unallocated seats after the initial division by quota.

Parties receive **seats based** on the **integer result** of dividing votes by the quota. **Remaining seats are distributed based on the highest fractional remainders until all seats are allocated**.

Features of proportional systems influencing allocation of seats:

- **District Magnitude**: The number of seats per district. Higher magnitudes increase proportionality, while lower magnitudes reduce it.
- **Electoral Thresholds**:
  - **Natural Threshold**: An inherent feature of proportional systems.
  - **Formal Threshold**: A minimum vote percentage (e.g., 10% in Turkey) specified by law, preventing parties below it from receiving seats.

Advantages:

- **Fair Vote-to-Seat Translation**: Minimizes wasted votes and accurately reflects the electorate's preferences.
- **Inclusive Representation**: Minority parties receive representation, fostering a more diverse array of candidates and views.
- **Support for Minorities and Women**: Encourages a balanced representation of social groups.
- **Eliminates Regional Fiefdoms**: Reduces localized dominance by parties, creating a broader, national representation.

Disadvantages:

- **Coalition Governments**: Proportional systems often result in coalition governments, which can be less efficient.
- **Fragmentation of the Party System**: Allows for a high number of parties, potentially destabilizing the political landscape.
- **Influence of Small Parties**: Small parties can have disproportionate influence in coalition negotiations.
- **Entry for Extremist Parties**: Lower thresholds can provide opportunities for extremist parties to enter parliament.
- **Weak Candidate-constituency Link**: Candidates are less tied to specific geographic areas.
- **High Party Leadership Influence**: Party leadership often controls candidate selection, especially in closed list systems.

Single Transferable Vote (STV)

The Single Transferable Vote (STV) is a candidate-centered proportional system used in **multimember districts**:

Voters rank candidates by preference, and **seats are allocated to candidates who meet a specific quota** (typically the **Droop quota**).

- **It Minimizes Wasted Votes**: Surplus votes for winning candidates are transferred to other candidates based on voter preferences.
- **Proportional Outcome**: Offers proportional results while maintaining a strong link between candidates and constituencies.
- **Broad Appeal**: Encourages candidates to campaign on inclusive platforms to gain transfer votes.
- **Cross-Party Voting**: Voters can select candidates across different parties.

Effectiveness of STV: Proportionality varies based on district magnitudes, but STV remains unique in its balance between candidate-centered representation and proportional outcomes.

- Only PR system not based on PR lists

MIXED SYSTEM

The mixed electoral system **combines the strengths of both proportional and majoritarian systems**, allowing voters to elect representatives through two different methods. Typically, majoritarian methods apply to lower levels (e.g., district) and proportional methods apply to higher levels (e.g., regional or national).

INDEPENDENT

The **majoritarian** and **proportional** components **operate separately**, meaning that each system independently allocates seats without influence from the other.

Ukraine's parliament comprises 450 members elected for a five-year term.

- **Half** of MPs are elected using a **proportional system** with closed party lists in a single nationwide constituency. Parties must receive at least 5% of all votes to qualify for seats.
- The other **half** are elected through a **plurality** (FPTP) **system** in single-member districts (SMDs), where each district elects one representative.

DEPENDENT (MMP)

Also known as the **Mixed-Member Proportional** (MMP) system, this approach uses the **proportional component** to **correct the disproportionalities created by the majoritarian system**.

In this system, the proportional allocation depends on the majoritarian seat distribution to ensure that the final representation reflects the proportional vote distribution. This setup balances the direct representation of majoritarian systems with the fairness of proportional representation.

The System of Legal Sources

Constitutional review refers to the process by which **courts compare subordinate legal sources to the Constitution**. If a conflict is found, these sources can be declared unconstitutional and thus invalid. It is distinct from:

- **Constitutional Justice**: Broader legal concepts regarding constitutional law.
- **Constitutional Adjudication**: Resolving disputes specifically within constitutional frameworks.

To fully grasp constitutional review, it is essential to understand the system of legal sources, particularly the **distinction between the Constitution and ordinary laws**.

Sources of Law

Sources of law are regulations that:

- Govern the production of legal norms.
- Create the rules that constitute the legal system.

They can be classified into:

- **Sources of Cognizance**: Mechanisms that determine the legal norms in force.
- **Sources of Production**: Facts or acts capable of altering the legal framework.

1. **Acts**: Written sources of law voluntarily adopted by a competent authority. They produce legal effects when they meet three conditions:
   - **Existence**: Adopted by a body exercising legally conferred powers.
   - **Validity**: Adopted following procedural and substantive rules established by law.
   - **Efficacy**: Capable of producing intended legal effects.
2. **Facts**: Unwritten sources of law arising from societal behavior, not directly created by a specific body. For these to produce legal effects:

- **Objective element**: The behavior must remain consistent over time.
- **Subjective element**: Society must view the behavior as obligatory and legally binding.

Major Distinctions in Sources of Law

- **Judicial Precedent**: A binding decision in a prior case that serves as a guide for analogous cases (typical in Common Law systems).
- **Legislative Acts**: Formal proceedings through which legislative bodies create texts containing legal norms (dominant in Civil Law systems).

Legal Traditions are frameworks of legal concepts and institutions. Two major traditions dominate the Western world:

1. **Civil Law Systems**:
   - **Statutory laws**, enacted by legislative bodies, are the primary sources of law.
   - Judges are ***mouthpieces of the law*** (bouche de la loi), applying and interpreting statutes without creating new laws.
   - Legal rules are **codified** and **formalized**, with minimal reliance on precedent.
2. **Common Law Systems**:
   - **Court decisions** are the main source of law, developed through judicial precedent and principles such as stare decisis.
   - Judges actively create and refine legal rules based on **case outcomes**.
   - The legal rule stems from **decisions made by higher courts**, which are binding on lower courts.

Outside the Western world, legal systems often blend these traditions with local customs and norms.

Hierarchy of Legal Sources

1. **The Constitution**: Supreme legal authority, to which all other laws must conform.
2. **Primary Sources of Law**: Laws enacted by legislative bodies.
3. **Secondary Sources of Law**: Regulations, bylaws, and decrees issued by the executive branch, ministries, agencies, or local authorities.
4. **Customs**: Societal practices recognized as binding by law.

This hierarchy ensures that all legal sources align with the fundamental principles enshrined in the Constitution.

The Constitution

Supreme Authority: It is the ***Law of Laws***, organizing government structures, enabling law production/amendment, and protecting individual rights through Bills of Rights.

Functions:

- **Power Distribution**: Defines the separation between government branches and the territorial organization of the state.
- **Rulemaking**: Establishes procedures for creating/amending laws.
- **Rights**: Enshrines and protects fundamental human rights.

Types of Constitutions:

1	**CODIFIED**: contained in a single document. EG: US Constitution	**UNCODIFIED**: more than one document or no document. EG: UK Constitution (a mix of written acts, Magna Carta and conventions)

This first distinction has lost importance. In the second half of the 20th century many constitutions were adopted, all written (either in a single documents or a few documents). Virtually the only unwritten one is the UK one, even if some argue also New Zealand and Israel

2	**LONG**: containing the frame of government and the bill of rights. These are exclusive of long constitutions: **Preamble**: Provides broad principles and invokes national identity. It serves an educational or expressive function, often referencing historical events or milestones. Raises questions such as: • Are preambles formally part of the constitution? • Can courts rely on them during constitutional review processes to interpret legal provisions? **Bill of Rights**: A detailed list of fundamental human rights and permissible exceptions.	**SHORT**: containing only the frame of government. Limited to basic governmental structure and lawmaking processes.
	For both of them: • **Organization of Government**: Defines the division and allocation of powers among branches • **Legislative Procedures**: Specifies who can make laws and the processes involved and includes special procedures for constitutional amendments. • **Judiciary**: Outlines the organization and powers of the judicial branch. • **Territorial Organization**: Establishes the structure of territorial governance (e.g., federal, regional, or unitary). Constitutional Conventions • **Definition**: Practices emerging from customs, habits, or common behavior that are considered binding despite not being codified. • **Distinction from Empirical Regularities**: - **Repetition in Time**: Relevant constitutional actors consistently act in a specific manner. - **Opinio Juris**: These actors perceive themselves as legally obligated to follow the practice. Particularly significant in the UK, where conventions play a vital role in governance (e.g., the Queen's assent to legislation). Also relevant in countries with codified constitutions, where conventions supplement formal rules.	
3	**RIGID**: Require a **special procedure** to amend, making changes more complex and less frequent. Constitutional amendments often need **special majorities, referenda**, or other strict requirements. In federal states, amendments may require the agreement of subnational units. EG: US Constitution • Amendments must be proposed by either: - A 2/3 majority in both the House and Senate, or - 2/3 of state legislatures calling for a constitutional convention. • Ratification requires approval by 3/4 of state legislatures.	**FLEXIBLE**: Can be amended like **ordinary laws**, with no need for special procedures. Reflect the **principle of parliamentary supremacy**, where the legislative body has ultimate authority. Typically, there is **no constitutional review**, as flexibility allows laws to adapt more easily. Historically, **granted constitutions** of the 19th century were often flexible. EG: UK, often cited as having a flexible constitution due to the ease of legislative change, though this is contested.
	The overwhelming majority of constitutions today are **rigid**, as rigidity provides stability and protects fundamental rights from frequent alteration. Rigid constitutions offer stability and deliberate change, while flexible ones prioritize adaptability and parliamentary sovereignty. The debate over the UK's flexibility highlights the unique nature of its unwritten, evolving system.	

4	**VOTED**: Constitutions that are adopted through a democratic process, typically involving: A **constituent assembly** or **constitutional convention** tasked with drafting the constitution. Ratification by the people (e.g., via referenda) or their representatives. **Philosophical Basis**: Rooted in the concept of self-government, as articulated by Alexander Hamilton: defining a constitution "from reflection and choice" rather than "accident and force." Derives legitimacy from the demos (the people), seen as the collective entity authorizing the constitution. **Modern Relevance**: Today, virtually all constitutions are voted, aligning with the idea of democratic legitimacy and self-determination. New states often draft their constitutions with the assistance of the international community, reflecting this global norm. Constituent Power: 2 components: • **Material Adoption**: The assembly or convention that physically drafts and approves the constitution. • **Legitimacy Source**: The demos, the collective will of the people from which the constitution draws its authority.	**OCTROYÉE**: Constitutions that are **granted by a sovereign authority** rather than created through a democratic process. These were the earliest forms of constitutions, provided by monarchs to establish a framework of governance while maintaining their own power. Reflect the idea of governance imposed "**from above**" rather than arising from the people. EG: Many 19th-century constitutions in monarchies, where sovereigns granted limited rights and frameworks to their subjects.
	The transition from octroyée to voted constitutions symbolizes the shift from imposed governance to democratic self-determination. Today, having a voted constitution is almost a prerequisite of statehood, embodying the principles of legitimacy and sovereignty.	

Based on the relationship between promises (content of the constitution) and delivery (implementation in practice):

- **Strong Constitution**: Promises much and delivers much.
  EG: Constitutions that protect rights and ensure compliance, such as the U.S. Constitution.
- **Sham Constitution**: Promises much but delivers little.
  EG: Constitutions in authoritarian regimes that promise rights but fail to enforce them.
  - These constitutions have **no real connection to reality**.
  - While they may be descriptively accurate, they **fail to influence behavior or governance**.
  - Often referred to as "**constitutions without constitutionalism**", they serve as a ***façade***, sometimes helping regimes pursue goals without actual implementation of rights or structures.
  - EG: The Soviet Constitution of 1936, which promised many rights but delivered little in practice.
- **Modest Constitution**: Promises little and delivers much.
  EG: Constitutions in minimal states that focus on limited governance and efficiently deliver on their commitments.

- **Weak Constitution**: Promises little and delivers little.
  EG: Constitutions in fragile states with limited scope and weak enforcement.

Certain constitutions include **unamendable provisions**, which are principles or elements that are even more entrenched than the rest of the constitution. These provisions:

- **Cannot be amended**, even through formal constitutional processes.
- Serve as the foundation of the legal system, ensuring the constitution's core values remain intact.
- Require that the rest of the constitution complies with them.

Examples of **Explicit Unamendable Provisions**

- **German Basic Law (Eternity Clause)** protects the following principles: The democracy principle, The federal structure of the state, Human dignity.
- **Italian Constitution**: Explicitly protects the Republican form of government (Article 139). This form cannot be altered under any circumstances.

Implicit Unamendable Provisions: In some countries, constitutional courts identify provisions that are considered unamendable, even if not explicitly stated.

Example: Supreme Principles of the Italian Constitution: Identified through interpretation by the Constitutional Court. Include:

- **Fundamental Principles (Articles 1–12)**: Foundations of the state, such as democracy, sovereignty, and equality.
- **Organization of the Republic (Part II)**: Structure of government and separation of powers.
- **Human Rights (Part I)**: Protection of individual rights and freedoms.

Primary Law

Constitutions establish the rules and frameworks for the legislative process, identifying the organs with jurisdiction to create primary laws and defining the procedures to enact different types of legislation.

Principle of Nomen Iuris: The **sources of law** form a **closed system**, meaning every source must fit into one of the categories outlined in the constitution. The most common form of primary law is **legislation passed by parliament**.

Many constitutions allow governments to exercise **delegated legislative powers**, which is a partial deviation from the principle of **separation of powers**. This is typically done for:

- **Urgent situations** requiring immediate action.
- **Streamlining the legislative process** to address time-sensitive issues.
- **Highly technical matters** where government expertise is more effective, such as taxation, immigration, or public administration.

Note: Delegated laws are also considered **primary law**.

Italy recognizes two types of delegated legislation:

1. **Legislative Decrees (Decreti Legislativi)**:
   - **Purpose**: Used for highly technical matters.
   - **Process**:
     - **Delegation Law**: Parliament approves a law specifying the principles, scope, and time limits of delegation.
     - **Legislative Decree**: The government drafts the decree in line with the delegation law.
2. **Law Decrees (Decreti-Legge)**:
   - **Purpose**: Reserved for cases of necessity and urgency.
   - **Process**:
     - The government directly issues a law decree without prior approval from Parliament.
     - Parliament has 60 days to convert the decree into a law. If it fails, the decree loses its efficacy ex tunc (as if it never existed).

Conflicts Between Different Laws

When the same factual situation is governed by two different laws within the same legal system, conflicts arise. Resolving these conflicts requires applying specific criteria:

Three Main Criteria

1. **Hierarchical Criterion**: The law higher in the hierarchy prevails over the lower one.

   EG:The Constitution prevails over ordinary law. Parliamentary laws override ministerial regulations.
2. **Chronological Criterion (Lex Posterior Derogat Priori)**: A later law repeals or overrides an earlier law, provided they are of the same hierarchical level. **Principle**: Newer rules reflect updated legislative intent.
3. **Specialization Criterion (Lex Specialis)**: A more specific law overrides a more general law.

   EG: Specific rules for public defense contracts take precedence over general rules for public contracts.

   Principle: This criterion prevails over the chronological criterion: Lex Posterior Generalis non Derogat Priori Speciali (a later general law does not repeal an earlier specific law).

Application of the Criteria

- When laws conflict, the hierarchical criterion is applied first.
- If the laws are at the same hierarchical level, the chronological criterion is used unless a specialization rule applies, which takes precedence.

By following these criteria, legal systems ensure coherence and resolve potential overlaps or contradictions effectively.

The EU - Institutions and Form of Government

The EU can be understood as:

- **INTERNATIONAL Organization**: Formally, the EU is based on **international treaties**, including **foundational agreements which** shape the **EU's legal and institutional framework:**
  - **European Coal and Steel Community** (**ECSC** - 1952)
  - Treaties of **Rome**: **European Economic Community** (**EEC** - 1958) and **Euroatom** (1958). The establishment of **Euratom** (the European Atomic Energy Community) was part of the EU's foundational approach to **coordinate nuclear energy resources** and **promote peaceful cooperation**. The broader vision was to create a **unified Europe** that would prevent historical rivals, notably France and Germany, from entering into further conflict. The strategy was simple: by tying these countries together economically, the EU would maintain peace on the continent—"Mission accomplished."
  - **European Single Act** (1986)
  - **Treaty of the European Union** (Maastricht - 1992)
  - Treaty of **Amsterdam** (1997)
  - Treaty of **Nice** (2003)
  - **TCE** (Rome, 2004). Although the EU has **no single document** labeled a ***constitution***, many scholars view the **treaties as having a constitutional character**:
    - ***Les Verts v. European Parliament*** (1986): The ECJ described the treaties as "The Basic Constitutional Charter of the EU."
    - ***European Charter of Fundamental Rights***: serves as a bill of rights since the Treaty of Nice (2000).
    - ***Failed Constitutional Treaty*** (2004): An attempt to formalize an EU constitution failed after rejection in France and the Netherlands. The **European Convention on Human Rights** (ECHR), established in 1950, led to the creation of the **Council of Europe**, a **separate entity from the EU**, responsible for overseeing human rights across Europe. Although it uses the same flag as the EU, the Council of Europe operates independently and is not an EU body.
  - Treaty of **Lisbon** (2007-2009), known as the reform treaty.
- **SUPRANATIONAL Organization**: In 1963, the EU established a new legal order through which **EU law could impact member states and individuals directly**. Unlike typical international organizations, the EU can legislate in areas previously under exclusive national control, like **trade policy** and **monetary matters**. A key example is **Brexit**: as a former EU member, the UK had to negotiate new trade agreements with the EU, reflecting the EU's exclusive competence over trade.

Since its inception, the Community has offered a **new approach to transnational relations**:

- **Powerful Institutions**: EU institutions hold **substantial power**, particularly in **legislative** and **regulatory** matters, surpassing those of other international organizations.
- **Direct Effect**: EU laws directly affect **individuals**, unlike traditional international law, which typically binds only states.
  - **Vertical Direct Effect**: Characteristic of **international law**, whereby **states are bound by international obligations**. In the EU, all treaties, directives, and regulations have vertical direct effect
  - **Horizontal Direct Effect**: Allows EU citizens to **enforce rights against each other** (e.g., contract law). Certain EU regulations apply directly among individuals.
- **No Legislative Equivalent**: **No other international organization has legislative powers comparable to the EU**.

The EU is **NOT A STATE in a formal sense**, as **it lacks sovereignty**. However, it has acquired federal-like features, particularly in:

- **Monetary Policy**: The EU holds **exclusive authority in monetary policy for the Eurozone**.
- **Supremacy and Direct Effect**: Established by the **European Court of Justice** (ECJ), these principles assert that EU law is hierarchically superior to national laws (Supremacy) and can be enforced by citizens in national courts (Direct Effect).

Primary and Secondary Sources of EU Law

- **Primary Sources**: Directives and regulations, products of the EU legislative process.
- **Secondary Sources**: ECJ decisions (case law) also shape EU law.

The EU's development process has often been critiqued as **too top-down**, especially regarding efforts to adopt a formal constitution. Many argue that **this integration was too treaty-focused** and **should have more actively involved European citizens**, favoring a bottom-up approach instead. This criticism became particularly relevant with the 2004 enlargement, where the EU expanded from 15 to 25 member states.

In 2004, the EU welcomed ten new members, including countries from the **former Eastern Bloc** **that were transitioning to democracy**. The accession of Cyprus and Malta also marked this expansion, though only the Greek part of Cyprus joined officially. This significant growth raised questions about the **EU's capacity to integrate such a diverse set of new members** and adjust its structures to support an expanded membership.

The Council of the European Union

Often called the Council of Ministers, it's the primary body representing the **interests of EU member states**. It operates as a **LEGISLATIVE** body alongside the European Parliament, and is headquartered in **Brussels**. The Council has a unique structure where **representation changes based on the subject under discussion**; for example, when addressing economic issues, each country's Minister of Finance participates, while discussions on agriculture would involve Ministers of Agriculture.

Each EU **member** state has **one seat**, and representatives are always **politicians** (not civil servants), ensuring that national interests are directly conveyed. The **presidency of the Council rotates every six months**, giving each member state the opportunity to guide the agenda during its term (e.g., "Italian Semester" or "French Semester").

The Council **approves or rejects EU legislation and the budget** and **appoints the European Court of Auditors (ECA)**.

In terms of structure, the Council is often compared to a **Federal Senate** or the ***German Bundesrat***, as it serves as a **chamber** where **state interests are represented**. When viewing the EU as an:

- **international organization**: the Council functions as a **plenary assembly representing all state parties**.
- **emerging federal entity**: the Council is akin to **one branch of a bicameral system**, balancing the powers of the European Parliament by ensuring member states' voices in EU legislation.

The European Parliament

It's the only EU institution **directly elected** by European citizens through a **universal vote** every 5 years. This process has been in place **since 1979**, although electoral laws are determined nationally. Unlike traditional parliaments, the European Parliament represents **EU-wide political parties** rather than individual member state interests.

The Parliament's **LEGISLATIVE power** has grown significantly over time. **Initially** limited to a **consultative** role, it now shares **co-decision power with the Council of the EU** as the standard legislative procedure. Additionally, the Parliament holds authority over the **EU budget**, and it has the power to **approve or reject laws** and **vote confidence** in the European Commission, underscoring its role as a fully empowered legislative body.

We can speak about **BICAMERALISM** in the EU because there the EU has both the **European Parliament** (directly elected by EU citizens) and the **Council of the European Union** (composed of member state representatives). This structure mirrors **Germany's bicameral system** of the **Bundestag** (federal parliament) and **Bundesrat** (federal council). In both, there's a split between citizen representation (European Parliament/Bundestag) and state representation (Council of the European Union/Bundesrat).

TYPES OF LEGISLATIVE ACTS IN THE EU

Under Article 288 TFEU, to exercise its competences, the EU institutions may adopt regulations, directives, decisions, recommendations, and opinions:

1. **Regulations**:
    - **Binding in their entirety** and **directly applicable in all member states**, similar to national laws.
    - They have a **general application across the EU** and are **automatically effective in all member states** without the need for national legislation.

- **Purpose**: To **ensure uniformity across the EU**, eliminating discrepancies between member states on specific matters.

2. **Directives**:
   - **Binding in terms of objectives** but **allow national authorities the flexibility to choose how to achieve these goals**.
   - They specify a **deadline for implementation**, by which member states must incorporate the directive's objectives into national law.
   - **Purpose**: To **harmonize certain policies across the EU** while **respecting the unique legislative processes of each member state**, particularly in a confederal setting.
3. **Decisions**:
   - **Binding in their entirety** and **may be addressed to one or more specific member states**, **companies**, or **individuals**.
   - When addressed specifically, they are **binding only on those to whom they are directed**.
   - Decisions can also be **generally applicable** when needed.
   - **Purpose**: Often used to **address specific cases**, such as competition rulings or financial allocations.
4. **Recommendations and Opinions**:
   - **Non-binding advisory acts**.
   - Used to **express views or provide guidance without legal force**.
   - **Purpose**: To encourage certain actions or express the position of EU institutions without imposing legal obligations.

SCOPE OF EU COMPETENCE

The EU's legislative power is governed by three core principles under Article 5 TEU:

1. **Principle of Conferral**:
   - The **Union** can only **legislate** in areas where **member states have delegated authority to it through treaties**.
   - The **EU does NOT have general legislative power** and can only act within the scope of competences explicitly conferred by the treaties.
2. **Principle of Subsidiarity**: In areas of **shared competence**, the EU will act **only when it is more effective** than actions taken at the national, regional, or local level.
3. **Principle of Proportionality**: The EU's actions must be **limited to what is necessary to achieve the objectives of the treaties**, avoiding excessive or unnecessary regulations.

The European Commission

The European Commission serves as the **EXECUTIVE** body of the EU, **representing and independently protecting the Union's general interests**. It holds a monopoly on **legislative initiative**, meaning that EU legislative acts can only be adopted based on a Commission proposal (Article 17 TEU), except in cases specified otherwise by the Treaties. The Commission is also responsible for **ensuring member states comply with EU law** through infringement procedures when necessary.

The Commission comprises **27 Commissioners**, one from each member state. However, **Commissioners do NOT represent their countries**; instead, they act **independently**, following the mandate to "***neither seek nor take instructions from any government***" (Article 17 TEU). The **President of the Commission**, seen as the EU's equivalent of a **HoG**, is involved in **selecting commissioners in collaboration with member state governments**.

Additionally, the **High Representative for Foreign Affairs and Security Policy** serves as the **EU's de facto foreign minister**, overseeing Common Security and Foreign Policy and holding the position of **VP of the Commission**. The Commission also **proposes and manages the EU budget**, consolidating its role as the Union's primary executive authority.

APPOINTMENT

1. The process begins with the **European Council** **proposing** a **candidate** for the **President of the Commission**. This candidate must then be **elected** **by a majority in the European Parliament**.
2. Once elected, the **President of the Commission** **collaborates** with the **Council of the European Union** (not the European Council) to **form** **a** **list** **of potential Commissioners**.
3. The Commission as a whole is then **subjected** **to a vote of** **confidence** by the **European Parliament**.
4. The **European Council** officially **appoints** the **Commission** by **qualified majority**.
5. The **Commission**, as a body, is **accountable to the European Parliament**. It can be subjected to a **motion of censure**; if passed, **all members** of the Commission are required to **resign collectively**.

FUNCTIONS

- **Promotion of EU Interests**: According to **Article 17(1) TEU**, the Commission is tasked with "**promoting the general interest of the Union**" and taking necessary initiatives to achieve this goal. As the successor to the **High Authority of the Schuman Declaration**, the Commission is viewed as a driving force of European integration, prioritizing the interests of the EU as a whole.
- **Role as the EU's Executive**: While the Commission can be considered the **executive branch** of the EU, its role differs from traditional executives. It has **significant legislative influence** through its **monopoly on legislative initiative** but **does not wield executive power in the same manner as a national government**.

LEGISLATIVE POWERS

The Commission has a monopoly on the power of legislative initiative. According to Article 17(2) TEU, ***Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise***. This means that **only the Commission can propose new legislation**, although the European Parliament and the Council of the EU can modify, approve, or reject these proposals but cannot introduce new legislation themselves.

POWERS OF OVERSIGHT

The Commission ensures that **EU law is respected by both member states and private firms**:

- **Member States**: The Commission monitors **compliance with EU Treaties** and initiates infringement procedures when a member state violates EU law. If necessary, the Commission can bring the member state before the Court of Justice of the European Union (CJEU).
- **Private Firms**: Through competition law, the Commission i**nvestigates and prosecutes firms engaging in anti-competitive practices** that infringe on EU rules, safeguarding fair competition within the internal market.

The European Council

It's a **distinct institution from the Council of the European Union**. Initially developed informally outside the treaties, it was formally established as an **EU institution** by the ***Lisbon Treaty*** in 2007. The European Council is composed of:

- **27 HoS or HoG of the member states**
- **President of the European Council** (without voting rights)
- **President of the European Commission** (without voting rights)
- **High Representative for Foreign Affairs and Security Policy** (without voting rights).

The **President of the European Council** holds a full-time role with a term of **2.5 years**, **renewable once**. Elected by **qualified majority**, the **President cannot be a current HoS or HoG**. This position acts as the **principal representative of the EU on the world stage**, akin to a **HoS for the Union**.

The European Council defines the **general political direction and priorities of the EU**, often **addressing issues of significant political importance** that are **challenging to resolve within the Council of the EU**. Decisions are taken by **consensus**, as there is **no formal voting process in this body**.

While it plays a crucial role in shaping EU policy, the European Council has **NO legislative responsibilities**. Instead, it functions as **part of the executive branch in cooperation with the European Commission**, **setting the EU's agenda**, **nominating key positions** (e.g., the President of the Commission and the ECB leadership), and guiding the Commission's work.

The European Court of Justice (CJEU or ECJ)

It serves as the **JUDICIAL** branch of the EU with a ***quasi-constitutional*** role, ensuring the **consistent interpretation and application of EU law across member states**. The CJEU is divided into two main courts:

1. **Court of Justice (CJ)**:
    - Composed of **27 Judges** (one from each member state) and **11 Advocates General**, appointed for **6year renewable** terms. The Advocates General assist by providing independent opinions on cases.
    - It primarily **interprets EU law for national courts** through preliminary rulings, **handles annulment cases involving EU legislation**, and **hears appeals on points of law from decisions of the GC**.
2. **General Court (GC)**:

- Composed of **54 Judges** (2 from each member state), also serving **6year renewable** terms.
- It mainly hears **cases brought by individuals**, **companies**, and **organizations**, including matters related to competition, state aid, trade, and trademarks. Its focus is primarily on cases of **annulment where private parties challenge EU acts directly affecting them**.

The CJEU also **operates in various formations** to handle cases of different significance and complexity:

- **Full Court or Grand Chamber** (13 judges) for **exceptional cases** or those **requested by member states**.
- **Smaller Chambers** handle **other cases** depending on the **issue's importance**.

The CJEU has **extensive language arrangements**, allowing proceedings to be conducted in any of the EU's official languages to ensure **accessibility for all EU citizens and institutions**.

Another court exists in Europe: The **European Court of Human Rights** (ECHR) based in **Strasbourg.** It addresses **human rights under the Council of Europe**. It's a different entity from the CJEU.

ECB and ECA

European Central Bank (ECB): was established in 1998 by the Treaty on European Union with the aim to operate within the "European System of Central Banks" (ESCB) which includes all Member States' central banks. **FINANCIAL**

European Court of Auditors (ECA): is based in Luxembourg. It is a collegiate body of 28 Members, one from each Member State. The Court's Members are appointed by the Council of the EU for a six-year renewable term, after consultation with the European Parliament, while the President is elected among the members themselves for a three-year renewable term. **It audits the budget of the EU**. **JUDICIAL**

Let's Apply the Dispositional Properties to the EU

HoG and HoS:

- The **President of the European Commission** can be seen as the EU's de facto **HoG** in the sense of executive leadership.
- The **President of the European Council** can be seen as the EU's HoS.

Popular Election:

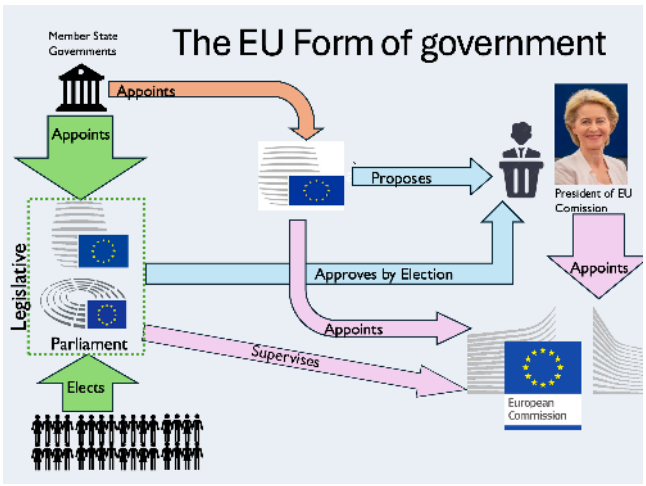
- The **European Parliament** is the only EU institution **directly elected** by European citizens every 5 years, giving it a **direct democratic mandate**.
- The President of the European Commission is proposed by the European Council but must be approved by an election within the European Parliament, meaning the Parliament plays a key role in indirectly electing the EU's executive head.

Fixed Terms:

- The **European Parliament members** are elected for a **fixed 5 year** term.
- The **President of the European Commission** also serves a five-year term, which aligns with the term of the European Parliament, ensuring coherence between the legislative and executive branches.

EU's Form of Government:

- The EU functions with a **unique form of government** that combines aspects of both parliamentary and executive roles across its institutions:
- The European Council (composed of the member states' Heads of State or Government) proposes the President of the European Commission.
- The European Parliament approves the Commission President through an election, giving the President democratic legitimacy.
- The European Commission, led by its President, acts as the executive body of the EU, implementing legislation and overseeing EU policies.
- Parliament supervises the Commission and can issue a vote of no confidence, leading to the resignation of the Commission as a body.



International Law:

- **Not self-executing**: Typically requires implementation through national legislation to take effect within a state's legal system.
- **No direct effect**: Individuals cannot directly invoke international law in national courts. If a state fails to comply, another state must bring a claim for enforcement, leading to an inter-state dispute.
- **No supremacy over national law**: International law is not hierarchically superior to national law. States may override international agreements with subsequent national legislation, following the principle of lex posterior derogat priori (a later law overrides an earlier one).

EU Law:

- **Self-executing**: EU law automatically applies within member states without the need for implementing national legislation; it is directly incorporated as "law of the land."
- **Direct effect**: Individuals can invoke EU law in their national courts and can hold their own government accountable for non-compliance with EU law.
- **Supremacy**: EU law takes precedence over national law. National legislation cannot override or derogate from EU law, ensuring its consistent application across all member states.

Functional Orientation of the Community

The European Economic Community (EEC) was established with a clear objective: to **create an integrated single market,** often referred to as the **internal market or common market**. This market aims to **foster economic integration** by allowing **unrestricted movement** across borders within the EU.

The creation of the **internal market** relies on **eliminating intra-community barriers to trade**. The founding treaties prohibit member states from imposing obstacles to the free movement of the four main factors of production:

- **Goods**
- **Persons**
- **Services**
- **Capital**

These are known as the **four freedoms**, which are the **foundation of the internal market**.

Free Movement of Goods: Article 34 TFEU **prohibits *quantitative restrictions on imports (quotas) and all measures having equivalent effect***. The European Commission and the CJEU have used this article to significantly expand the scope of the common market. The interpretation of ***measures having equivalent effect*** has been applied broadly, allowing the Commission and the CJEU to **reduce restrictions and promote integration across the EU.**

Challenges Facing the EU: Legitimacy Deficit and Rule of Law

Legitimacy Deficit

There is ongoing debate regarding the **democratic legitimacy of the EU**. Many critics argue that EU integration has gone too far, claiming that the **EU has accumulated excessive power**, sometimes at the **expense of democratic accountability and national sovereignty**. This perception has led to calls for the EU to move towards a more democratic and less technocratic approach. Questions arise, such as:

- Has EU integration gone too far, or not far enough?
- Does the EU need more democratic legitimacy?

These concerns reflect a **broader dialogue** about **how much authority the EU should wield** and whether current structures sufficiently represent the will of European citizens.

Rule of Law Crisis

The rule of law is a foundational value in the EU, ensuring that **all public powers act within the boundaries of law** and in accordance with **democratic principles and fundamental rights**. The European Commission outlined essential aspects of the rule of law in its 2019 Communication on Further Strengthening the Rule of Law:

- **Legality**: A transparent, accountable, and democratic process for enacting laws.
- **Legal Certainty**: Ensuring laws are clear and predictable.
- **Prohibition of Arbitrary Power**: Preventing unchecked executive actions.
- **Effective Judicial Protection**: Independent and impartial courts uphold rights and ensure judicial review.
- **Separation of Powers**: Maintaining a balanced distribution of powers.
- **Equality Before the Law**: All citizens are treated equally in the eyes of the law.

The EU faces challenges in upholding these principles across all member states, as certain nations have been criticized for undermining judicial independence or breaching rule-of-law standards. Addressing these rule-of-law issues remains a critical focus to maintain EU cohesion and protect democratic values within the Union.

Constitutional Justice

- **Key terms related to Constitutional or Supreme Courts**
  - **Constitutional Justice**: A broad term encompassing **all functions of a Constitutional or Supreme Court**, including safeguarding the Constitution and protecting fundamental rights.
  - **Constitutional Adjudication**: Similar in meaning to constitutional justice, focusing on **ensuring compliance with constitutional principles**.
  - **Constitutional Review**: A **narrower concept referring specifically to the review of laws or legal actions for consistency with the Constitution**. In case of conflict, the law is declared unconstitutional. In the US, this is called judicial review of legislation, addressing laws' constitutionality. In the UK, judicial review refers to the review of administrative actions, not legislation. To reduce confusion, modern scholars often use constitutional review to refer exclusively to the review of laws' constitutionality.
- **Purpose of Constitutional or Supreme Courts**:
  - **Legal Certainty and Equality**: Ensures consistency in applying the Constitution and laws.
  - **Rule of Law**: Upholds legal principles and prevents arbitrary governance.
  - **Conflict Resolution**: Mediates disputes between central and decentralized governments, especially in federal or devolved systems.
- **Methods of Selecting Constitutional Judges**: 4 main systems to select constitutional judges:
  - **APPOINTMENT based system**: Judges are directly appointed without legislative involvement. E.g. **US**: The President nominates Supreme Court judges with Senate approval.
  - **ELECTION based system**: Parliament plays a significant role in the election of judges, often more so than in the case of regular courts. E.g. **Germany**: Half the Federal Constitutional Court members are elected by the Bundestag, and the other half by the Bundesrat.
  - **MIXED system**: Judges are selected through a combination of legislative and non-legislative appointments. E.g. **Spain**: The King appoints 12 judges, nominated by Congress, Senate, Government, and the General Council of the Judicial Power.
  - **PREDETERMINED system**: Judges are selected based on predefined criteria, without direct involvement of Parliament or Government. E.g. **Greece**: The court is composed of the Presidents of major courts and selected senior judges chosen by lot for a two-year term.

Historical Perspective

UK MODEL: DR BONHAM'S CASE-1610

The Dr. Bonham's Case is often regarded as a precursor to judicial review of legislation, despite Britain lacking a rigid, codified constitution.

Dr. Bonham practiced medicine without the necessary license and was fined and imprisoned under the College of Physicians Act 1553, which allowed the College to fine or imprison violators and take half of the fine. **Dr. Bonham appealed to the Court of Common Pleas**. Chief Justice Coke argued that **the College acted as both judge and party**, which **violated the principle of fairness**.

Coke introduced the idea that **common law can control Acts of Parliament when** those acts:

- **Contradict common right** and **reason**.
- Are **repugnant or impossible to perform**.
- Can be **declared void by the courts**.

What's New?

- **Supremacy of Common Law**: The judiciary could override Parliament under certain circumstances.
- **Parliamentary Prerogatives Limited**: Bound by legal precedents.

US MODEL: MARBURY V. MADISON-1803

The U.S. model of constitutional review, established in the landmark case of Marbury v. Madison (1803), defined the judiciary's power to review the constitutionality of legislation. Chief Justice John Marshall delivered the decision, setting the foundation for judicial review in the United States.

President Adams appointed judges at the end of his term, including Marbury. The appointments were approved by the Senate and signed by the President, BUT the new President, Thomas Jefferson, did not want the new judges to take office and asked his Secretary of State Madison not to send the Commissions (formal acts through which a judge could start exercising its mandate).

Marbury petitioned the **Supreme Court** for a **Writ of Mandamus** to compel Jefferson's Secretary of State, Madison, to deliver his commission.

The J***udiciary Act 1789*** granted the **SC original jurisdiction** over such writs.

The SC decided that **Marbury had a right to his commission and a remedy**. However, the SC could not issue the Writ of Mandamus because the Judiciary Act 1789 granting such power was **unconstitutional**. The Constitution (Article III) does not grant the SC original jurisdiction in such cases.

Chief Justice Marshall asserted the **supremacy of the Constitution** and established judicial review, **allowing courts to declare laws unconstitutional**.

Features of the US Model

- **A Posteriori (Repressive) Review**: Laws are reviewed only after they come into force.
- **Concrete and Incidental Review**: Judicial review occurs within the context of a real controversy between parties (e.g., Marbury's dispute with Secretary of State Madison).
- **Decentralised (Diffused) Review**: All ordinary courts, not just the Supreme Court, can review the constitutionality of laws during their proceedings.

AUSTRIAN Model

The Austrian Model of Constitutional Review, introduced in the Austrian Constitution of 1920 and conceptualized by Hans Kelsen, offers a distinct approach to constitutional oversight. Known variously as the Kelsenian, European, Centralised, or Concentrated model, it contrasts sharply with the U.S. system of constitutional review.

Judicial review characteristics:

- **Centralized Review**: **Constitutional review** is carried out exclusively by a **dedicated Constitutional Court**, separate from the ordinary judiciary. **Ordinary courts cannot rule on constitutional matters**, distinguishing the Constitutional Court's role.
- **Abstract and Principaliter Proceedings**: Unlike the US model, review is not linked to an actual controversy between parties. Instead, **it arises from special proceedings initiated by constitutional bodies**, addressing the law in a theoretical, **abstract context**.
- **A Posteriori**: Similar to the US model, review occurs after the law has come into effect, rather than preemptively.
- **Hierarchical Legal Structure**: Kelsen's **Stufenbau** theory views the Constitution as the ***law of laws***, creating a hierarchy of legal norms. This mirrors the US concept of the Constitution as the supreme law of the land.

HYBRID Models

Judicial review characteristics:

- **Centralized Review**: Conducted by a specialized Constitutional Court.
- Review may occur through:
  - Special Proceedings (**Principaliter**).
  - Regular Court Proceedings (**Incidenter**).
- **A Posteriori**: Conducted after the law has come into effect.

FRENCH Model

Rooted in the **French Revolution** (1789), France's legal framework aimed to make laws judge-proof, limiting judicial interference with legislative power, in line with **Montesquieu's separation of powers**.

Early French Constitutions (1799, 1852) assigned **preventative review** to the Senate (political review).

The Fourth Republic's (1946) creation of the **Comité constitutionnel** marked the establishment of an ad hoc body for constitutional review, but it had limited powers and only performed preventative review.

Current French Model (Fifth Republic):

- The **Conseil constitutionnel** conducts **preventative review** only.

- The **bloc de constitutionnalité**, including the ***Declaration of the Rights of Man and the Citizen*** (1789) and the ***1946 Preamble***, was incorporated in a 1971 decision, expanding constitutional parameters.
- The **saisine parlementaire** (1974) allows a parliamentary minority to petition the Conseil constitutionnel, significantly enhancing its role in French constitutional law.

Post-2008 Reform:

- **Question Prioritaire de Constitutionnalité (QPC)**:
  - Parties may raise constitutional concerns when a legal provision potentially violates fundamental constitutional rights and liberties.
  - Raised only by Supreme Courts: The Conseil d'État or Cour de Cassation may submit the claim.
- **Criteria for Relevance**:
  - The provision must be concretely applicable to the dispute.
  - The Conseil constitutionnel has not previously ruled on its compatibility with the Constitution.
  - The claim must demonstrate an innovative and serious nature.

Structure, Composition and Appointment of Constitutional or Supreme Courts

The composition and appointment processes for Constitutional and Supreme Courts vary widely across countries, reflecting diverse approaches to judicial independence and accountability.

Key Aspects of Judicial Composition

1. **Number of Judges**: The number of judges differs significantly:
   - U.S. Supreme Court: 9 judges serving for life, subject to impeachment.
   - Canadian Supreme Court: 9 judges with mandatory retirement at 75.
   - Australian High Court: 7 judges with mandatory retirement at 70.
   - German Federal Constitutional Court (Bundesverfassungsgericht): 16 judges with a non-renewable 12-year term, retiring by 68.
2. **Terms of Office**:
   - Some courts have life tenure (e.g., U.S.), while others impose fixed terms (e.g., Germany).
   - Judges may or may not be eligible for re-election after serving their terms.
3. **Partial vs. Full Renewal**: In some systems, such as Spain and Italy, judicial terms expire successively, leading to partial renewal of the court.

Appointment Methods

- **Appointment-Based System**: Judges are appointed exclusively by the executive (e.g., Japan and Sweden).

- **Election-Based System**: Judges are appointed exclusively by the legislature, as in Germany, Belgium, and Poland.
- **Mixed System**: Some judges are appointed (by the executive or head of state), while others are elected (by Parliament or senior judges).
- **Predetermined Composition**: In systems where constitutional review is carried out by a Supreme Court or High Court, the court's composition is predefined and independent of parliamentary or governmental influence (e.g., U.K.).

WHO carries out Judicial Review?

Judicial review can follow two main systems:

- **Centralized Review**: Exclusively conducted by a dedicated Constitutional Court or similar specialized body.
- **Decentralized Review**: Conducted by any judge during regular court proceedings, integrating constitutional review into the broader judiciary system.

The decentralised vs. centralised dichotomy provided a clear classification in the past, but it has become insufficient since the 1980s, with the rise of hybrid systems. Many countries, particularly in Latin America and Central and Eastern Europe, now use mixed systems that blend elements of both centralised and decentralised review.

WHEN is Is Judicial Review Performed?

Judicial review can occur either before or after a law takes effect:

- **Preventative Review (a priori)**: Review occurs before the law comes into effect, ensuring its compliance with the Constitution from the outset. **Centralised systems**, such as Austria, can support both repressive and preventative reviews, while France is notable for exclusively employing preventative review.
- **Repressive Review (a posteriori)**: Found in both the U.S. and Austrian models, review is conducted after the law is enacted and takes effect. In decentralised systems like the U.S., review is always repressive as it is tied to actual controversies between parties during regular court proceedings.

How Can a Constitutional Claim Be Brought?

Constitutional claims can be initiated in two primary ways:

1. **Principaliter Proceedings**:
    - **Independent from a Specific Case**: Claims of unconstitutionality are lodged directly with the Constitutional or Supreme Court, unrelated to any specific legal dispute or controversy.
    - **Abstract Review**: The court evaluates the law's constitutionality in general terms, without applying it to a concrete situation.

- **Locus Standi**: Eligibility to file a claim varies by country. Common petitioners include:
  - **Government bodies**: Presidents, parliaments, or regional/local authorities (e.g., in many European countries).
  - **Professional groups**: In Brazil, the Bar Association, trade union confederations, or nationwide professional associations can initiate actions.
- **Individual citizens**: In some countries, individuals or groups can directly petition the court if a statute violates their constitutional rights (e.g., Germany's Verfassungsbeschwerde, Spain's recurso de amparo, and in many Latin American nations).

2. **Incidenter Proceedings**:
   - **Linked to a Specific Case**: Claims arise during regular court cases where a law's application in a particular case raises constitutional concerns.
   - **Concrete Review**: The court evaluates the law's constitutionality as it applies to the specific controversy.
   - **Process**: In some systems, the regular court refers the issue to the Constitutional Court. In others, the sitting judge decides the matter directly.

Types of Decisions Issued by Constitutional Review

Constitutional and Supreme Courts can issue judgments in four main categories, often combining elements of multiple types. These categories are:

Cassation Decisions: The court strikes down the statute law as unconstitutional.

- **Annulment (Ab Initio)**: The decision has retrospective effect, as if the law never existed.
- **Abrogation (Prospective)**: The law ceases to have effect from the moment of the court's decision.

Declaratory Decisions: The court declares the statute unconstitutional without directly annulling or abrogating it. The legislature must address the unconstitutionality, often within a timeframe set by the court. These decisions emphasize the court's advisory role, leaving implementation to the legislature.

Appellate Decisions: The court appeals to the legislature to amend or replace unconstitutional legislation. The intensity of judicial activism varies by country:

- Limited activism in Germany, Austria, and Poland.
- Stronger activism in Portugal, Hungary, and Italy.

Interpretative Decisions: The court uses its discretion to interpret whether a statute aligns with the Constitution. These decisions aim to ensure future implementation of the law complies with constitutional principles. Common in Italy, they significantly affect the relationship between the Constitutional Court and the ordinary judiciary.

Impact on Government Relationships

- **Appellate Decisions**: May be seen as judicial interference with legislative activities, highlighting tensions between courts and legislatures.
- **Interpretative Decisions**: Particularly in centralised systems, they shape the interaction between Constitutional Courts and ordinary courts, as the former guides how laws are applied in compliance with the Constitution.

Effects of Judicial Review

The effects of Constitutional or Supreme Court judgments vary based on their binding scope and temporal application:

Subjective Effects (Binding Nature): These refer to whom the decision applies:

- **Erga Omnes**: The decision is generally binding and applies to all parties and situations. Common in cases where a statute is struck down as unconstitutional.
- **Inter Partes**: The decision is binding only on the parties directly involved in the controversy. Typical in systems with incidental review, such as the U.S. model.

Temporal Effects (Time of Application): These determine when the unconstitutional statute ceases to have effect:

- **Ex Tunc**: The judgment applies retroactively from the moment the disputed provision originally came into effect. The unconstitutional law is treated as if it never existed.
- **Ex Nunc**: The judgment applies only from the moment the decision is delivered. The unconstitutional law remains valid for the period prior to the judgment.

Cassation Decisions: When a law is struck down, the temporal effects classify the decision as:

- **Annulment (Ex Tunc)**: Retroactive invalidation of the law.
- **Abrogation (Ex Nunc)**: Law ceases to have effect only from the time of the court's decision.Models of Constitutional Review

Other Functions of Constitutional/Supreme Courts

Beyond constitutional review, Constitutional and Supreme Courts often perform a range of other crucial functions, which vary across jurisdictions:

1. **Jurisdictional Disputes**: These courts resolve disputes involving:
    - **Top Government Bodies**: Conflicts between national government institutions.
    - **State and Regional or Local Entities**: Disputes concerning federal or decentralized systems.
    - **Local or Regional Entities**: Conflicts between different subnational entities.
    - **Courts and Government Bodies**: Disputes over authority between the judiciary and other branches of government.

2. **Political Parties oversight (Militant Democracy)**: They adjudicate on matters related to unconstitutional acts or activities of political parties.
3. **Referendums**: Ensure the conformity of referendum proceedings with the Constitution. Italy has a peculiar: **abrogativo** (repealing) seen as an instrument to correct mistakes by the parliament. Germany doesn't do referendums at all.
4. **Electoral overisight**:
   - Verify that electoral proceedings comply with the Constitution and relevant laws.
   - Confirm the legitimacy of elected members.
5. **Impeachment powers**: Oversee and decide on impeachment proceedings for:
   - **President of the State**.
   - **Other State Representatives**.
6. **Miscellaneous Jurisdictions**:
   - **International Treaties**: Rule on violations of international agreements.
   - **Judicial Appointments and Immunity**: Handle matters related to the appointment and immunity of constitutional justices.
   - **Martial Law**: Declare or evaluate the constitutionality of martial law.
   - **International Court Decisions**: Enforce and implement rulings from international courts.
   - **Constitutional Amendments**: Participate in or review the amendment process.
   - **Consultative Functions**: Provide advisory opinions on constitutional matters.

The Italian Constitutional Court

The Constitutional Court (Corte costituzionale) was first envisioned by the Constituent Assembly elected on June 2, 1946, when Italy became a republic. It is regulated by Articles 134–137 of the Italian Constitution, effective January 1, 1948, as well as by:

- **Constitutional Laws**: 1/1948, 1/1953, 2/1967.
- **Statute Law**: 87/1953.

The Court became operational only in 1956; before this, constitutional adjudication was carried out by the Corte di Cassazione.

Italy adopts a **centralised model of constitutional review**, unlike the decentralised model of common law systems. **However**, some scholars (e.g., Pegoraro) argue that Italy employs a **HYBRID MODEL** since the Court can review laws via both **principaliter** and **incidenter proceedings**.

The **number of Judges** is 15.

- 5 appointed by the **President of the Republic**.
- 5 appointed by **Parliament in joint session**.
- 5 appointed by **Supreme Courts**.

The **judges' Tenure** is 9 years (non-renewable).

Eligibility: Judges must be lawyers with at least 20y of practice, full professors of Law or judges of supreme civil, criminal or administrative courts (including retired judges).

The **President of the Court** is elected from among the judges, typically the most senior, and serves a short term due to frequent turnover.

Judicial decisions require the participation of **at least 11 judges** (9 for non-judicial decisions). Only judges who participated in all hearings of a case may rule on it.

Some notable features:

- **Parliamentary Voting Rules**: A candidate requires a 2/3 majority in the first three ballots and 3/5 majority thereafter. This allows the parliamentary minority to exercise a form of veto power, as seen in the case of Filippo Mancuso, whose candidacy was blocked by opposition.
- **Amendments to Jurisdiction**: Constitutional amendments in 1999 and 2001 introduced changes in principaliter proceedings and the review of regional statutes.

Function 1: Constitutional Review

Key Interpretations and Clarifications:

1. **Definition of "Law" (Legge)**:
    - The term "law" includes primary legislation and constitutional amendment laws.

- The Constitutional Court has clarified that it can review:
  - State and regional statute laws.
  - State acts with the force of law (e.g., law decrees and legislative decrees).
  - Constitutional amendment laws.

2. **Pre-1948 Legislation**: Laws enacted before the 1948 Constitution came into effect can also be reviewed for constitutional compliance.
3. **Exclusions from Review**:
   - **Secondary sources of law** (e.g., government regulations).
   - **European law**: The Italian Constitutional Court does not have jurisdiction over European Union legislation.
   - **Parliamentary standing orders**: Internal parliamentary rules and regulations are outside its purview.

Parameter of Judgment

The parameter of judgment refers to the **standard or criteria against which a law under review is assessed for constitutional compliance**. These parameters are outlined in the Italian Constitution and include additional sub-constitutional elements.

Primary Parameters: Provisions of the Constitution and Constitutional Laws: These are the foundational criteria (known as bloc de constitutionnalité or bloque de constitucionalidad) used in constitutional review.

Sub-Constitutional Parameters (Interposed Rules): The Italian legal system also considers "interposed rules" (norme interposte) as intermediary standards, which indirectly reference constitutional provisions. These include:

1. **Delegation Acts**: Legislative decrees must adhere to the principles and guidance outlined in their enabling delegation acts. A violation of these principles results in an indirect violation of Article 76 of the Italian Constitution.
2. **State Framework Laws**: Regional laws related to concurrent subject matters must respect the fundamental principles specified in state framework laws (Art. 117.3).
3. **International Customary Law**: All Italian laws must conform to international customary law, indirectly referencing Article 10.1 of the Constitution.
4. **European Directives**: Italian statute laws must align with European Union directives, indirectly linking to Article 11 of the Constitution.
5. **Concordate with the Holy See**: Italian laws must not contravene the Concordate agreements with the Vatican, referencing Article 7.2 of the Constitution.

Types of Proceedings

Constitutional claims in Italy can be initiated through two types of proceedings: **principaliter** proceedings and **incidenter** proceedings, with the latter being more prevalent.

1. **Incidenter Review**: Claims are raised by an **ordinary court judge during a regular trial** when a question of unconstitutionality arises regarding a law to be applied in the case. These proceedings are **concrete** because the constitutional question is tied to an ongoing legal controversy.

   - **Requirements**:
     - **Subjective Requirement**: Only judges within the ordinary or administrative judiciary system can raise the question. Examples include disciplinary bodies, tax commissions, and even arbitration tribunals (e.g., Judgments 114/1970, 287/1974, 376/2001).
     - **Objective Requirement**: There must be a pending court case where judicial power is exercised.
   - **Steps**:
     - The ordinary judge suspends the trial and refers the constitutional question to the Constitutional Court.
     - The Court then decides on the constitutionality of the law in question.

     This mechanism allows for constitutional review to be triggered within the judiciary system, even though the Constitutional Court has exclusive jurisdiction to decide on constitutional matters.
   - **Raising the Question**: The constitutional issue can be raised by the parties involved (including the public prosecutor) or ex officio by the judge a quo (Art. 23, Law 87/1953). The claim must specify:
     - The legal provisions under review (**thema decidendum**).
     - The constitutional provisions allegedly violated (**parameter of review**).
   - **Conditions for Referral**: The judge a quo must verify two conditions before suspending the case and referring the question:
     - **Relevance**: The questioned law must be essential for deciding the case. If the case can be resolved without applying the disputed provisions, the question is irrelevant.
     - **Not Clearly Unfounded**: The judge must have a legitimate doubt about the law's constitutionality. If convinced of the law's compliance, the referral is unnecessary.
   - **Preliminary Review by the Judge a Quo**: The judge performs a preliminary constitutional review to confirm that the question is relevant and not clearly unfounded. This resembles the US model but remains distinct because:
     - The judge does not determine the law's unconstitutionality, only whether doubt exists.
     - The judge lacks discretion; if doubt exists and the question is relevant, they must refer the case to the Constitutional Court.

- **Referral Process**: The judge a quo issues an order to suspend the main proceedings and refer the question to the Constitutional Court. The order must include:
  - The constitutional provision alleged to be violated.
  - The statute law in question.
  - Reasons why the question is relevant.
  - Reasons why the question is not clearly unfounded.
- **Significance:** The incidenter proceedings embody a hybrid feature of Italy's constitutional review system:
  - It incorporates elements of preliminary judicial review akin to the US model.
  - However, the exclusive authority of the Constitutional Court aligns it closely with the Austrian model.

This process ensures a structured and specific pathway for resolving constitutional questions during ordinary legal disputes.

2. **Principaliter Review**: Claims are filed directly with the Constitutional Court by the Central Government or the Regions. These proceedings focus on disputes regarding legislative powers or other jurisdictional matters between the state and sub-national entities. The claim is lodged independently of a specific legal case or controversy, making the review abstract.
   - **Initiation of Claims**:
     - **State vs. Regional Laws**: The State (via the Council of Ministers) can challenge a regional law for any constitutional violation without needing a specific interest.
     - **Regions vs. State Laws**: Regions can challenge state laws only if they interfere with their competencies.
   - **Equalization of Review Timing**:
     - **Before the 2001 reform**:
       - The **State** could challenge regional laws **before** they came into effect (preventative/a priori review).
       - **Regions** could only challenge state laws **after** they came into effect (repressive/a posteriori review).
     - **After the 2001 reform**: Both the State and Regions must file claims within 60 days of a law's publication in the **Official Journal**, ensuring a uniform repressive review process.
   - **Residual Differences in Locus Standi**:
     - Despite procedural equalization, the State retains broader powers, as it can challenge any constitutional violation, whereas **Regions** are restricted to cases involving interference with their competencies.

- This reflects the **State's general legislative power** and aligns with **Article 5**, which declares the Republic "one and indivisible" while recognizing local autonomy.

- **Possibility of Inter-Regional Challenges**:
  - Regions can also challenge laws passed by **other Regions** if those laws violate constitutional provisions or interfere with the challenging Region's competencies.

- **Impact of the 2001 Reform**:
  - Created a more balanced framework for constitutional review between the **State** and the **Regions**.
  - Limited the State's ability to use preventative review, making **repressive review** the standard for both.
  - However, the **State** remains in a more advantageous position than the **Regions**, reflecting its central authority in the Italian constitutional framework.

- **Significance:** The principaliter proceedings embody Italy's **unitary yet decentralized system** by ensuring checks and balances between the **State** and **Regions** while preserving the **State's supremacy** in constitutional matters. This mechanism highlights the tension between **local autonomy** and the **unity of the Republic**.

3. **Review of Statutes**: In addition to the incidenter and principaliter proceedings, Italy includes a specific case of preventative (a priori) constitutional review for the **statutes of the Ordinary Regions**. This proceeding reflects the **unique legal nature of these statutes** and the constitutional oversight mechanisms involved.

   - **Regional Statutes and Their Adoption**:
     - **Ordinary Regions** can adopt a statute that defines their form of government and fundamental principles of organization and functioning, in accordance with the Constitution.
     - These statutes are approved by the **Regional Council** through a specific procedure:
       - Two approvals with a majority of council members.
       - A minimum interval of two months between the votes.

   - **Preventative Review by the Central Government**:
     - **After the statute's publication, the Central Government has 30 days to challenge its constitutionality before the Constitutional Court.**
     - Although this occurs after the statute's publication, the publication serves merely as a notification of approval, not its entry into force.

   - **Role of Referendum**: According to Article 123.3 of the Constitution:
     - A referendum can be requested within **three months** of publication by **one-fiftieth of the Region's electors or one-fifth of the Regional Council members**.

- If a referendum is requested, the statute cannot be promulgated unless approved by a **majority of valid votes**.

- **Comparison to Constitutional Amendments**:
  - The procedure mirrors Article 138 for constitutional amendments:
  - Publication acts as a notification, and the statute only takes effect if referendum conditions are met or no challenge is raised.

- **Preventative Review**:
  - If the **Central Government** challenges the statute, the review occurs **before it takes effect**, making it preventative.
  - This distinguishes it from the standard **repressive review** seen in incidenter and principaliter proceedings.

- **Interpretation and Debate**: Some commentators argue that Article 123 grants the Constitutional Court a fifth function: constitutional review of regional statutes. However, this theory is disputed because Article 134.1 defines the Court's jurisdiction as including "laws and acts having the force of law," which regional statutes clearly qualify as, albeit **sui generis laws**.

- **Significance**: This proceeding highlights the **hybrid nature** of Italy's constitutional review system. It underscores the balance between regional autonomy and constitutional oversight, ensuring that regional statutes align with the national constitutional framework before they come into force.

- **Comparison with Other Models**:
  - Scholars like Lucio Pegoraro describe the Italian system as a tertium genus (a hybrid model) due to the coexistence of abstract and concrete review mechanisms.
  - Similar systems exist in Germany and Spain, which also blend features of centralised review with procedural flexibility.

- **Connection to Kelsen's Theory**
  - **Alignment with Austrian Model**: The Italian system closely mirrors the Austrian model of constitutional review.
  - **Kelsen's Perspective**: Hans Kelsen, the architect of the Austrian model, did not exclude the possibility of constitutional claims arising during regular court cases, making the Italian approach consistent with his broader theoretical framework.

Types of Decisions

1. **Categories of Decisions**:

- **Judgments** (Sentenze): Final, unappealable decisions that terminate proceedings. These include:
  - **Sentenza di Rigetto**: Rejects claims, stating the law is constitutional.

- **Sentenza di Accoglimento**: Accepts claims, declaring the law unconstitutional.

- **Orders** (Ordinanze): Procedural decisions that do not conclude proceedings.
- **Decrees**: Internal organizational decisions by the Court President.

2. **Decision of Inadmissibility**: Issued when procedural conditions are unmet, such as:
   - Lack of locus standi.
   - Irrelevance of the challenged law to the case.
   - Supervening law changes (ius superveniens).

   Sometimes act as a warning to referring judges when the claim is clearly unfounded.
3. **Judgment of Acceptance**: Declares a law unconstitutional with erga omnes effects.
4. **Judgment of Dismissal**: Declares a law constitutional with inter partes effects.
5. **Interpretative Acceptance**: Declares a provision unconstitutional due to its interpretation in practice.
6. **Interpretative Dismissal**: Declares a provision constitutional based on a permissible interpretation.
7. **Manipulative Judgments**: Modify or integrate laws creatively to address constitutional issues:
   - **Partial Acceptance**: Declares only part of a law unconstitutional.
   - **Substitutive Judgments**: Replaces unconstitutional provisions with new ones.
   - **Additive Judgments**: Adds necessary provisions to ensure constitutionality.
8. **Additive Judgments with Collaboration**: Indicate principles for Parliament to follow in addressing omissions, fostering collaboration between the Court, Parliament, and judiciary.
9. **Exhortative Decisions**: Temporarily reject claims, urging Parliament to address potential unconstitutionality. Provide warnings, and may eventually strike down the law if Parliament remains inactive.

Function 2: Resolution of Jurisdictional Disputes

- **Between Branches of Government**: Includes disputes over administrative, judicial, or even legislative acts. The dispute may arise either because:
  - **one branch of government is exercising a power that belongs to another branch of government**, i.e. one party claims the power exercised by another (vindicatio potestatis) or
  - **one branch of government challenges the way that another branch of government has exercised its power** because it has adversely affected the claimant in some way.

  The Process:

- **Admissibility**: The ICC has to decide whether the claim that has been lodged is **admissible or not**.
  - Whether the dispute has a **constitutional tone**
  - **Identification** of the **parties** to the dispute
- **Merits**: The ICC will then enter into the merits of the case and **resolve the dispute**. In practice the court will declare that **function X should be exercise by body Y**. Given the fact that the dispute is between parties the **judgment** only has **inter partes effects**.

- **Between State and Regions**:
  - With the exception of statute laws, **all acts of the State or the Regions may be the cause of a dispute**.
  - Typically involves **administrative acts** or **regulations**.
  - The dispute begins **when the claim is lodged by the State or by the Region**, **within 60 days from the publication** (or notification) of the act that caused the dispute.
  - The ICC will **resolve** the dispute by **declaring who the competence belongs to** (the State or the Regions) with consequential **annulment of the disputed act**.
  - Due to the fact that the case is **between 2 parties**, the judgment will only have **inter partes effects**
  - **State** claims are filed by the **President of the Council of Ministers** after approval by the **Council**, and **regional** claims by the **President of the Regional Executive** after approval by the Regional **Council**.
    - **Impact on Other Regions**:
      - If the ruling favors a Region, other Regions benefit from the interpretation and annulment.
      - If it favors the State, other Regions are unaffected to protect their right to defense.
      - Decisions serve as non-binding but authoritative precedents for future disputes.

Function 3: Impeachment of the President of the Republic

Only two presidential crimes:

- **High treason**;
- **Attempt to overthrow the Constitution**.

For acts carried out in the exercise of duties, the President is otherwise immune.

The impeachment procedure is divided into two phases.

- **First Phase**: **Parliamentary Investigation**

- Conducted by **Parliament in joint session**, starting with an investigation by a special committee composed of the **Immunities Commissions** from both houses.
- The committee has **5 months** to investigate the evidence and can use broad powers like searches, seizures, and telephone interceptions.
- The committee may:
  - **Dismiss the case** (if unfounded),
  - **Propose impeachment** (if the evidence supports it),
  - **Transfer the case to ordinary judiciary** (if the alleged crime is not one specified in Art. 90, It. Const.).
- If the majority of Parliament in joint session votes for impeachment, the case is sent to the Constitutional Court.

- **Second Phase: Trial by the Constitutional Court**
  - Parliament appoints members of the committee to **prosecute the case** before the Court.
  - The President may face **temporary suspension from office** as a precautionary measure.
  - The Constitutional Court sits with an expanded composition:
    - **16 additional members** are selected by lot from a list of citizens with qualifications to be Senators, elected by Parliament every nine years.
    - The Court is composed of **31 members** for the trial.
  - The Court determines whether the President is guilty of the charges.

Function 4: Judgment of Admissibility of Abrogative Referendums

To ensure that the referendum request does not violate one of the limits of admissibility contained in Art. 75. It's a primary source of it may be requested by:

- **500000 electors**
- **5 regional councils**

Controls:

- **Central Office** at the **Court of Cassation** verifies **procedural regularity**
- **Constitutional Court**: verifies the **referendum's admissibility**.

According to art. 75.2 Const., the referendum **cannot be called on certain subject matters**:

- **Tax** or **budget laws**
- **Amnesties** or **pardons**: already require a supermajority. There is also a substantive pov: not the best circumstance, personalization of referendums.
- **Laws authorizing** the **ratification** of **international treaties**:

Fundamental Rights and Freedoms

The concept of fundamental rights and freedoms has evolved significantly over time, shaped by historical, political, and philosophical developments.

Magna Carta (1215) represented the **first attempt to safeguard principles** such as the **writ of habeas corpus** and **freedom of movement** while **limiting the arbitrary power of the Crown**. Although these protections were initially intended for specific groups, they laid the groundwork for the idea of universal rights. In the **medieval period**, the **focus** was not on the individual but on **protecting the rights of social classes and groups**.

English Bill of Rights (1689): with it, the **liberal concept of rights** began. The state's primary responsibility was to **ensure the protection of individual freedoms**. This shift underscored the growing recognition that safeguarding personal liberties was not just a function of governance but its very essence.

American Bill of Rights (1791): Across the Atlantic, the US further advanced these ideas, shortly after the ratification of the US Constitution (1787). These first ten amendments were designed to **protect a range of freedoms:** those of **religion**, the **press**, **speech**, and **assembly**. They also addressed **legal rights**, such as **protection from excessive fines and double jeopardy**, the **right to bear arms**, and **guarantees of due process and security**. Importantly, these freedoms were **not seen as new privileges granted by the state** but as **pre-existing conditions**, inherent to human existence, a notion championed by the philosopher ***John Locke***.

Declaration of the Rights of Man and the Citizen (1789) emerged in Europe as a cornerstone of the French Revolution. Although fundamentally a declaration of intent, it signaled a profound commitment to the **principles of equality and liberty**. Over time, this document inspired a **wave of constitutional reforms across Europe**, with the ***French Constitution of 1848*** standing out as a notable example of a legal framework designed to protect fundamental rights.

The **early 20th century** brought significant political and social upheaval, particularly in the aftermath of WWI. This period called for **innovative approaches to the formulation of rights**, as exemplified by the ***German Constitution of 1919***. It marked a departure from earlier frameworks, reflecting the **complexities of a radically different international political landscape**.

Following World War II, a new phase of **constitutionalism** emerged. The emphasis shifted toward **unalienable rights** as the **core of constitutional design**, highlighting the **ethical and social values that underpin a just society**. These post-war constitutions sought to ensure that the lessons of the past would inform a **more equitable future**, making fundamental rights central to state organization.

Ultimately, the **role of any Constitution**, whether written or unwritten, is to **strike a delicate balance**. On one hand, it **must protect an individual's freedom to act as they wish**; on the other, it **must impose necessary legal restrictions to safeguard the well-being of society as a whole**. This dynamic interplay between **personal liberty** and **collective security** continues to define the essence of modern constitutional frameworks.

Generation of Rights

1st Generation Rights - Civil and Political Rights

They are also known as **Negative freedoms.** Their key focus is **protecting individual freedoms by limiting state interference**. They are **rooted in the liberal state constitutions of the 19th century**. Some examples are the ***Albertine Statute of 1848*** (Kingdom of Sardinia, later Italy), ***Prussian Constitution of 1850***, ***Meiji Constitution of Japan*** (1889)

Prussian Constitution of 1850:

- Article 5: Guarantees personal freedoms.
- Article 6: Declares homes inviolable.
- Article 9: Asserts the sanctity of property.
- Article 12: Protects freedom of religious beliefs and organizations.
- Article 20: Ensures academic freedom.
- Article 27: Safeguards freedom of expression in all forms.
- Article 70: Grants voting rights to every Prussian citizen aged 25 or older.

2nd Generation Rights - Social and Economic Rights

They are also known as **Positive freedoms.** Their key focus is **ensuring social welfare and economic equality through state intervention**. They are found in the **rigid constitutions of democratic states during the 20th century**. Some examples are: ***Weimar Constitution*** (1919), ***French Fourth Republic Constitution*** (1946), ***Italian Constitution*** (1948), ***Basic Law of Germany*** (1949)

Italian Constitution (1948) – Article 38 (Welfare):

- All citizens unable to work and lacking resources necessary for their existence shall be entitled to private and social assistance.
- Workers shall be entitled to adequate insurance for their needs in case of accidents, illness, disability, old age, or involuntary unemployment.
- Disabled and handicapped individuals shall be entitled to education and vocational training.
- The responsibilities laid down in this article shall be entrusted to public bodies and institutions established or supplemented by the State.

3rd Generation Rights

They are also known as **New rights**. Their key focus is **addressing private and collective needs, including environmental and cultural preservation**. They emerged during the 1970s constitutionalism. Some examples are ***Portuguese Constitution*** (1976), ***South African Constitution*** (1996).

Portuguese Constitution (1976) – Article 35 (Use of Data Processing):

- Citizens have the right to access personal data and request corrections.

- Use of personal data for third-party purposes or interconnection of files is prohibited, except in exceptional cases.
- Data processing is restricted for sensitive information (e.g., religious beliefs, political affiliations) unless anonymized for statistical purposes.

Fourth Generation Rights - Intergenerational Rights

Their key focus is **promoting sustainable development and addressing ethical concerns in science and technology**. **Recently identified**, these rights **emphasize the responsibility toward future generations**. An example is the ***Constitution of Argentina*** (1998)

Argentine Constitution (1998) – Section 41 (Environment):

- Guarantees a healthy, balanced environment for human development, ensuring present needs do not endanger future generations.
- Mandates environmental preservation, rational resource use, and education.
- Requires reparations for environmental damage as a legal priority.

Generation	Focus	Key Characteristics	Examples
1st Generation	Civil and Political Rights	Negative freedoms; limit state interference	Prussian Constitution (1850)
2nd Generation	Social and Economic Rights	Positive freedoms; require state intervention	Italian Constitution (1948)
3rd Generation	Collective and Private Rights	Address group needs (e.g., environment, privacy)	Portuguese Constitution (1976)
4th Generation	Intergenerational Rights	Emphasize sustainability and future responsibilities	Argentine Constitution (1998)

Basic Rights

Basic rights encompass the fundamental freedoms and guarantees provided to individuals and groups within a legal framework. These rights are often classified into five categories, reflecting the breadth of their application and the domains they address.

1. **Individual Rights protect personal freedoms** and **ensure individuals can act without undue interference from the state**. Key Rights:
   - **Personal Freedom**: **Protection from unlawful detention, inspection, or searches**.
     Art. 13, Italian Constitution: "Personal liberty is inviolable. No one may be detained, inspected, or searched except by judicial order, with reasons stated and within limits defined by law. Acts of physical or moral violence against those in custody are punishable."
   - **Personal Domicile**: The **right to the inviolability of one's home**.
   - **Freedom of Correspondence and Information**: Ensures **confidentiality of communication**.
     Art. 15, Italian Constitution: "Freedom and confidentiality of correspondence and all forms of

communication are inviolable. Restrictions may only occur by judicial decision in accordance with the law."

- **Freedom of Movement, Residence, and Expatriation**: Protects the **ability to travel, reside, and leave the country freely**.

2. **Rights of the Public Sphere** **govern interactions in the social and political domains**, emphasizing **collective freedoms**. Key Rights:
   - **Freedom of Assembly**: The right to meet and discuss collectively.
   - **Freedom of Association**: The right to form organizations, provided they align with legal norms.
     Art. 18, Italian Constitution: "Citizens can freely form associations for purposes not prohibited by law. Secret and militarized political associations are forbidden."
     XII Transitional and Final Disposition: "Reorganization of the dissolved Fascist party, in any form, is forbidden. Temporary limitations on political rights for leaders of the Fascist regime were implemented for five years after the Constitution."
   - **Freedom of Religion and Creed**: Ensures individuals can practice their beliefs freely.
   - **Freedom of Expression**: Guarantees the right to express opinions through various mediums.
     Art. 21, Italian Constitution: "Everyone has the right to express thoughts freely through speech, writing, or other forms of communication. The press shall not require authorization or censorship except under judicial orders for defined offenses or violations of public morality."

3. **Social Rights** ensure that individuals have access to basic services and protections necessary for well-being. Key Rights:
   - **Education**: Universal **access to education for all citizens**.
   - **Healthcare**: Guarantees **access to medical services**.
   - **Welfare**: Provides **support for those unable to sustain themselves**.
   - **Housing**: Recognizes the **right to adequate shelter**.

4. **Economic Rights** safeguard participation in the economic sphere and ensure fairness in enterprise and labor. Key Rights:
   - **Right to Property**: Guarantees **ownership and protection of private property**.
   - **Freedom of Enterprise**: Ensures the **right to engage in business activities**.
   - **The Market and Competition**: Protects **fair competition and economic integrity**.
   - **Trade Union Rights**: Allows workers to **organize and advocate for their interests**.

5. **Political Rights** empower citizens to **participate in the governance of their country**. Key Rights:
   - The **right to vote and be elected**.
   - **Participation in political activities and decisions affecting public policy**.

The classification of basic rights highlights the multifaceted nature of freedom, encompassing personal, social, economic, and political dimensions. By enshrining these rights in constitutional frameworks like the Italian Constitution, modern democracies aim to balance individual autonomy with collective responsibility, ensuring a just and equitable society.

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TEACHING DIVISION

OUR PARTNERS

700+ CLUB

ETHAN SUSTAINABILITY

DELIVERY VALLEY
NO GENDER KITCHEN

LA PIADINERIA