

# The Conflict Between the Meanings of Constitutional Texts and the Constitutional Judiciary's Position Thereon

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**Abstract:** The conflict among the meanings of constitutional texts is considered one of the most significant core problems affecting the constitutions of countries. This is due to changing ideologies and the drafting of constitutional texts at different times. This conflict is explicitly manifested in two forms: actual or apparent, which creates major challenges

for constitutional courts when interpreting constitutional texts in order to apply them in a way that preserves the unity of the legal system and protects fundamental rights, thereby achieving justice.

**Keywords:** Conflict, Constitutional Texts, Constitutional Judiciary.

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## **I. Introduction**

The issue of conflict between the meanings of constitutional texts has preoccupied legal jurisprudence and constitutional courts, as it is considered one of the complex matters that affect the stability of the constitutional system. This begins with its impact on the supremacy of the constitution as the highest legal reference, continues through creating overlap in the functioning of state authorities, and culminates in hindering the work of constitutional courts that strive to ensure the proper application and respect of constitutional provisions. This conflict is manifested in two forms: apparent conflict and real conflict. Therefore, it becomes clear that constitutional courts have made significant efforts to find ways to resolve such conflicts, especially in the absence of a legal mechanism required to address them.

## **II. Importance of the Study**

The importance of this research lies in the necessity of resolving the conflict between the meanings of constitutional texts to prevent the exploitation of such conflict in violating individuals' rights and freedoms. Additionally, it enriches the discussion by clarifying the position of constitutional courts and their use of the method of reconciliation between conflicting constitutional texts to preserve the legal system and reinforce legal certainty.

## **III. Research Problem**

Constitutional document texts are often general and abstract, requiring interpretation to be properly applied. The adaptability of constitutional texts to emerging realities poses one of the greatest challenges for drafters in terms of their application, as texts are finite while real-life events are infinite. This process can raise numerous issues, the most prominent of which are:

1. What are the main reasons behind undermining the intent of the constitutional text's drafter?
2. What are the conditions and types of conflict?
3. What is the position of constitutional courts on this matter?

## **IV. Research Methodology**

Given the importance of the topic and the need to address its problem, the research adopts the analytical method, which involves studying and analyzing constitutional document texts to extract rulings that may help solve the proposed problem. This is complemented by the comparative method, which involves studying constitutional documents, judicial rulings, and legal opinions to achieve

the desired benefit of the study.

## V. Scope of the Study

The scope of this study is limited to the provisions set out in the Constitution of the Republic of Iraq (2005) and the amended Constitution of the Arab Republic of Egypt (2014), in addition to analyzing judicial rulings issued by both the Iraqi Federal Supreme Court and the Supreme Constitutional Court of Egypt.

## VI. Structure of the Study

In accordance with the nature of the research, we have divided it into two sections. The first section is dedicated to explaining the concept of conflict and its causes, including the meaning and elements of conflict as well as its underlying reasons. The second section addresses the types of conflict and the positions of both jurisprudence and constitutional courts regarding them.

## VII. Section One: The Concept of Conflict and Its Causes

The conflict between the meanings of constitutional texts represents a major challenge to their interpretation. Such conflict arises from contradictions between the meanings of constitutional provisions, making it difficult to determine the intended meaning of the drafter. However, any research topic must begin with a definition and delimitation of its scope. Therefore, it is necessary to clarify the meaning of conflict and identify its causes, as these are central to the study. Subsequently, we will outline the positions of jurisprudence and constitutional courts regarding this constitutional conflict. Accordingly, we will divide this section into two subsections. The first will address the concept of conflict, while the second will examine the positions of legal scholars and constitutional courts on the issue.

### 1. *The Concept of Conflict*

The issue of conflict is considered one of the fundamental topics in legal science. Legislators, legal scholars, and judges all strive to develop precise solutions to address conflicting situations. Notably, conflict does not arise within constitutional frameworks spontaneously; there must be certain underlying causes that lead to it. Therefore, it is necessary to explain the meaning of conflict in the first part of this subsection, followed by an explanation of its causes in the second part.

Legal jurisprudence has defined *conflict* as: “*The application of two or more legal provisions to a single case, where each provision requires a different ruling*”

from the other.”<sup>1</sup>. This definition clearly outlines how conflict arises between the texts of the constitutional document. However, it is criticized for being narrow in scope, as it does not address all aspects of the conflict nor does it explain how such conflict can be resolved. Another broader definition describes conflict as “A divergence between two constitutional texts, whether the difference lies in the wording or the underlying concept, regardless of whether the conflict emerged at the moment the constitution was enacted or surfaced at a later time. The conflict may exist between two texts, or between a constitutional provision and the content or titles of the constitutional chapters. This is due to the unified nature that characterizes constitutional texts, given that they are all the product of the same constitutional legislator.”<sup>2</sup>. This definition is more comprehensive than the previous one, as it includes several forms of conflict:

1. Temporal Conflict: This includes both modern and subsequent conflicts that arise after the constitution's adoption.

2. Verbal Conflict

3. Conceptual Conflict

However, the techniques of resolving conflicts were not mentioned.

## 2. *Elements of Conflict*

For a conflict between constitutional texts to be established, several conditions must be met:

1. Difference in Ruling: That is, there must be a contradiction between two provisions, where one negates the effect of the other or contradicts what the other affirms.

2. Existence of Two or More Constitutional Texts: The presence of multiple provisions within the constitutional document is a prerequisite for any conflict to arise.

3. Equal Legal Value of the Texts: The conflict under discussion must be confined to constitutional law alone, without involving laws of lower rank<sup>3</sup>. In the case of a conflict between a constitutional provision and an ordinary legal rule, ordinary law is set aside because it holds a lower legal status. Thus, the conflicting law is annulled rather than reconciled with or preferred over the constitutional provision. In other words, the conflicting texts must possess equal legal authority. A conflict cannot logically occur between legal texts that do not share the same

<sup>1</sup> Albert, R. (2019). *Constitutional amendments: making, breaking, and changing constitutions*. Oxford University Press. <https://global.oup.com/academic/product/9780190640507>

<sup>2</sup> Stephenson, S. (2021). Constitutional Conventions and the Judiciary. *Oxford Journal of Legal Studies*, 41(3), 750-775. <https://doi.org/10.1093/ojls/gqaa047>

<sup>3</sup> Mahalwar, V. (2023). LIVING CONSTITUTIONALISM' AND THE ROLE OF INDIAN JUDICIARY. *ShodhKosh: Journal of Visual and Performing Arts*, 4(2), 1377-1382. <https://doi.org/10.29121/shodhkosh.v4.i2.2023.2403>

legal standing. This stems from the principle of the hierarchical structure of legislation, which dictates that higher-ranking laws govern those beneath them. Accordingly, this principle serves as a safeguard to ensure the supremacy and enforceability of constitutional texts<sup>4</sup>.

4. Unity of judgment: This means that both provisions contained in the two conflicting texts refer to the same place, and if that place differs, the conflict is negated. This is what the Federal Supreme Court held in one of its decisions when the Iraqi Council of Representatives requested to resolve the issue of the nominal conflict between the text of Article (118) of the current Iraqi Constitution, which obliges the Council of Representatives to develop a law stating the procedures for the formation of regions within a period of 6 months starting from the first session of the Council. Article (142) of the Constitution, which stipulates the formation of a committee of members of the House of Representatives at the beginning of the Council's work to formulate recommendations for constitutional amendments. These recommendations shall be submitted within a period not exceeding four months and then dissolved after deciding on the proposals submitted by it; as the court indicated in its decision that there is no correlation between the two articles, neither in terms of subject matter nor in terms of the time of application of the two texts. Therefore, there is no priority of one text over the other that requires weighting. The Federal Supreme Court ruled in its interpretative decision No. 214/Federal/2006 dated September 28, 2006 that “there is no interconnection between the provision of Article 118 and the provision of Article 142 of the Constitution, and that the work of the provision of one article does not intersect with the work of the provision of the other article due to the difference in their subject matter, although the implementation of their provisions is obligatory on the Parliament in implementation of the text of the Constitution. The text of each of the above-mentioned articles defines the commencement of the operation of their provisions by two expressions that differ in wording but are identical in meaning. From the foregoing, the Court concludes that the provisions of the two articles must be implemented simultaneously and that one has no priority over the other.”<sup>5</sup>. The issue of conflict between constitutional texts is not an unlikely occurrence, whether such conflict arises between provisions within the same constitutional document or across multiple documents of a constitutional nature. Conflict may emerge within the constitutional framework due to the differing sources of constitutional rules, whether in terms of the time of their enactment or the concepts and values they reflect. For example, civil and political rights, such as the right to life, freedom of

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<sup>4</sup> Tierney, S. (2022). *The Federal Contract: A Constitutional Theory of Federalism*. <https://doi.org/10.1093/oso/9780198806745.001.0001>

<sup>5</sup> Tushnet, M. (2021). *The new fourth branch: institutions for protecting constitutional democracy*. Cambridge University Press. <https://hls.harvard.edu/bibliography/the-new-fourth-branch-institutions-for-protecting-constitutional-democracy/>

movement, and freedom of expression, are rights granted for the benefit of the individual in relation to the state, which is obligated not to interfere with or restrict them except within the limits set by law. In contrast, social and economic rights require positive intervention by the state, making it responsible for ensuring these rights in favor of individuals and society at large. As a result, the differences in these rights may lead to conflict between the constitutional rules governing them<sup>6</sup>. A conflict may arise between the provisions of a single constitutional document, either through a contradiction between two constitutional articles that regulate the same constitutional matter in different ways, whether in terms of rule or condition, or through a constitutional amendment<sup>7</sup>. An amendment to the constitution may occur that alters or develops certain provisions. Such an amendment may result in a conflict between the existing constitutional provisions and the newly introduced ones, due to differences between the founding authority and the established authority, as well as variations in time and circumstances. The constitution is issued during a specific time and under certain conditions, which may differ from those under which it is later amended<sup>8</sup>. Therefore, conflicts between provisions of the constitutional document are a negative phenomenon that may lead to the invalidation of constitutional texts if not resolved. This highlights the importance of resolving such conflicts, as doing so prevents the suspension of the constitution and ensures the supremacy of its provisions. More importantly, it protects individuals' rights from being violated by state authorities encroaching on domains reserved for society, the family, or the individual. Additionally, it safeguards public order from political, economic, or social instability. All of this contributes to the stability of constitutional provisions, the public's trust in the constitution, and the preservation of its supremacy.

### 3. *Causes of Conflict*

There are several reasons that may lead to conflicts between constitutional provisions. Among the most significant are the following:

#### 3.1. *The Drafting of Constitutional Texts*

Legal drafting, or legislative formulation, is defined as the set of tools and methods used to bring a legal rule into practical existence in a way that fulfills the

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<sup>6</sup> Tierney, S. (2022). *The Federal Contract: A Constitutional Theory of Federalism*. <https://doi.org/10.1093/oso/9780198806745.001.0001>

<sup>7</sup> Lewkowicz, J., Metelska-Szaniawska, K., & Fałkowski, J. (2024). Political conflict, political polarization, and constitutional compliance. *Constitutional Political Economy*. <https://doi.org/10.1007/s10602-024-09434-3>

<sup>8</sup> Szente, Z. (2022). Constitutional identity as a normative constitutional concept. *Hungarian Journal of Legal Studies*, 63(1), 3-20. <https://doi.org/10.1556/2052.2022.00390>

purpose of its imposition<sup>9</sup>. It is also described as the process of transforming the values, principles, facts, and ideas from which the law derives its material into precise words, phrases, and sentences that are suitable for practical application<sup>10</sup>. It may be assumed that drafting is merely the process of transferring the ideas residing in the legal drafter's mind into concrete form. Some have even described it as the tool or medium through which legal thought moves from the internal sphere to the external realm<sup>11</sup>. However, drafting is not merely a means of conveying ideas, it is the sole voice that articulates the substance of a legal text. In other words, it is the drafting that defines the intended meaning of the text. This indicates a fundamental relationship between drafting and the legal provision: the success or failure of a legal text is inherently tied to the success or failure of its formulation. Sometimes, the wording of a constitutional text may fail to accurately convey the intent of its author<sup>12</sup>. For instance, when a constitutional document stipulates the formation of unions based on democratic principles guaranteed by law, this formulation reveals the constitutional legislator's intention that the attainment of union leadership positions must be tied to the free and informed will of its members, without any preferential treatment among them in the exercise of their rights<sup>13</sup>. Due to the risks associated with legal drafting, particularly constitutional drafting, some countries have recognized its importance and taken steps to avoid ambiguity and vagueness. They have done so by establishing specialized committees tasked with drafting constitutional texts. For example, during the drafting of the Egyptian Constitution, the internal regulations of the "Committee of Fifty" (responsible for amending the draft constitution) explicitly mandated the formation of a drafting committee, as stated in Article 12, paragraph 5. Similarly, the United Kingdom has adopted this approach in drafting certain constitutional texts by creating a body known as the *Office of Parliamentary Counsel*, which is tasked with the responsibility of legal drafting<sup>14</sup>. Nonetheless, some critics might object to this approach on the grounds that such committees could distort the text, intentionally or unintentionally, and thereby undermine the intent of the constituent authority. We believe that such doubts have no real basis, since the work of these

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<sup>9</sup> Sacco, R. (1991). Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II). *The American Journal of Comparative Law*, 39(1), 1-34. <https://doi.org/10.2307/840669>

<sup>10</sup> Greenberg, M. (2004). HOW FACTS MAKE LAW. *Legal Theory*, 10(3), 157-198. <https://doi.org/10.1017/S1352325204040212>

<sup>11</sup> HABERMAS, J. (1986). Law as Medium and Law as Institution. In T. Gunther (Ed.), *Dilemmas of Law in the Welfare State* (pp. 203-220). De Gruyter. <https://doi.org/10.1515/9783110921526.203>

<sup>12</sup> Crawford, L. B. (2022). The Communist Party Case Revisited: Constitutional Review in the 2020 Term. *Federal Law Review*, 50(1), 20-39. <https://doi.org/10.1177/0067205X211066142>

<sup>13</sup> Wright, R. G. (1990). Could a constitutional amendment be unconstitutional. *Loy. U. Chi. LJ*, 22, 741. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/lucj22&div=34&id=&page=>

<sup>14</sup> Bignotti, C., & Camassa, C. (2024). Legal Minds, Algorithmic Decisions: How LLMs Apply Constitutional Principles in Complex Scenarios. *Proceedings of the AAAI/ACM Conference on AI, Ethics, and Society*, 7(1), 120-130. <https://doi.org/10.1609/aies.v7i1.31623>

committees is ultimately subject to a vote by the constituent authority. This reflects the idea that was present in the mind of the text's drafter. Some countries have even found it necessary to amend the internal regulations of the constituent authority due to the lack of clarity regarding the powers of the constitutional drafting committee. For example, concerns were raised about the internal rules of procedure of the Tunisian National Constituent Assembly, particularly regarding whether the drafting committee could introduce amendments to the constitutional draft without coordinating with or referring to the specialized thematic committees. One of the members of the committee responsible for drafting the Egyptian constitution said: "Allah willing, in the first week after the holiday, the General Drafting Committee will convene, and we will begin studying the various chapters, especially... The drafting has already covered more than 150 articles, and communication is ongoing between the Drafting Committee and the rapporteurs of the specialized subcommittees and their assistants. We will not vote, but rather we will come here to the hall...we will discuss these matters, and at the same time, we will work on the sensitive points to reach consensus and agreement on them. Of course, the sessions discussing the drafting will not be broadcast, because the formulations will be extremely precise, and we will deliberate on the comma, the dot, the dash, the word, whether it's in the present or past tense..."<sup>15,16</sup>. This is important because it is the drafting that can reveal the constitutional legislator's intended meaning, clearly articulating his direction and purpose, or, conversely, it may result in the loss of that intent altogether. Ultimately, it must be emphasized that both the original and derived constituent authorities should possess strong legal and political competence when drafting constitutional texts. This is why many countries are keen to assign the task of drafting constitutional provisions to a select group of leading judges and legal scholars, ensuring that the constitutional document is characterized by sound and precise formulation<sup>17</sup>.

### 3.2. *Ideological Change*

The legal norm in general, and the constitutional norm in particular, is composed of foundational material derived from political thought and ideology, which reflect the collective conscience of society and are manifested in the political reality of the state through the structure of its authorities and their relations with one another, as well as with individuals. The term *ideology* consists of two parts: (*idea*) meaning

<sup>15</sup> Proctor, B., & Moussa, I. B. (2012). *The Tunisian Constituent Assembly's By-laws: A Brief Analysis*. International IDEA. <https://www.idea.int/sites/default/files/publications/tunisian-constituent-assembly-by-laws-brief-analysis.pdf>

<sup>16</sup> El-Shahed, K. M. (2020). Drafting the Egyptian Constitution: a comparative analysis between the drafting committees of the 2012 and 2014 Constitutions. *A&c-Revista de direito administrativo & constitucional*, 20(79), 13-23. <https://doi.org/10.21056/aec.v20i79.1308>

<sup>17</sup> Lazarus, L. (2020). Constitutional Scholars as Constitutional Actors. *Federal Law Review*, 48(4), 483-496. <https://doi.org/10.1177/0067205X20955056>

that which is related to thought, and (*logos*) meaning science or study. Thus, *ideology* is the science of ideas, it explores the nature of thought and the origin of mental images in humans<sup>18</sup>. The term was first used by the French philosopher Destutt de Tracy in the 19<sup>th</sup> century, who defined it as the science that studies the ideas formed by humans during their interaction with their material environment. Karl Marx later used the term to describe a set of beliefs that prevail in society as a result of prevailing political and economic conditions. During the era of Napoleon Bonaparte, the term acquired a negative connotation due to the opposition of philosophical school thinkers to his rule. He accused them of plotting against him and mockingly called them *men of ideology*, portraying them as idle intellectual chatterers devoid of meaning. This negatively affected the perception of the term *ideology*. However, after the mid-20<sup>th</sup> century, the term gained popularity once again and was widely adopted by many thinkers<sup>19</sup>. In other words, the constitutional text consists of a set of terms and expressions that embody content grounded in thought and ideology, serving as a guide toward achieving specific goals. Ideology plays a crucial role in shaping individuals' choices and the extent of their belief in the ideas and values expressed in the constitutional text. It thus functions as a strategic framework for organizing collective political aspirations. Accordingly, ideology is the theoretical framework of political values, ideas, and concepts, through which all aspects of societal life are interpreted, and transmitted via language as the medium for conveying these values<sup>20,21</sup>. Most constitutions, if not all, are based on a particular ideology, which has a significant impact on the process of constitution-making. This ideological influence may stem from a religious source or from human imagination and intellectual thought. Hence, the constitutional norm is built upon two main factors:

1. The material factor, which is based on political, economic, social, cultural, religious, and historical influences that interact with the life of society governed by the constitutional rule. These influences determine the necessary behavioral norms.
2. The formal factor, which refers to the technical means or tools through which these ideas are transformed into a general, abstract, and binding legal rule applicable to all its subjects.

These two factors are deeply interconnected: the former represents the substance

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<sup>18</sup> Ahmed, A. (2022). A theory of constitutional norms. *Michigan Law Review*, 120(7), 1361–1418. <https://doi.org/10.36644/mlr.120.7.theory>

<sup>19</sup> Plamenatz, J. P. (1971). *Ideology*. Springer. <https://doi.org/10.1007/978-0-230-62914-1>

<sup>20</sup> Anzalone, A. (2020). Importance of Constitutional Values and Duties: The Italian Case. In J. Cremades & C. Hermida (Eds.), *Encyclopedia of Contemporary Constitutionalism* (pp. 1-10). Springer International Publishing. [https://doi.org/10.1007/978-3-319-31739-7\\_222-1](https://doi.org/10.1007/978-3-319-31739-7_222-1)

<sup>21</sup> Baker, J. R. (2020). Decoding Geopolitical Language in New Constitutions: An Analysis of Contemporary Constitutional Content. In S. D. Brunn & R. Kehrein (Eds.), *Handbook of the Changing World Language Map* (pp. 981-1026). Springer International Publishing. [https://doi.org/10.1007/978-3-030-02438-3\\_6](https://doi.org/10.1007/978-3-030-02438-3_6)

and essence of the rule, while the latter provides its binding force<sup>22,23</sup>. The earliest constitutions to adopt a specific ideology and political philosophy were those that emerged in the 18th and 19th centuries, following the French and American revolutions. These revolutions emphasized the triumph of the people under the principle of popular sovereignty as a political force against other powers. Similarly, the constitutions under study are grounded in specific ideas and philosophies that dominate their texts, whether in relation to the system of governance, the economic and social structure of the state, or the rights and freedoms they guarantee. For example, the Iraqi Constitution states in Article (41) that “*Iraqis are free in their personal status matters,*” while the ideology reflected in the Egyptian Constitution is shaped by religious and nationalist cultural influences within Egyptian society. Article 41 of the Constitution of the Republic of Iraq of 2005 stipulates that “Iraqis are free to adhere to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.” This is evident in Article (10), where the constitutional legislator emphasizes the role of religion, patriotism, and morality in maintaining family cohesion. Article 10 of the amended 2014 Constitution of the Arab Republic of Egypt stipulates that “the family is the foundation of society, based on religion, morality and patriotism, and the state shall ensure its cohesion, stability, and the consolidation of its values.” The conflict between constitutional norms may arise either from a divergence in the ideology introduced by the original constituent authority within the same constitutional document or from a mismatch between the ideology brought by a derivative constituent authority and that of the original authority, especially since most constitutions around the world, including those studied here, provide for the possibility of amendment. When a derivative constituent authority amends the constitution, it may introduce an ideology that conflicts with the one originally embedded in the constitution, thus creating contradictions between constitutional provisions due to ideological shifts. Accordingly, the derivative constituent authority must consider the ideology underlying the constitutional document when carrying out amendments, to ensure that such amendments harmonize with the overall philosophy of the constitution. For instance, in the preamble of the current Iraqi Constitution, the original constituent authority declared:

*“We, the people of Iraq, who have just risen from our stumble and look forward confidently to our future through a federal, democratic, pluralistic republican system.”* At the end of the preamble, it also stated: *“We, the people of Iraq, who have resolved, with all our components and spectrum, to affirm freely and by*

<sup>22</sup> Vinx, L. (2021). Hans Kelsen and the material constitution of democracy. *Jurisprudence*, 12(4), 466-490. <https://doi.org/10.1080/20403313.2021.1921493>

<sup>23</sup> de Geus, T., Wittmayer, J. M., & Vogelzang, F. (2022). Biting the bullet: Addressing the democratic legitimacy of transition management. *Environmental Innovation and Societal Transitions*, 42, 201-218. <https://doi.org/10.1016/j.eist.2021.12.008>

*choice our union.”*

The first part stresses a political ideology based on political and social participation through a federal democratic system. In contrast, the second part emphasizes freedom of choice and unity among the diverse components of the Iraqi people, reflecting an ideology that promotes personal liberty and peaceful coexistence. This reveals a degree of ideological divergence within the vision of the original constituent authority, differences that can influence the structure of the state and its institutions. When ideological differences exist, it may become difficult for the executive authority to implement a unified policy, which in turn affects the efficiency of governance. Combining multiple ideologies within a single constitutional document can create contradictions in the interpretation of its provisions. This may ultimately result in conflicts between the legislative and executive branches, thereby threatening political and social stability in the state<sup>24,25</sup>.

#### ***4. Types of Conflict and the Position of Constitutional Jurisprudence and Judiciary Thereon***

The conflict between the provisions of a constitutional document does not arise spontaneously, but is rather the result of various contributing factors, which in turn make the application of the constitution and the realization of justice more difficult. Understanding the type of conflict occurring among constitutional provisions is essential for choosing the appropriate method of resolving it.

##### ***4.1. First Requirement: Types of Conflict Among Constitutional Provisions***

Conflicts between constitutional provisions, which all possess the same legal authority, are indeed possible. The process of legal inquiry requires identifying these types of conflicts, beginning with apparent conflict and ending with actual conflict, since recognizing these categories is crucial for resolving contradictions and achieving justice, whether by reconciling the conflicting texts or giving precedence to one over the other. Accordingly, this requirement will be divided into two subsections:

- In the first subsection, we discuss the *apparent conflict* between constitutional provisions.
- In the second subsection, we address the *actual conflict* between constitutional provisions.

##### ***4.2. Apparent Conflict Among Constitutional Provisions***

<sup>24</sup> Bogaards, M. (2021). Iraq's Constitution of 2005: The Case Against Consociationalism 'Light'. *Ethnopolitics*, 20(2), 186-202. <https://doi.org/10.1080/17449057.2019.1654200>

<sup>25</sup> Eriksson, J., & Grief, I. (2023). The Iraqi state's legitimacy deficit: Input, output and identity-based legitimacy challenges. *Global Policy*, 14(2), 363-372. <https://doi.org/10.1111/1758-5899.13208>

Apparent conflict is defined as “a difference in constitutional rulings regarding a single issue between two or more provisions of the constitutional document, in which a superficial contradiction appears between them”. That is, the provisions may seem contradictory at first glance, but in truth and reality, no genuine contradiction exists, and the texts can be reconciled<sup>26</sup>. This type of conflict often arises due to differences in interpretation among legal scholars or due to issues related to the semantic nuances of constitutional language. In other words, it is a mental or formal conflict. There is a divergence in constitutional jurisprudence as to whether this type qualifies as a genuine constitutional conflict. Some jurists consider it a type of conflict<sup>27</sup>, while others do not. Apparent conflict may be contemporary with the drafting of the constitution or emerge during its application.

- Contemporary apparent conflict refers to conflicts that exist at the time of issuing the constitutional document between two provisions regulating the same constitutional matter, but in different ways, either in terms of judgment or conditions<sup>28</sup>.

An example of a *contemporary apparent conflict* in the current Iraqi Constitution is the principle of equality before the law, which includes the concept of *equality in parliamentary representation* as stated in Article 14 of the 2005 Constitution of the Republic of Iraq stipulates that “Iraqis are equal before the law without discrimination on the basis of gender), contrasted with the *women’s quota* mentioned in Article (49 / IV) of the 2005 Constitution of the Republic of Iraq stipulates that “the electoral law shall aim to achieve a percentage of women's representation of not less than one-quarter of the members of the House of Representatives). However, applying the rule of specific overriding the general (*lex specialis derogat legi generali*) resolves the contradiction between the two provisions. Some have pointed out that there is a clear conflict between the principle of equality and the women's quota. Some argued that the women's quota was an exception to the principle of equality<sup>29</sup>. Similarly, the conflict present in the Egyptian Constitution between the text of Article 97, which states that “*Every person shall be tried before their natural judge*” (the text of Article 97 of the amended 2014 Constitution of the Arab Republic of Egypt.), and the constitutional provision in Article 204 (the text of Article 204 of the amended 2014 Constitution of the Arab Republic of Egypt.), which allows for trying civilians before military

<sup>26</sup> Bisztyga, A., & Kuczma, P. (2022). The Outline of Constitutional Regulations on the Freedom of Conscience and Religion in Poland. *Religions*, 13(1), 7. <https://doi.org/10.3390/rel13010007>

<sup>27</sup> Ezzerouali, S., & Chami, Y. (2023). Inclusion of Definitions in Legislative Drafting: A Necessity or a Luxury? *Mazahib*, 22(1), 37-64. <https://doi.org/10.21093/mj.v22i1.5298>

<sup>28</sup> Levinson, D. J. (1999). Rights essentialism and remedial equilibration. *Colum. L. Rev.*, 99, 857. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/clr99&div=40&id=&page=>

<sup>29</sup> Tank, P. (2021). Rebel governance and gender in northeast Syria: transformative ideology as a challenge to negotiating power. *Third World Thematics: A TWQ Journal*, 6(1-3), 69-87. <https://doi.org/10.1080/23802014.2022.2115547>

courts in cases specified by law, such as attacks on military installations or areas, recruitment-related crimes, and others. (Natural justice means that litigants are entitled to an equal trial before the same courts according to procedural rules and applying the same legal provisions, and no one may be prosecuted except by competent and established ordinary courts<sup>30,31</sup>. Based on the above, it becomes clear that conflicting constitutional provisions give rise to a derived constitutional rule based on the principle of proportionality between the conflicting texts. This rule requires interpreting and applying the provisions in a way that achieves balance and harmony between the conflicting meanings without compromising the spirit and objectives of the constitution. This rule reflects the necessity of reconciling conflicting provisions within the constitutional document by interpreting them so as to benefit from each provision and reduce the discord between them. It plays an important role in reinforcing the supremacy of the constitution and ensuring its application. It should be noted that this rule, which is derived from the constitution, does not affect the conflicting constitutional rights or competences themselves but rather influences their realization.

As for the *apparent conflict emerging after the constitution's enactment*, this can only be conceived during the future application of the constitutional provisions in light of new circumstances that may arise due to evolving political, economic, social, or cultural visions<sup>32</sup>. An example of this is the constitutional provisions under study regarding the protection of human dignity (The text of Article 37/I/A of the 2005 Constitution of the Republic of Iraq corresponds to the text of Article 51 of the 2014 Constitution of the Arab Republic of Egypt, as amended.) and the statement that the family is the foundation of society, based on religion (The text of Article 29/I/A of the 2005 Constitution of the Republic of Iraq corresponds to the text of Article 51 of the 2014 Constitution of the Arab Republic of Egypt, as amended.), and that no laws may be issued contrary to the fundamental provisions of Islam and the principles of Islamic Sharia (The text of Article 2 of the 2005 Constitution of the Republic of Iraq corresponds to the text of Article 2 of the 2014 Constitution of the Arab Republic of Egypt, as amended.), contrasted with the constitutional provision guaranteeing the encouragement of scientific research that serves humanity (The text of Article 34/third of the 2005 Constitution of the Republic of Iraq corresponds to the text of Article 23 of the 2014 Constitution of the Arab Republic of Egypt, as amended.), including human cloning and embryo

<sup>30</sup> Bordón, J. (2025). 'They Are All the Same': Securitising the Muslim Brotherhood in Saudi Arabia and Egypt, Ordering Space and the Regional 'Common Sense'. *The International Spectator*, 1-22. <https://doi.org/10.1080/03932729.2025.2491359>

<sup>31</sup> Hynek, S. (2024). Weaponizing Democratization: Street Battles and Transformation in Post-Revolutionary Egypt. *Middle East Critique*, 33(1), 25-44. <https://doi.org/10.1080/19436149.2023.2234131>

<sup>32</sup> Rackley, E., & Auchmuty, R. (2020). The Case for Feminist Legal History. *Oxford Journal of Legal Studies*, 40(4), 878-904. <https://doi.org/10.1093/ojls/gqaa023>

experimentation<sup>33</sup>. If we approximate these provisions, we conclude that scientific research should be conducted within the framework of ethical, human, and religious values and should not violate the human dignity that the constitution stresses must be preserved and not infringed upon. Accordingly, it is believed that the constitutional provision in this example does not conflict with the other constitutional provisions. Iraq acceded to the Arab Convention on Preventing and Combating Human Cloning under Law No. 30 of 2023 ratifying the Arab Convention on Preventing and Combating Human Cloning.

#### 4.3. *Real Conflict between Constitutional Texts*

Real conflict is the actual difference between two texts such that they cannot be reconciled except by applying one and neglecting the other. Some have defined it as the disagreement between two texts where each prevents the application of the other; that is, they cannot be combined except by disregarding the value of one of them. In one of its decisions, the Egyptian Court of Cassation defined a true conflict between legal texts as “the occurrence of two texts on the same subject matter, which makes it impossible to implement them together.” (Egyptian Court of Cassation ruling No. 5095, year 63, dated 2/13/2002). It is defined as “a clash between two provisions that hold different rulings which cannot be harmonized<sup>34</sup>. This meaning differs from *apparent conflict*, which can be resolved by preference or reconciliation between the conflicting texts. In apparent conflict, both texts remain effective, such as the conflict between a general text and a specific text, or between an absolute text and a restricted text. In such cases, the constitutional judge gives priority to the specific or restricted text over the general or absolute one, but does not cancel it; the general constitutional text remains effective and its application occurs outside the scope of the specific constitutional text. By contrast, *real conflict* leads to the nullification of some constitutional texts by neglecting their application. This stems from the principle of destruction, which holds that if legal texts contradict each other, they lose their regulatory character and therefore have no effect within the legal framework<sup>35</sup>. The Iraqi Constitution encompasses both types of conflict and explicitly addresses real conflict by the term “contradiction” in Article (121/second), which refers to the right of the regional authority to amend federal law during application if a contradiction or conflict

<sup>33</sup> Saati, A. (2020). Participatory constitution-building in Fiji: A comparison of the 1993–1997 and the 2012–2013 processes. *International Journal of Constitutional Law*, 18(1), 260-276. <https://doi.org/10.1093/icon/moaa001>

<sup>34</sup> Eriksson, J., & Grief, I. (2023). The Iraqi state's legitimacy deficit: Input, output and identity-based legitimacy challenges. *Global Policy*, 14(2), 363-372. <https://doi.org/10.1111/1758-5899.13208>

<sup>35</sup> Borelli, S. (2015). The (Mis)-Use of General Principles of Law: Lex Specialis and the Relationship Between International Human Rights Law and the Laws of Armed Conflict. In L. Pineschi (Ed.), *General Principles of Law - The Role of the Judiciary* (pp. 265-293). Springer International Publishing. [https://doi.org/10.1007/978-3-319-19180-5\\_13](https://doi.org/10.1007/978-3-319-19180-5_13)

exists. From the above, it is clear that apparent conflict differs from real conflict in the following aspects:

1. In terms of outcomes: Apparent conflict does not lead to nullifying either of the conflicting constitutional texts; both continue to operate. Real conflict, however, may result in the nullification of one and application of the other.

2. In terms of how the conflict is resolved: Apparent conflict is resolved by preference or reconciliation between texts if both texts emerged simultaneously, or by repeal (abrogation) if one text emerged after the other; the later ruling overrides the earlier one. Real conflict, on the other hand, is resolved by preference without reconciliation.

One example of this type of conflict is found in Article (15) of the Iraqi Constitution, which permits the restriction or deprivation of individual rights and freedoms guaranteed by the constitution by a law issued by the legislative authority and a decision issued by a competent judicial body. Article 15 of the 2005 Constitution of the Republic of Iraq stipulates that “everyone has the right to life, security and freedom, and these rights may not be deprived or restricted except in accordance with the law and based on a decision issued by a competent judicial authority.” This conflicts with Article (46), which allows for the limitation or restriction of rights and freedoms listed in the constitutional document by law or based on law. Article 46 of the 2005 Constitution of the Republic of Iraq stipulates that:

“The exercise of any of the rights and freedoms contained in this Constitution shall not be restricted or limited except by law or on the freedoms, provided that such limitation or restriction does not affect the essence of the right or freedom.”

Because of this, some have argued that the Iraqi constitutional legislator has fallen into a serious conflict that must be resolved by the derived constituent authority when it undertakes its amendment tasks. We support this view. Another example of this type of conflict in the Egyptian Constitution is the conflict between Article (107), which grants the Court of Cassation the authority to adjudicate on the validity of the membership of members of the House of Representatives, and Article (210), which assigns the Supreme Administrative Court the authority to decide on decisions issued by the National Elections Authority regarding presidential and parliamentary elections, including appeals against decisions declaring election results. The latter authority results in the acquisition of membership. This jurisdiction is reserved for the Court of Cassation. Hence, the conflict between the two articles becomes evident because when the Court of Cassation exercises its jurisdiction over membership validity, it may be reviewing the validity of the election result declaration issued by the National Elections Authority, whose legality the Supreme Administrative Court is constitutionally empowered to review under Article (210).

#### 4.4. *The Position of Jurisprudence and Constitutional Courts on the Conflict*

Constitutional jurisprudence and constitutional courts play a vital role in identifying conflicting constitutional provisions, as well as providing solutions to resolve them. Therefore, this issue is considered one of the most important topics deserving study, as it contributes to reaching the soundest opinion based on legal foundations, in addition to clarifying how the constitutional judge handles cases presented during their interpretive duties to ensure the stability of the legal system in the state. Accordingly, this section will be divided into two subsections: the first will address the position of constitutional jurisprudence regarding conflicts, and the second will clarify the stance of constitutional courts on the matter.

#### 4.5. *The Position of Constitutional Jurisprudence on Conflict*

Constitutional scholars have differed on whether conflicts occur between constitutional provisions, dividing them into two main schools of thought:

First school of thought: Supporters of this view deny the possibility of conflicts occurring between written constitutional texts, based on the premise that the constitutional document is an integrated fabric or a single inseparable unity, which by its nature precludes any conflict. This opinion is supported by several arguments, including:

1. All constitutional provisions enjoy the principle of supremacy and precedence over other legal texts, which makes the issue of conflict difficult to arise in any dispute.
2. The resolution of any apparent conflict between constitutional texts can be achieved through rules of interpretation, such as applying methods to reconcile conflicting constitutional provisions and resorting to conflict resolution rules like specializing the general provision and constraining the absolute provision, among others.
3. The entire constitutional document forms a single, integrated fabric that cannot be fragmented, which acts as a barrier against any contradiction among its provisions.

It becomes clear that this approach acknowledges the existence of apparent conflict, which can be resolved through the rules of conflict resolution, but it does not recognize the existence of true (actual) conflict or contradiction. Thus, some scholars state that “constitutional provisions are interpreted in an integrated manner without contradicting or colliding with each other, and no constitutional text is superior to another in terms of legal force” (ibid). Dean George Vidaul emphasized that “all constitutional provisions have equal value; there is no constitutional text higher than another. When a conflict or dispute arises between one constitutional provision and another, the solution is not to apply hierarchy between constitutional

provisions, but rather to reconcile between the constitutional texts”<sup>36</sup>. The second approach holds that conflict can indeed arise between the provisions of the constitutional document itself or between them and the constitutional block. For example, a conflict may arise between a constitutional provision and the Declaration of Human and Citizen Rights, or between the constitutional text and the explanatory memorandum of the constitution, as this is an undeniable reality. Such conflicts are resolved by applying the principle of legislative hierarchy between texts or between them and constitutional principles. This approach is divided into two parts:

- The first part refers to formal hierarchy, meaning that the conflict between constitutional texts or principles is resolved within the framework of material hierarchy between those rules. In this case, the constitutional judge balances between the conflicting texts or principles by selecting one of them to decide the case at hand while disregarding the others<sup>37</sup>, effectively giving priority to some texts over others based on their origin (For example, the conflict between the provisions of the 1978 Declaration of the Rights of Man and the Citizen and the preamble of the 1946 French Constitution. Some addressed this conflict by favoring the provisions of the 1978 Declaration of the Rights of Man and the Citizen over the preamble of the 1946 French Constitution, arguing that the Declaration contains absolute rights that are always applicable and in all places.

Others argued that the preamble of the 1946 French Constitution should prevail over the provisions of the 1978 Declaration of the Rights of Man and the Citizen, based on the rule that the later supersedes the former. Another opinion favors the texts of the constitution, including the preamble, over other constitutional sources because the constitution is the basic law that is required to take precedence over everything else because the constitutional legislator who drafted the constitution has no higher authority than him. Therefore, the conflict is resolved in favor of the texts of the constitutional document<sup>38</sup>. In other words, this opinion is based on the idea that immutable constitutional provisions are higher than amendable provisions, given that the constitution explicitly establishes this. The constitution thus establishes a hierarchical relationship between its texts. This formal hierarchy revolves around the nature of the constituent authority: the original constituent authority’s acts take precedence over those of the derived constituent authority. The latter cannot amend constitutional provisions without the safeguards, restrictions, and procedures laid down by the original constituent authority. However, most

<sup>36</sup> Kristopher, E. G. K. (2023). *Balancing Equality and Fundamental Freedoms: A Canadian Perspective*. <https://coilink.org/20.500.12592/cqpd47>

<sup>37</sup> Alexy, R. (2002). *The Argument From Injustice: A Reply to Legal Positivism*. Oxford University Press UK. <https://philpapers.org/rec/ALETAF-2>

<sup>38</sup> Marcos, H. (2025). Lex Specialis as a Reason-Giving Norm: Balancing Norm Specificity and Individual Rights in Legal Conflicts. *International Community Law Review*, 27(3), 218-253. <https://doi.org/0.1163/18719732-bja10138>

scholars argue that although the immutable provisions form the basis for distinguishing between the two authorities, this distinction is only formal. Substantively, the derived constituent authority can take any action but within constitutional limits, whether temporal or substantive. This view does not raise the question of hierarchy between constitutional texts since all constitutional provisions are equal in legal value. The second part addresses substantive conflict, which must be resolved by recognizing the substantive hierarchy of constitutional texts. This means that certain constitutional provisions constitute review constraints because they occupy the highest rank. Consequently, the derived constituent authority is not entitled to infringe upon them. Some scholars argue that provisions relating to fundamental rights are superior to other constitutional texts because they believe that constitutional rights differ in importance. Others contend that sovereignty provisions supersede other rights, as sovereignty predates the constitution itself. Therefore, in case of conflict between these provisions, priority is given to those that hold the highest rank. Moreover, when the derived constituent authority undertakes amendments, it must adhere to these rights and draft provisions that do not conflict with those established by the original constituent authority, since these provisions constitute a restriction on its powers<sup>39</sup>. This approach bases its view on several arguments, including:

1. When the derived constituent authority amends the constitution to make its provisions keep pace with emerging events or new issues, it may introduce texts that conflict with the philosophy of the constitutional provisions established by the original constituent authority, which were not permitted to be amended.

2. The claim that no conflict exists between constitutional provisions may be accepted by those who adhere to the formal criterion, but this is inconsistent with the constitutional system based on the substantive criterion, which acknowledges multiple sources of the constitutional block.

3. The assertion that conflict is inconceivable entails sanctifying legislative action, even though it is a human product not free from error. Why then do constitutions allow for amendment, and why do constitutions fall and disappear? Reality has proven this, serving as clear evidence that this issue does arise.

4. If we concede the possibility of conflict between a legislative text and a constitutional text, then the occurrence of such conflict places the legislative text in the realm of unconstitutional action. Likewise, we can accept the occurrence of conflict between constitutional texts themselves, since both are legal texts, even though the constitutional text occupies the highest rank in the state's legal system.

5. Practical reality has proven the existence of the problem of conflict between

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<sup>39</sup> Scotti, V. R. (2018). Constitutional amendments and constitutional core values: the Brazilian case in a comparative perspective. *Revista de Investigações Constitucionais*, 5, 59-76. <https://doi.org/10.5380/rinc.v5i3.60979>

constitutional texts or between them and the rest of the constitutional block.

Accordingly, it becomes clear that both approaches may acknowledge the possibility of conflict between constitutional texts, but they differ in how to resolve such conflict. The predominant approach favors reconciliation between the conflicting texts as the primary method of resolving conflict. In contrast, the other approach considers prioritization (choosing one text over another) as the fundamental method to resolve conflicts between constitutional provisions.

## **VIII. Section Two: The Position of the Constitutional Judiciary on Conflict**

The constitutional judiciary has adopted a clear stance regarding the issue of conflict between constitutional provisions, denying the possibility of its occurrence. The Supreme Federal Court, in one of its rulings, stated that its role is limited to interpreting the meaning of constitutional texts, removing ambiguity, filling gaps, and reconciling their conflicting parts (The Federal Supreme Court, in its decision No. 43/Federal/2019 dated 11/7/2021, indicated that "The legislator is above using an accumulation of words without a purpose intended to be achieved. It is an essential function of this Court to interpret the constitutional text to decide on a specific matter. This task aims to determine the meaning of the text by providing, clarifying, or affirming a specific meaning among several possible interpretations, or by elucidating ambiguous terms in the Constitution, supplementing its concise provisions, resolving contradictions among its rulings, and reconciling its various components). Accordingly, the Court carried out a process of reconciliation to resolve the conflict between Article (2, second paragraph) of the Constitution, which states that Islam is the main source of legislation, and Article (41), which affirms that "Iraqis are free to adhere to their personal status according to their religions, sects, or beliefs." The Court noted that the Constitution guarantees the Islamic identity of most of the population while also protecting the religious rights of all individuals, such as Christians, Mandaean, and Yazidis (Ruling of the Federal Supreme Court in its decision No. 219/Federal/2024 dated 9/17/2024). This approach aligns with the stance of the Supreme Constitutional Court of Egypt, which, in many rulings, held that the provisions of the constitutional document do not conflict or contradict each other. Rather, they form a single integrated fabric that complements itself through reconciliation of all its provisions. Ambiguity can be resolved by linking provisions in light of the constitutional drafter's intentions and overall purposes (The Supreme Constitutional Court of Egypt, in Case No. 37 of Judicial Year 9 (Constitutional), dated 19/5/1990, stated that "It is well-established that, when interpreting the provisions of the Constitution, they must be viewed as a unified whole, with each provision complementing the others. No article should be interpreted in isolation from the rest, but rather in a manner that aligns with them, understanding its meaning in a way that achieves harmony and avoids contradiction). This principle is grounded in the legal presumption that there is no conflict, contradiction, or inconsistency between the texts of a single constitutional document. The Court has

also established that the rights and freedoms enshrined in the Constitution do not have a hierarchy whereby some override others. Instead, they must be interpreted as a unified whole, so that no provision is interpreted in isolation but rather in support of the others, with an understanding that balances them and eliminates any apparent conflict (The Supreme Constitutional Court of Egypt, in Case No. 30 of Judicial Year 16 (Constitutional), dated 6/4/1996, stated that "It is established that human rights and freedoms guaranteed by the Constitution are not ranked in a hierarchy where some take precedence over others. Rather, they must be viewed as supreme values that encompass indivisible rights. These rights cannot be fragmented; their protection in all their elements and components is essential for states to develop their societies in accordance with the rules of international public law... All human rights must not be isolated from one another, even if some appear more central due to their strong connection with human existence and dignity. They must instead be compatible and harmonious, so that the human personality may be completed in its deepest and most noble dimensions). In another ruling, the Court clarified the meaning of the unity of constitutional texts by stating: "The integration among constitutional texts means the impossibility of their conflict or contradiction, their harmony rather than offsetting each other, as a guarantee for achieving the purposes they are connected with, such that none of them abrogates another..."<sup>40</sup>. The Court emphasized that its mission is confined to reviewing the constitutionality of laws and regulations according to the law, a responsibility entrusted to it by the Constitution. It explicitly prohibits any other authority from contesting or disputing this role to ensure the centrality of constitutional review, thereby securing consistency in its standards and criteria. This is aimed at building an organic unity of constitutional provisions and ensuring their integration and harmony (Ruling of the Supreme Constitutional Court of Egypt in Case No. 188 of Judicial Year 27 (Constitutional), dated 15/5/2006). An example of this is that the Supreme Constitutional Court has carried out the process of reconciling apparently conflicting texts in many of its rulings. One such case involved the conflict between freedom of the press and the right to privacy. Freedom of the press is considered a form of freedom of expression. Accordingly, the Constitution affirms the independence of the press, defining the framework within which it must operate a framework that requires adherence to its principles without deviation, in order to fulfill its role in serving society and contributing to the formation and guidance of public opinion. This must be done within the essential foundations of society, preserving rights, freedoms, and public duties, as well as respecting the private lives of individuals and people. Therefore, the method of reconciliation is applied between general formulations: both freedom of the press and the right to privacy are defined by way of addition. In the same context, the Supreme Constitutional Court of Egypt worked to reconcile two constitutional principles: a woman's right to work and the family's right to care and protection. The Court affirmed that a woman's employment must be appropriate to her nature, and that it should not conflict with her responsibilities toward her family as a caregiver to her home,

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<sup>40</sup> Barak, A. (2011). Purposive interpretation in law. <https://www.torrossa.com/en/resources/an/5581965>

husband, and children. (see: Ruling of the Supreme Constitutional Court of Egypt in Case No. 23 of Judicial Year 16 (Constitutional), dated 18/3/1995. On the same matter, see also its ruling in Case No. 25 of Judicial Year 22 (Constitutional), dated 5/5/2001. Ruling in Case No. 18 of Judicial Year 14 (Constitutional), dated 3/5/1997. On the same matter, see also: Ruling in Case No. 226 of Judicial Year 20 (Constitutional), dated 7/7/2001). Accordingly, it becomes clear that the constitutional judiciary in the countries under study has adopted the idea of the unity of constitutional texts. Moreover, it embraced the formal criterion, meaning that its role is confined to the texts of the constitutional document without addressing the possibility of actual conflicts arising between constitutional rules in their broader sense. Additionally, its supervisory role does not extend to reviewing the constitutionality of constitutional texts issued by the derived constituent authority<sup>41</sup>. Furthermore, the judiciary has adhered to the principle of resolving contradiction and ambiguity in the interpretation of texts to perform its interpretive function. This principle does not require an explicit legal provision; rather, it is founded on practical logic, which assumes the existence of differences in the application of a legal text resulting from poor wording or ambiguity within the text. Interpretation then serves to clarify and remove this ambiguity. It is worth noting that the constitutional judiciary has given interpretation a broader meaning than its linguistic sense by including the process of reconciliation within this meaning. From the foregoing, we conclude that the constitutional judiciary has not applied any form of hierarchy (as understood in constitutional jurisprudence) between the texts of the constitutional document. Instead, it has advocated for the application of reconciliation to resolve conflicts and avoid invalidating any constitutional text at the expense of another. Moreover, it has indicated that constitutional conflict is considered an exception to the general principle that the constitutional texts form an organic unity, with each text having its own purpose and objective; thus, they neither clash nor contradict but rather complement and harmonize with each other.

## IX. Conclusions

This study addressed the concept of conflict and the position of the constitutional judiciary regarding it. The study reached several conclusions and recommendations, summarized as follows:

### 1. *First: Conclusions*

1. The study concluded that conflict only arises with the presence of its essential elements, which are the existence of two constitutional texts equal in legal value, sharing the same subject matter but differing in ruling.
2. The constitutional judiciary in the countries under study has adopted the idea

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<sup>41</sup> Colón-Ríos, J. I., Hausteiner, E. M., Lokdam, H., Pasquino, P., Rubinelli, L., & Selinger, W. (2021). *Constituent power and its institutions*. *Contemp Polit Theory*. 2021;20(4):926-56. doi: 10.1057/s41296-021-00467-z. Epub 2021 Apr 6. <https://doi.org/10.1057/s41296-021-00467-z>

of the unity of constitutional texts.

3. We found that the more the original and derived constituent authorities possess legal competence when drafting constitutional texts, the more capable they are of producing well-formulated constitutional provisions. This explains why some countries encourage a group of judges and pioneering legal scholars to draft constitutional texts, ensuring the document is well articulated.

4. Mixing several ideologies within a single constitutional document may affect the meanings of constitutional terms, potentially leading to conflicts among the provisions of that document.

5. The process of reconciling conflicting constitutional texts creates a derived constitutional principle that reflects proportionality rules. This principle, which stems from the constitution itself, does not affect the constitutional rights or conflicting competencies but influences their implementation.

## 2. *Second: Recommendations*

1. We recommend that the competent authority responsible for amending the Iraqi constitution should take into account the ideology underlying the constitution to ensure that amendments are consistent with the general philosophy of the constitutional document.

2. It is necessary to foster cooperation between educational institutions and the bodies responsible for drafting legal rules, using mechanisms that assist in proper legal drafting regarding the generality, specification, and restriction of legal texts.

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