

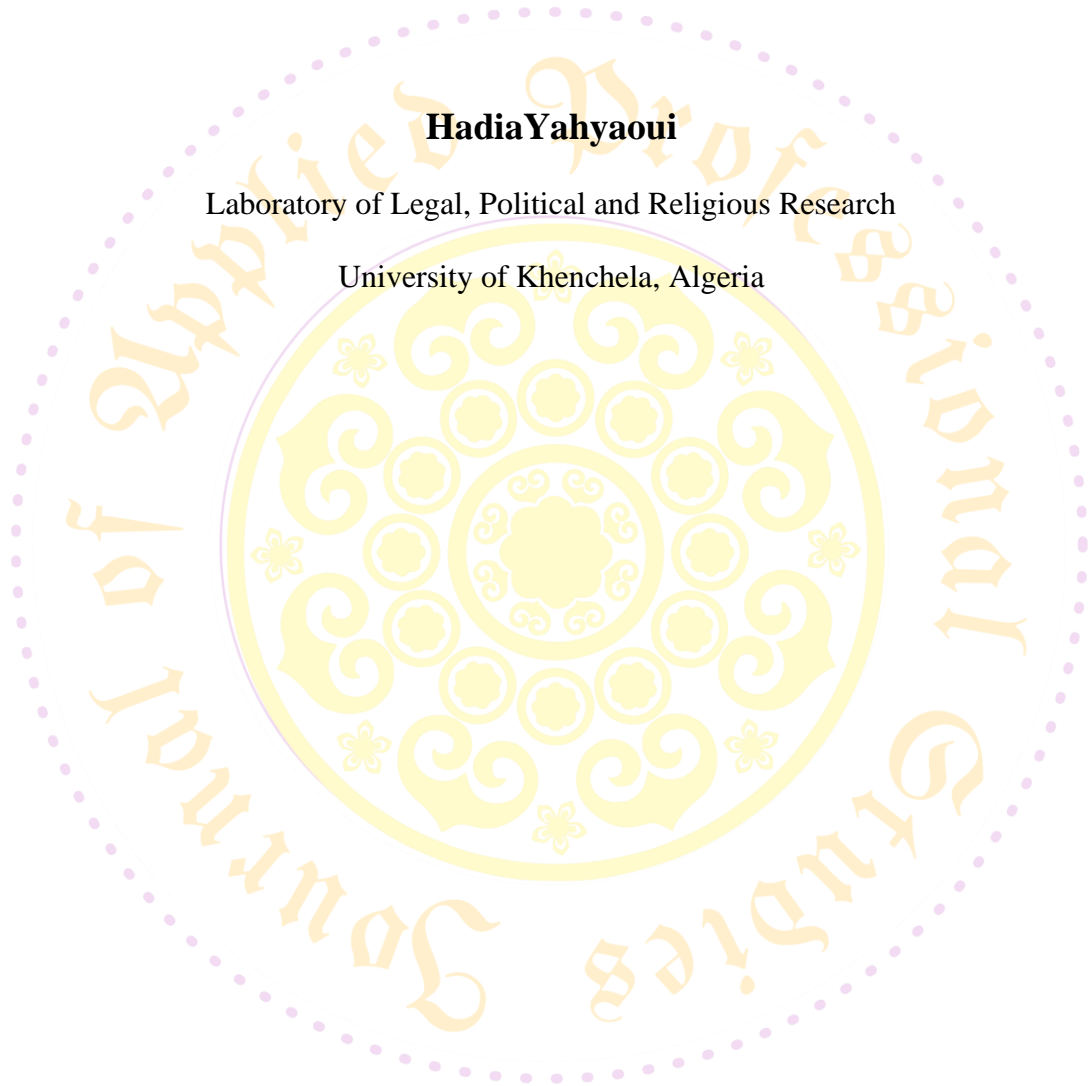
Political Transition in Algeria Post Arab Spring

The Constitutional Variable

HadiaYahyaoui

Laboratory of Legal, Political and Religious Research

University of Khenchela, Algeria



Political Transition in Algeria Post Arab Spring

The Constitutional Variable

Hadia Yahyaoui

Abstract

This paper aims to shed light on Algeria's transitional path by focusing on the impact of constitutional reform and assessing its effectiveness in formulating a social contract that accommodates sociological and cultural transformations resulting from evolving societies. The goal is to facilitate the transition towards more legitimate and democratic regimes while ensuring the realization of a wide range of rights and liberties. The paper particularly examines the rationalization of the relationship between the three authorities and the achievement of a balanced power dynamic, especially in the aftermath of the 2011 Arab Spring. It addresses crucial issues such as identity and the role of executive authority. In this context, an important question is raised: "To what extent did the constitutional founders comprehend the political transitions in Algeria?"

Using a critical analytical perspective that goes beyond the theoretical framework, the researcher aims to explore the interplay between the persistence of the existing system and the necessity of political transition resulting from crisis contexts. Furthermore, the researcher examines the lack of public confidence in the government's performance and decision-making.

Keywords: El-Hirak, Protests, Constitution, Transitional Process, Reforms.

Introduction

Keeping with its evolutionary systemic nature, as David Easton said, the environment of political systems in all countries of the world undergoes transformations and changes in various aspects of life. This requires response to ensure the formulation or modification of a valid social contract that suits the varying and specific requirements received from other sub-systems, including political and legal requirements. Such responses may even lead to reconsidering the contents of constitutions and governance mechanisms.

According to what was mentioned above, and as a result of various factors and different contexts, since its independence in 1962 until the post-Arab Spring of 2011, political life in Algeria has witnessed several decisive crises in defining the decision-making circles and how to assume power and regulate the relationship between its components. This necessitated constitutional reforms that break with previous practices and establish a system of governance and guidance based on the values of legitimacy and constitutionalism, ensuring the broadest representation of rights and freedoms.

In addition to the above, this paper analysis the relationship between the constitutional variable and the political transition process in Algeria and assesses the extent to which constitutionality is upheld. Therefore, we ask the following question: "How did constitutional mechanisms shape the political transition in Algeria, and to what extent?"

First Section: Algerian Constitutions: Brief History

The constitutional experience of Algeria ranged from drafting constitutions to amending them, with a distinction between two main stages:

Uni-Party Period 1962-1988

This period witnessed the issuance of several constitutional documents, as listed in the table below:

Document Nature	Date of Issuance	Most Important contents
Constitution	September 8, 1963	first constitution of the country, establishing a republican system the Uniparty principle
Constitutional Declaration (The Little Constitution)	June 19, 1965	Abolished the 1963 constitution Reorganized the Revolutionary Council as the supreme authority based on revolutionary legitimacy
Constitution	November 22, 1976	Affirmed the identity of the state The first amendment aimed to strengthening the executive authority to face the internal pressure of economic factor and the pressure of the international environment. Affirmed the socialist approach, Approval the presidential system.
Constitutional Amendment	July 17, 1979	Reduced the presidential term from 6 years to 5 years created the position of Prime Minister, addressed the case of the President's inability to perform his duties (Dupret B 2019 October 11 P26)

Source: prepared by the researcher based on reading the concerned constitutions and the references mentioned within the table.

The Multi-Party Period of 1989-2021

Under the pressure of the protest action, the authority headed to issue a new constitution, announcing the birth of a new republic in which the socialist approach was abandoned, as well as the one-party system that was characterized by

Document Nature	Date of Issuance	Most Important contents
Constitution	18 February 1989	<ul style="list-style-type: none"> - Expanding the president's authority with the duplication of the executive authority. - Establishing the principle of separation of powers. - Approval of partisan pluralism.

		- Approval of liberalism
Constitutional Amendment	28 November 1996	The Algerian emphasis on the components of the state's identity.' Approval the bicameralism system - Criminalizes forming political parties based or racial or discriminatory element.
Constitutional Amendment	10 April 2002	- Approval the Amazighity as a national language
Constitutional Amendment	15 November 2008	The possibility of renewing the presidential term for more than two terms Promotion of Women's Political Rights.
	28 November 1996	Return to the limitation of the number of presidential terms provided for in the 1996 constitution Eligibility for positions in the State, including that of the President of the Republic
Constitutional Amendment	07 February 2016	Promotion of the Amazighity as an official language. Establishment of Advisory Bodies for Enhancing Public Life.

Source: prepared by the researcher based on reading the concerned constitutions.

The Second Section: The Transitional Process in Algeria Post-Hirak Popular Movement

It is important to note that the context in which the popular movement "Hirak" erupted was one of crisis, influenced by several factors. Among the most significant were the president's health issues and the collapsed economic situation. While there is no consensus on a single term to describe the events that occurred in Algeria in February 2022, it can be characterized as a peaceful mass protest involving a wide range of intellectual trends and political currents. Despite the absence of a central leadership, these various groups actively participated in addressing and expressing the issues raised during the Hirak movement. The central demand of the movement was the rejection of the outgoing president's proposed fifth term, as stated in the slogans raised. It is worth noting that these demands gained momentum in response to the attitudes and actions of decision-makers. Below, we present the most significant issues that were raised during this period:

1. Rejection of the Fifth Term of the President of the Republic

"There is no fifth term, Bouteflika."

The former President Abdelaziz Bouteflika's announcement of his candidacy for a fifth term on February 10, 2019, in accordance with the provisions of Article 74 of the 2016 constitution, had a significant impact on galvanizing the will of the masses. The initial signs of opposition emerged in interior regions such as Kharrata and Khenchela, where the situation was deemed

shameful. The opposition movement then spread to major urban centers, with a massive number of people demanding a return to constitutional legitimacy and the implementation of Articles 07-08 and 102 of the constitution (Algerian constitution 2016) , which aimed to prevent the establishment of a hereditary system and the privatization of the state.

On April 2, 2019, President Bouteflika retracted his candidacy following a series of camouflaged initiatives, including:

- Postponing the elections.
- Formation of a comprehensive national symposium with broad representation.
- Amendment of the constitution.

The researcher believes that the popular movement known as "HIRAK" originated from the interior regions, particularly from deprived areas often referred to as shadow areas. The majority of the movement comprises young individuals, with an increasing number of elites joining in. The demands of the movement reflect a growing political awareness that goes beyond merely suspending the candidacy of Bouteflika. It recognizes the necessity of transcending the political framework established by the Algerian political authority, which has limited the capacity for opposition and change. The movement proposes the construction of a new state that breaks away from the old political and constitutional forms. The state, according to the movement, has been using state resources and public funds to buy social peace. This is evident in the rejection of proposals calling for the departure of key figures from the three authorities: the President of the Constitutional Council, the Head of Government, and the Interim President, who assumed power according to Article 102 of the constitution.

2 The Revolution Against Corruption

Under the slogan "You Ate the Country, Thieves," the revolution against corruption emerged as a significant cause. The Arab Index poll, conducted by the Arab Centre for the Study of Research and Policies (Arab Center for Research and Policy Studies,2020) confirmed that economic conditions were the primary cause of the Arab revolutions, accounting for 31% of the overall causes. The same poll also revealed that corruption had spread in the Maghreb countries, with politicians being the main culprits, accounting for 56% of the corruption cases. In Algeria, in addition to the collapse of the oil market, 60% of public companies and 65% of construction companies (Belkacem Ben Zetin, 2020) were liquidated, while small and medium enterprises failed to withstand the pandemic. Furthermore, corruption and the frequency of embezzlement of public funds and suspicious deals conducted by the regime's clients, including politicians and even army officers, have contributed to Algeria's ranking of 105th out of 180 countries on the corruption scale (Transparency International Corruption Report 2018),Consequently, this has led to the erosion of the middle class.

Economists recall that during the pandemic period of 2020, the Algerian market lost approximately 51,000 jobs, and the unemployment rate exceeded 13%, with 23% of the unemployed being university graduates and 27% being young people (Hamza Kahal, 2022). In 2017, the level of corruption, according to a report issued by Transparency International, amounted to \$70 million(Ibid), affecting both the public and private sectors, including the banking sector (Al-Khalifa Bank), the public works sector (the east-west highway), and even the hydrocarbons sector (Sonatrach case 1 and 2). The World Bank has also classified Algeria as a fertile environment for the spread of corruption.

3 Identity

Initially, the popular movement "HIRAK" did not prioritize the question of national identity. It distinguished itself through the unity of slogans and demands (Fatima Sayeh, Issue 03, Volume 07, September 2019, p. 36), devoid of racist, regional, ethnic, or ideological features. However, the issue of identity later emerged within the "HIRAK" movement, with conflicting cultural backgrounds becoming apparent. These divisions can be categorized into two components:

- The first component defends the religious identity of the state.
- The second component calls for secularism and rejects the political exploitation of identity.

According to the Doha Index, Algerians strongly adhere to Islam as a reference for governance and vehemently oppose the separation of religion from the state. Even the political currents that emerged after the 1989 constitution be they religious, secular, or nationalist, disappeared after the violent events of the 1990s.

Considering the context of the popular movement, the absence of unified leadership indicates a deep diversity and differences in intellectual and political references in Algeria. This diversity reflects the competing factions that emerged during the liberation struggle. The situation intensified under the dominance of local and tribal identities, undermining patriotism and a sense of belonging due to the regime's long-standing political and intellectual unilateralism from 1963 to 1989. Some examples of conflicts include:

- The conflict between Amazigh and Arabism
- The conflict between patriotism and secularism
- The conflict between civil and military powers

The absence of a central element, a comprehensive concept of Algerian identity throughout the various constitutions, is seen as a circumvention of reality and a cover for a delayed crisis, where identity is used as a tool to serve specific goals and the agendas of decision-makers. By examining the overall demands and slogans of the "HIRAK" popular movement, as well as the movement's structure itself, the following observations can be made:

- Demonstrators shifted the political scene beyond the realm of ideology, preventing its politicization or exploitation, focusing instead on pragmatic thinking that sought specific benefits, mostly economic in nature.
- The Islamic current was excluded to avoid the potential for violence and to prevent a repetition of the scenario from the "black decade," referring to the period of violence in the 1990s

The Third Section: The Popular Movement and the Constitutional Response

Let us agree in advance that the popular movement succeeded in obtaining a strong influence on the decision-maker represented by the new president elected on December 12, 2021, who consulted the people on a constitutional amendment under the slogan of the new Algeria. The text of the constitution was distinguished by new features in terms of wording and meaning. As for the outputs of the constitutional founding process, in response to the demands, a committee of experts composed of academics was appointed in order to adapt to the constraints of the context. Some opponents questioned this mechanism, arguing that it abused the constituent

authority of the people, and they cited the low participation rate of 33.20% out of 66.8% of those who expressed support for the new constitution (Algerian Official Journal ,N°72 December 03 2020).

1. The Constitutionalization of the Popular Movement

In an explicit reference to the role of the movement (EL-HIRAK) and its weight in establishing a new modern state with the sovereign reference of the people, the preamble to the new constitution stipulates that "the people express their eagerness to translate their aspirations into this constitution, by bringing about deep social and political transformations in order to build a new Algeria that they demanded peacefully through the authentic popular movement that started on February 22, 2019 (Official Gazette of the Republic of Algeria, Issue 54, September 16, 2020, p. 05). Thus, it became comparable to the rank of the liberation revolution, although researchers wonder about the integrity of this constitution in view of the future, the nature of societies, and the possibility of the emergence of other movements that mimic the 2019 movement.

2. Restricting Executive Authority and Defining Presidential Commitments

This constitution is considered a pretext for democracy, the features of which were evident in the suspension of the fifth term, in accordance with the provisions of Article 40 of the Constitution, which affirms that the President of the Republic cannot exercise the functions of the presidency for more than two separate or connected terms, as the term is considered complete regardless of its duration. In fact, the 2020 constitution does not mention this procedure, as many Algerian constitutions preceded it, but it was unique in terms of the formulation of the restriction. The text of Article 40 is considered more accurate and clear compared to the text of Article 74 of the 2016 constitution, as it narrowed the margin of possible interpretation by describing it as the guarantor of not exercising more than two mandates. It is an objective ban (Kuwait International College of Law Journal, December. 2020 P 591)

With the intention to limit the influence of the executive authority and introduce checks and balances, the principle of separation of powers (Article 16) is emphasized, charging the President of the Republic with full responsibility for protecting the Constitution (Article 84) in accordance with the oath he takes after his election, which strengthens his authority in constitutional oversight of laws. However, the new method does not go far, as the President of the Republic retains previous powers while acquiring new one

Introducing a breakthrough power compared to previous constitutions by deciding to send the Algerian army on foreign missions (Article 91) after consulting both chambers of parliament, which is inconsistent with Algeria's security doctrine, considering its army as a defensive military (Nasreddin Bousamaha, January 2021).

- Preserving the wide power of appointment (Article 92) within all legislative authorities (two-thirds of the members of the National Assembly), presiding over the Supreme Judicial Council, appointing members of the Constitutional Court that replaced the Constitutional Council (Article 180), appointing the most important security officials in the state, as well as members of the Independent Election Commission.
- Appointing the Prime Minister from the parliamentary majority if the loyalists to the President of the Republic do not obtain a majority in the legislative elections. There is a difference between the two cases: a prime minister from the presidential majority and

a head of government in the case of a parliamentary majority (Article 103) (Al-Arab newspaper: Algeria:2020).

- Preserving the right to legislate orders with the right to request a second reading after their approval by Parliament, which the opposition described as a legislative veto.

3. Fighting Corruption

The background of combating corruption and changing the prevailing conditions that preceded the popular movement (EL-HIRAK) has deviated from the constitutional philosophy and goals of the constitutional founder who aimed to institutionalize the fight against corruption, as stated in the preamble: "Algeria expresses its commitment to work to prevent and combat corruption in accordance with the international conventions it has ratified." In addition to incorporating articles dedicated to oversight, the constitution includes the following provisions:

- Transparency is enshrined in state institutions chosen by the people, in accordance with Article 09.
- Article 24 mandates the declaration of property by senior state officials, the prevention of conflicts of interest, and the obligation to report them.
- Criminalization of influence peddling and abuse of power.
- Article 27 guarantees the impartiality of the administration.
- Disclosure of conflicts of interest.
- Ensuring the independence of the Accountancy Board through Article 199, with the president's term set at five years, renewable only once.
- Creation of the Supreme Authority for Transparency, Prevention of Corruption, and Combating Corruption under Article 204.

Overall, this constitution is highly regarded compared to previous versions, as it focuses on legislative measures accompanied by structural and institutional reforms.

4. Identity

Conflict between Amazighity and Arabism

Compared to the 1996 Constitution and the 2002 Constitutional Acceleration (Article 03 bis), the constitutional founder dealt with the issue of identity in a more focused manner by elevating the Amazigh language to an official national language (Article 104) and protecting it from amendment or change. However, this limited approach to language alone does not fully acknowledge the cultural and ethnic diversities within the state, which has left some advocates of secularism unsatisfied. Furthermore, concerns may arise regarding the independence of certain municipalities for their specific developmental needs, potentially leading to a complex political system, as noted by constitutional law specialist Nevin Massad (Nevin Massad,2020)

Nationalism and Secularism

The 2020 constitution confirms Islam as the religion of the state in Article 02, but also emphasizes the separation of schools from political and ideological influences. This has been seen by the religious movement as progress towards secularism, particularly due to the absence of Islamic law as a source of legislation and the equality between the Amazigh and Arabic languages(Sally Nabil,2022). Although there has been a noticeable agreement between the religious and national movements, known as the Novembrian Badisian, aimed at suppressing

the secular movement, some proponents of secularism still criticize the constitution for not fully embracing secular principles.

Civil and Military

Given the social and historical context, the Algerian society generally appreciates the relationship between the military and the government, as evidenced by the popular movement (EL-HIRAK) using slogans that highlight the significance of the military institution and its role in the history and life of Algeria. The military has historically been the center of power, playing a guiding role and serving as the protector of the state and its people during crises and challenging times (Intissar Fakir \Zine Ghebouli 2022). The military has also been pivotal in the political process, with a unique legitimacy stemming from its historical revolution that granted it distinct roles, ranging from traditional defence to hidden political influence. Despite attempts to civilianize the state, previous constitutions have neglected to define the military's roles and establish civilian oversight, which has allowed a dominant elite to maintain power. The 2020 constitution introduces a new mission for the army, enabling its participation in operations outside the country's borders.

Regarding the public response to the aforementioned constitutional aspects, it varies between acceptances from:

- Religious movement and its supporters, who believe that the 2020 constitution brings about significant changes, with improved security and a halt to protests.
- Other hand, critics argue that the constitution perpetuates imperial powers through a closed presidential system, citing the extensive powers granted to the President of the Republic under the new constitution.

A more secure restriction is placed on defining presidential terms.

Conclusion

After completing a careful study of the constitutional founder's interaction with the protest movement in Algeria, referred to as 'El-Hirak,' the research paper reaches several results as follows:

- The constitutional expertise of Algeria was demonstrated in most cases in the form of amendments, as its history did not witness a completely new formulation. This reflects the connection between constitutional matters and the political context and its outcomes, which are manifested in severe crises.
- Restricting the president's authority to declare a state of emergency and exceptional cases, requiring parliamentary approval, and limiting their duration to 30 and 60 days, which has a positive impact on rights and freedoms.
- Restricting the appointment of the Prime Minister or Head of Government based on election results.
- The transition process is deemed illogical, as it would have been better to hold prior legislative elections that could have better ensured the production of a constitution aligned with the demands of the popular movement.
- Instead of appointing an authority, a constituent authority should have been established to draft the constitutional amendments.

- The same drafting committee that was responsible for the 2016 constitution also led the drafting of the constitutional amendments, raising concerns about continuity.
- The constitutional amendments were not a fundamental demand; the real demand was the drafting of a completely new constitution.
- The executive authority continues to dominate at the expense of the legislative and judicial branches.
- Certain constitutional articles, such as those related to identity, are excluded from amendments, resulting in unresolved conflicts and competition, despite attempts to address them.

References

1. Dupret Baudoin (2019 October 11), Evolution of the Algerian constitutions. CERMAC, HAL : <https://hal.science/hal-02160878/document>
2. Mohamed Lamine Laadjel (2016 October P38), A Comparative Study of Constitutional Amendments Initiatives in the Algerian Legal System, Journal of Law and Political Sciences (2016), Issue N°14
3. Algerian Republic Democratic and Popular, constitution 2016: Article 102: When the president of the republic due to serious and lasting illness and find itself unable to exercise his functions the constitutional council shall meet in full right and after verifying the reality of this impediment by all appropriate tools proposes unanimously to parliament to declare the state of impediment
4. Arab Index Survey Report (2020 June 10), Arab Centre for Research and Policy Studies, Doha: <file:///C:/Users/pc/Downloads/%D8%A7%D9%84%D9%85%D8%A4%D8%B4%D8%B1.pdf>.
5. Belkacem Ben Zetin (2020) Al-Jazairia Journal in Etorobiology and Social Sciences(2020), Algeria 2019, from the movement to the elections, , Issue 88, 2020, Part 2 <https://journals.openedition.org/insaniyat/2380903/11/2022>
6. Transparency International Corruption Report 2018(2022 April 11) (elsiyasa-online.com).
7. Hamza Kahal, angered by inflation of prices and corruption in a new wave of movement in Algeria, Al-Araby Al-Jadeed newspaper,: <https://www.alaraby.co.uk/economy/>
8. –IBID
9. Fatima Sayeh (2019 September 07,P36), the Role of Financial and Administrative Corruption in the Emergence of the Popular Movement in Algeria, Journal of Economic Integration Issue 03, Volume 07, 2019.
10. Announcement N° 01 (2020 November12) included the final results of November referendum on the draft amendment of the constitution , Algerian Official Journal ,N°72 date on 3thd December 2020.
11. The People's Democratic Republic of Algeria,(2020 September 16 P 05) draft amendment to the constitution, Official Gazette of the Republic of Algeria, Issue 54.
12. Kuwait International College of Law Journal (2020 December P591) - The Algerian Constitutional Amendment Project for the Year 2020: An Objective Analytical Study Eighth Year - Issue 4 - Serial Issue 32, 2020.
13. Nasreddin Bousamaha, (2021) Algeria: Legal Reading in the Constitutional Amendments Arab Organization for Constitutional Law: <https://aacl-mena.org/uploads/2021/01/>
14. Al-Arab newspaper: Algeria (2022 November25): Al-Hirak has reservations about the draft amendment to the constitution, : <https://alarab.co.uk/>
15. -Neven Massad (2020 October 10), Algeria and the Constitutional Amendments, Al-Ahram Newspaper, Issue 48900, Publication Date:: <https://gate.ahram.org.eg/daily/News/783722.aspx>,

16. Sally Nabil, Algerian Constitution Referendum (2022 November 26): How do Ul-Hirak view the new amendments? <https://www.bbc.com/arabic/middleeast-54>.
17. Intissar Fakir \Zine Gheboul (2022 August 02): Algerian Military Apparatus Powerfull an on the Rise, ISPI, , <https://www.ispionline.it/en/publication/algerias-military-apparatus-powerful-and-rise-35923>

