The Problem of the Relationship between the Federal Authority and the Territorial Authority in the Iraqi Constitution in 2005

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1 INTRODUCTION

States in terms of the classification of the book of constitutional and political law have different types, patterns and systems, as the type of states is determined by many circumstances and factors. Federal Union or the federal state system (Federalization) is one of the types of states in the world, and the Federal Union has many reasons and justifications for the first purpose of active and true participation in political life in a democratic and fair way away from the uniqueness of governance and the monopoly of powers in the hands of a person or group that violates the law and wastes rights because the rule of the individual always leads to mistakes and problems, while institutions under the group’s rule play a better and fairer role under the law and constitutional control. The concept of federalism is linked to the principle of self-determination of nations and peoples, especially since this right has been associated with universal acceptability, especially at the beginning of the 20th century. It is a principle that has taken its way to international conventions, particularly human rights charters and regulations, so the Federal Union can be the embodiment of the foundations of democracy in governance and political partnership.

Since the phenomenon of the Federal Union in the 20th century has been associated with the principles of defending the rights of minorities and small national and religious ethnicities and heading towards reducing the powers of the central state in favor of the territories and is now applied in many countries of the world, such as the United States of America, Canada, Malaysia, Switzerland and other countries. Therefore, experience has proved to be a great success in federal systems in many countries of the world and federalism is in fact a dynamic framework for governance. So, the Federation does not necessarily have to be in a political pattern of systems that are not changing, but it is a dynamic process that is constantly moving and is in any case a political system that is required to regulate the vast affairs of the countries, nationalities and different religions in order to make a common living without

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conflicting with others. The federal regime in Iraq has become a constitutional and political option that is the subject of much debate and discuss at the same time in the corridors of the Iraqi scene as a whole without exception.

Hence, the great importance of engaging in the different aspects of the subject of the Federation, theoretical and those dealing with the experiences of the people in the organization and management of the state bodies in the federal state, where the federal system faced supporters and opponents and each team has its own point of view. The concept of the Federal Union in Iraq in terms of experience of some political and societal forces in the Iraqi political system is modern and that is why we found there is an initial inadmissibility.

However, the political change that took place after April 9, 2003, proved the federal framework in the methodology of the new Iraqi state in accordance with the 2005 Permanent Iraqi Constitution, which was based on the State Administration Act, which is a road map for this constitution, but the Iraqi constitutional document of 2005 was not isolated from the political tensions and its differences in explaining the mechanisms of federal political work in Iraq.

This study is an attempt to give a legal framework to the concept of federalism and this study tries to shed light on the most important constitutional articles of the Constitution of Iraq permanent in 2005, which determine the nature of the relationship between the central government in Baghdad and the Kurdistan Regional Government as the only territory in the Iraqi state.

2 | THE IMPORTANCE OF STUDY

The importance stems from knowing the nature of the relationship between the Federal Center and the political units involved in the political work within the Federation, benefiting from an academic reading of the current Iraqi political system, which adopted the Federation as a future political option.

3 | STUDY HYPOTHESIS

The origin of the relationship in the federal state that Iraq has taken as a political system, is based on a co-operative and complementary relationship between the Federal Center and its other political units that is based on a democratic constitution, but there are gaps in the constitutional texts that marginalize the federal role of the federal government, and in case of conflict in a particular issue, the priority is for the law of the territory and this works to strengthen the territories against the federal government.

4 | STUDY METHODOLOGY

This study was based on the use of the following descriptive curriculum syllabus in the description and clarification of the federal state, and also based on the analytical method in the analysis of the constitutional texts contained in the 2005 permanent Iraqi constitution.

5 | STUDY STRUCTURE

This study was addressed through three main investigations and preliminary research preceded by an introduction and followed by a conclusion and due to the importance of clarifying the vocabulary of this study, the preliminary topic was interested in clarifying the concept of the federal state through the ways of the emergence of the federal state and its pillars and the manifestations of the unified state in the federal state, and the first topic is entitled “Distribution of Constitutional Competences in the Federal State”. The Constitution of Iraq for 2005, is represented by two demands, the first requirement shows the methods of distribution of competences in the federal state and the second requirement shows the mechanism for the distribution of constitutional terms in the Constitution of Iraq in 2005, and then the second topic is devoted to the study of federal and territorial authorities in the Permanent Iraqi Constitution of 2005, consisting of two requirements, the first requirement is allocated in determining the federal authorities in the Iraqi Constitution, and the
second requirement is allocated in the powers of both the Federal and the Territory and finally the third topic which pours into the light of our study is entitled “the relationship between the federal authority and the territorial authority”, and also came in two requirements, the first requirement was devoted to the joint powers between the federal government and the territory and the second requirement was to clarify the problem of the relationship between the federal authorities and the territorial authority.

6 | THE SECOND TOPIC

6.1 | The first requirement

6.1.1 | The concept of federalism

Federalism is understood as a form of a political system based on the consolidation and decentralization by distributing and not focusing them in the hands of a particular individual or group. That’s what most federalism definitions didn’t disagree on.

In linguistic terms, the term ”federalism” is derived from the Latin word “Foedus” which means the treaty and agreement, and there is a view that federalism is a form of contractual arrangement, meaning ”Foedus or pact”, and it is derived from the Fides or Trust and contains an agreement that has been accepted freely and mutually (1).

While some researchers believe that the origin of the word ”Foedus” is a common word for both the word Fides, i.e. trust and English word “bind” which means ”link”, thus it means a kind of agreement that depends on mutual trust between the parties or a credible undertaking. With regard to international policies, the agreed parties are governments and the agreement between them is a federal agreement (2).

As for the definition of federalism, the political encyclopedia defines federalism as ”the union of a group of independent states with a constitutional mandate that constitutes a permanent union with a central government that exercises its powers directly over the governments of these states, which become states and on their nationals. The Constitution is the regulator of relations between the states with each other and between them and the central government. The new State has an international legal personality, while the States entering the Union lose their international legal personality (3).

Graham Evans and Jeffrey Twentham in their Dictionary of International Relations detailed Federalism (a way to describe and explain the division of power and legitimate authority in federal states, assuming as a preliminary starting point the existence of tension or conflict between internal forces and this conflict is settled by the multiple parties signing a constitutional deal that provides for the competencies of both the center and the surrounding. Some areas of issues are referred to the center and others are referred to the surrounding, and defense, foreign affairs and macroeconomic policy are often addressed exclusively at the center. On the other hand, the surrounding retains the authority of some powers relating to revenues, control of social services and welfare services, and some freedom of action and testing in the area of laws and penal provisions, federalism is a government system that is preferred in major countries with different cultures (4).

Therefore, the federal government determines the distribution of power between the central government and the territorial governments so that each of them is sovereign to ensure its region of responsibility, and this requires a constitution that regulates the distribution of power between the central government and the territories in such a way as to ensure that there is no abuse of the rights and powers of the other party, as well as ensuring that there is a strong central government capable of protecting the unity of the country and avoiding any secessionist operation by any territorial, and a federal constitutional court that operates to resolve disputes that may occur between the central government and one territory or between one territory and another in a legal and constitutional way.

So, federalism is a political and constitutional organization based on the distribution of powers between the center and the territories with the aim of preserving the unity of the country and preventing secessionist operations following the monopoly of an individual or group with authority at the expense of other components of society.
6.2 | The second requirement

Ways of the emergence of a federal state:
It is done in two ways, through a voluntary union, multiple independent States may be organized together and form one state that is higher than the member States, and this is the usual method of the emergence of federal States, as happened in the United States of America and the German Empire appeared in 1871, the Weimar Republic of 1919, or through the union of different regions that did not form a single state by collective decision in order to form together a federal state in response to geographical, economic or historical realities, as happened in Switzerland and the United Arab Emirates. (5)

Another kind of union, but rare, is the Union of Disintegration, which is created by dismantling a simple unified state into multi-member countries or states, but under the same state that is transformed from a unified state into a composite state, in this way the (Brazil, Russian Federation, Mexico, India...) had been formed. These countries have resorted to transforming their systems into a complex federal form by giving their constituent territories more autonomy and allowing them to govern themselves on certain issues in order to avoid the separation of those territories altogether. (6)

6.3 | The third requirement

6.3.1 | Federal State pillars

It is based on three main pillars:
1. The rule of the Constitution
2. Distribution of the three powers (legislative, executive and judicial) between the federal central government and the government of territories, states or regions that make up the Federation.
3. The existence of a higher body that amends (control) disputes between the central government and the states or regions (7)

According to all of the above, we realize that federalism and the federal state are a democratic model contrary to central and dictatorial rule, which would retain all the central powers and therefore the federal system is a typical constitutional democratic system that achieves justice and ensures political participation, and thus achieves what the individual and the community aspire to both because of its following advantages:
1. It helps to form large states by bring its peoples into one federal state that is not so homogeneous as to allow for the establishment of a unified state.
2. The system of federalism reconciles national unity and autonomy, as it entails unifying legislation on the core issues of concern to the State of the Union as a whole, and then leaves great freedom for the territories by drafting legislation that is in accordance with their own circumstances and appropriate to their status.
3. The federal system has great democratic value. It allows local special legislation and administrative systems that are more appropriate for their mandate.
4. Federalism has extensive experience in constitutional affairs, as the independence of the states is in many internal matters. It makes each state makes its own independent constitution, and the laws and regulations that prove successful in one state will apply to other states to spread the benefit. (8)

6.4 | The fourth requirement

6.4.1 | Manifestations of a unified state in the federal state

The federal state has one authority on the one hand, and this authority is subject to all the constituent units of the Federal State in certain matters, and there are other authorities in that authority, the scope of which is determined by the scope of the units involved in the composition of the federal state and this jurisdiction extends, in accordance with the constitutional regulation of the Federal State to matters other than those of the federal authority, and as a result of this multiplicity of powers the federal state combines the manifestations of a unified state in some respects and appears in others as separate units.

Firstly: Manifestations of unity in the international scope (9)

In the face of the outside world, there is only one international person who deals with other countries.
Federalism is considered an international person with all the units in it, as it is not the right of these units to deal directly with the outside world, as they do not have international personality and are not addressed by the rules of international law.

There is a single nationality in the federal state faced by private international law, and passports held by members of the Federal State are uniform.

Based on the unity of nationality, the people of the Federal State are considered to be one people.

The federal state also has one territory in the face of the outside world, and it includes other territories. The units that are part of the Union, as these territories do not have an international entity, and the international entity goes to the territory of the federal state.

Secondly: Manifestations of unity in constitutional scope (10)

The federal state has a single federal constitution that confronts the territory of the whole state and all state personnel and addresses them directly.

The Federal State has generally applied legislation that addresses the entire people of the state without regard to the fact that some of them belong to one unit and others belong to another.

The federal state has a judicial authority whose courts are spread throughout the state, applying legislation that addresses all the people without discrimination, as well as at the head of the judiciary, there is a supreme court that work to harmonize the Federal Constitution with the constitutions of the units and ordinary laws, whether federal or those issued by the legislative authorities of the states or the territories.

Although the units in the Union are independent in the majority of administrative matters, this does not prevent the authority of the State of the Union from initiating some kind of administrative competence for the territory of the country and its people.

Thirdly: Manifestations of diversity and participation (11)

Each unit has a constitution or basic law that is higher than the ordinary law, and it is not amended except in the manner stipulated in it, and there is no reason why this constitution will not conflict with the constitutions of other states or units, but it is important not to contradict the General Federal Constitution itself.

The above-mentioned view is that each unit of the federal state has full state powers, as it has a legislative body, has its own courts and has its own executive power, provided it does not conflict with the federal authorities.

The units within the Union are keen to have a role in the formation of the common will of the whole union, which is usually achieved through the existence of a legislative council that is formed on the basis that the units represent equal representation despite the differences between them in the population and the causes of material and economic power, known as the Council of the Union next to the House of Representatives, whose members are elected by the entire population on the basis of numerical ratio.

The Federal State has a supreme constitutional court whose primary function is to maintain the balance between the authority of the Union on the one hand and the authority of its constituent units on the other hand so that an authority does not overwhelm over the other, and so that the Constitution of the Union remains permanent, and the Constitution of the Union is higher than all federal legislation.

7 | THE THIRD TOPIC

7.1 | Distribution of constitutional competences in the federal state and the Constitution of Iraq in 2005

Federal states differ in addressing the issue of the distribution of constitutional competencies, as the different composite states have somehow taken the distribution of these constitutional tasks, and the Iraqi constitution, after the transition from a simple state to a composite state, has been directed into one of these methods and the development of a special mechanism worthy of research.

Therefore, we will discuss in this research the ways of distributing the competencies in the federal state in a first topic, and then discuss the mechanism of the distribution of constitutional terms in the Iraqi
7.2 | The first requirement

7.2.1 | Ways of distribution of jurisdictions in the federal state

The Federal Constitution is the supreme law of the federal state and no authority has its jurisdiction unless it is stipulated in the Constitution, and the reason is to establish a balanced equation of the state that protects the common interests of the people while the components of the state enjoy their own entity (12).

In general, the Federal Constitution divides power between the center and the governments of the provinces or constituent units, where the federal systems differ radically in the degree of centralization, the federal Nile has tended to the economic and social turn into a highly centralized federal system as in the case of Russia, India and South Africa, and in contrast the federal systems that seek to retain a more decentralized federal system such as Belgium and Switzerland, i.e. there is no ideal perception of Centralization or decentralization in the division and distribution of competences, this is determined by the circumstances in each particular society according to the circumstances and data (13).

There is no doubt that the main constitutional problem that arises in federal states is to determine the amount of independence in the competencies for the constituent units of this state, or to determine and distribute the competencies between the institutions of the center government and the governments of the constituent units of the federal state. (14)

There are three basic ways in which federal states distribute the competencies between the center’s government, the states, the provinces or the constituent units, as follows:

The first is: The Federal Constitution shall determine the exclusive jurisdiction of state, provinces or Constituent units and the other jurisdictions are for the central government, which of course leads to the expansion and strengthening of the competencies of the center over time, as in the case of Canada and Venezuela.

Secondly: The Federal Constitution determines the competencies of the center’s government and otherwise they are of the states, regions or constituent units, and this shows the latter’s keenness to support its entity and internal sovereignty rather than its keenness to support and strengthen the Union, thus taking the United States of America and Switzerland.

Thirdly: The Federal Constitution determines the competencies of both the center government, the governments of states, provinces or the constituent units, and this division is flawed that the new jurisdictions not addressed by the Constitution will cause disputes between the center and the constituent units, and these defects were addressed by the establishment of some common jurisdictions between them enabling the territories to exercise jurisdiction under the supervision and supervision of the Center.

7.3 | The second requirement

7.3.1 | Mechanism for the distribution of constitutional competencies in Iraq’s 2005 Constitution

When looking at the provisions of the Iraqi constitution in force, we find that the exclusive competencies of the center have been specified in article (110), and the common competencies between the center and the territories are specified in article (114), and also it is stipulated in article (115) that "all that is not provided in the exclusive jurisdictions of the federal authorities is the prerogative of the provinces that are not regulated by an territory, i.e., the legislator has adopted in more than one way of distributing the competencies referred to earlier.

Since the federal system in the Republic of Iraq in accordance with article (116) of the Constitution of 2005 consists of a capital, decentralized territories, provinces and local administrations, and as far as our research is concerned, the territory is managed in accordance with the principle of administrative decentralization, provided that the broad administrative and financial powers are granted on the basis of the text of article (112/second) of the Constitution. (15)
This type of division of federalism is called a three-tier federalism, which means dividing the state into a federal government, the most influential, then the constituent units, and then the different local governments. (16)

The combination of the federalism and administrative decentralization raises an urgent question of the validity of this method and its relevance to social and political realities (17), as well as the fact that the constitutional legislator is criticized that it collected in the aforementioned article (115) the competencies of the decentralized authorities in one level, namely the provinces that are not regular in the territory and the jurisdictions of the territories towards the central authority despite the difference between the two systems in terms of legal nature (18).

We find that the constitutional legislator has equalized with regard to the distribution of executive jurisdictions other than legislative and judicial between the territories and provinces that are not regular in a territory, which are either shared with the government of the Center or are other than the exclusive competencies of the Federal Government (19).

There is no doubt that the provision of these competencies is at the heart of the Constitution and not in a normal law, as is customary when distributing the competencies for decentralized authorities, and we believe that it is the will of the constitutional legislator, where these non-regular provinces derive their competencies from the Constitution, as well as the competencies provided in the law of the non-regular provinces no. 21 of 2008, and therefore there is no way to prejudice these competencies except by amending the Constitution, which requires certain measures to amend it. There is no doubt that this is a great guarantee not to prejudice the competence of these provinces, which are not regular in the territory, because they are protected from the amendment except by a procedure by the provinces themselves.

8 | THE FOURTH TOPIC

8.1 |


The Iraqi Constitution mentioned the definition of federal authorities in Article 47, which reads, "Federal authorities are made up of legislative, executive and judicial authorities, exercising their powers and functions on the basis of the principle of separation of powers" (20), while its competences are determined in the fourth chapter, while the authorities of the provinces and territories that have not been regulated in a territory, and the status of the capital and local administrations are mentioned in the fifth chapter.

8.2 | The first requirement

8.3 | Federal authorities

8.3.1 | Federal authority includes

8.3.1.1 Legislative power The legislative power is the body that has the right to issue general laws binding on individuals, including constitutional rules and laws, and in addition, the legislative institution is one of the most important tasks of any political system for the decision-making process, and it is a process that is continuing and is interrupted only by the interruption of the political system itself (21).

Article 48 of the 2005 Iraqi Constitution stipulates that the federal legislature consists of two councils, the House of Representatives and the Federation Council. (22)

8.3.1.1.1 Article (49/I) of the Iraqi Constitution of 2005 reads: The House of Representatives is composed of a number of members with one seat per 100,000 Iraqi people representing the entire Iraqi people, elected by direct secret universal suffrage, and the representation of the all components of the people is considered (23).

It specializes in: (Legislation of federal laws, ratification of international treaties and conventions for the appointment of the president and members of the Federal Court of Cassation, the appointment of the
Chief Prosecutor, and the appointment of the head of the Judicial supervisory body, the appointment of ambassadors and holders of special degrees, the chief of staff of the army and his aides, who are the head of the task force, the head of the intelligence service and the accountability of the President of the Republic or his exemption, questioning the prime minister or ministers, withdrawing confidence from one of the ministers, questioning the officials of independent bodies or exempting them and agreeing to declare war and state of emergency, and the Council specializes in approving the general budget, and has the procedure of conveying between its parts and chapters, and has the possibility of increasing the total expenditures.

8.3.1.12 Section 2: Federation Council Article (65) stipulates that a legislative council called (the Council of the Federation, comprising representatives of the regions and provinces that are not regular in a territory, whose composition, conditions of membership, its competencies, and all related matters, are regulated by a law enacted by a majority of the members of the House of Representatives) shall be established, and the third article (137) referred all matters relating to the Federation Council of organization and powers to a decision of the House of Representatives by a two-thirds majority after its first electoral session.

8.3.1.2 Executive power The executive power is a group of employees who carry out the administration of the state, including the state, the government, its members and subsequent departments and executive bodies.

The Article 66 stipulates that the federal executive shall consist of the President of the Republic and the Council of Ministers, exercising their powers in accordance with the Constitution and Law.

8.3.1.21 Section 1: President of the Republic The Article 67 of the Iraqi Constitution stipulates that the President of the Republic is (the head of state and symbol of the unity of the nation, represents the sovereignty of the country, and ensures that the constitution is adhered to and that Iraq’s independence, sovereignty, unity and territorial integrity are preserved, in accordance with the provisions of the Constitution). The President of the Republic is elected by the members of the House of Representatives by a two-thirds majority of its members according to article 70 of the Iraqi Constitution for 2005.

The president term is extended by four-year term and may be re-elected to a second non-renewable term, and according to Article (73) of the Iraqi Constitution 2005, he shall assume the following powers (issuing a pardon on the recommendation of the Prime Minister, except in relation to the special right, those convicted of international crimes, terrorism and financial and administrative corruption, ratification of international treaties and conventions, after approval by the House of Representatives, and it is approved 15 days after the date of their receipt, he approves and passes laws enacted by the House of Representatives, and it is approved 15 days after the date of receipt., call the elected House of Representatives to convene within fifteen days from the date of ratification of the election results, and in other cases stipulated in the Constitution., the award of decorations on the recommendation of the Prime Minister, in accordance with the law., accepting ambassadors., issuing republican decrees., the approval of death sentences issued by the competent courts, he carries out by the supreme command of the armed forces for ceremonial and festive purposes., exercise of any other presidential powers contained in this Constitution).

8.3.1.22 Section 2: Cabinet Article (76/firstly) of the Iraqi Constitution of 2005 stipulates that "the President of the Republic, the candidate of the most numerous parliamentary bloc, shall be assigned to form the council of ministers within fifteen days of the election of the President of the Republic." The President of the Republic assigns the candidate of the most numerous parliamentary bloc and the prime minister in charge presents the names of the members of his ministry and the curriculum to the House of Representatives to win confidence and the simple majority and in the absence of the confidence, the president of the republic assigns another candidate to form the ministry within fifteen days.

Secondly: The mandated Prime Minister shall appoint the members of his ministry within thirty days of the date of the assignment and the President of the Council shall be the direct executive responsible for
the general policy of the state, and the commander-in-chief of the armed forces, and manages the Council of Ministers, presides over its meetings, and has the right to dismiss the ministers with the approval of the House of Representatives.

According to article 80 of the Constitution, the Council of Ministers exercises the following powers: planning and implementing the state policy, public plans, supervising the work of ministries, and non-ministry entities, Proposing bills, issuing regulations, instructions and resolutions, with the aim of implementing laws, preparing the draft general budget, the final account and the development plans, recommending to the House of Representatives, approving the enactment of the legislation of ministries, ambassadors, holders of special degrees, the chief of staff of the army and his aides, those who are the commander of the division and above, the head of the National Intelligence Service, and the heads of the security services, negotiating and signing international treaties and conventions, or authorizing them. (29)

8.3.1.3 The judiciary
The judiciary is usually the authority charged with preventing infringements on laws or adjudicating disputes between individuals (30). It is also the third authority stipulated in the Iraqi Constitution of 2005 and has affirmed its independence and even the independence of its judges, and prevents them from having power over their judiciary except the authority of the law, it is not permissible to interfere in the judiciary or in matters of justice and to assert their independence and to prevent the influence on them, the constitution makes them irremovable except in cases where the law determines the establishment of special or exceptional courts (31).

As article 87 of the 2005 Iraqi Constitution stated: The judiciary is independent, administered by courts of all kinds and degrees, and its judgments are issued in accordance with the law.

Article 88 also provides that judges are independent, and have no jurisdiction over them other than the law, and no authority may interfere in the judiciary or in matters of justice.

Article 89 also states that the federal judiciary consists of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Service, the Judicial Supervision Authority and other federal courts regulated in accordance with the law.

8.4 | The second requirement

8.4.1 | The competencies of the federal and territory authorities

8.4.1.1 First: The competencies of the federal authorities
The federal authorities shall carry out many competencies in accordance with fourth chapter of the Iraqi Constitution of 2005, which we will deal with in brief:

Firstly: Article 109 of the Iraqi Constitution stipulates that “the federal authorities shall preserve the unity, integrity, independence, sovereignty and federal democratic system of Iraq.” This text is a reflection of what was stated in the last paragraph of article 1 of the Constitution by saying (this constitution is a guarantor of the unity of Iraq) and the fact is that the guarantee of the unity of Iraq is guaranteed through the text of Article 109, which obliged the federal authorities to preserve the unity and integrity of Iraq. These authorities must take all measures to preserve the unity of Iraq and to rein in any party that dreams of secession, because that is forbidden by constitution (32).

Article 110 of the Iraqi Constitution of 2005 specified that the federal authorities should have the following exclusive jurisdictions (33):

Firstly: Foreign policy-making and diplomatic representation, negotiation of international treaties and agreements, borrowing policies, signing and concluding them, and sovereign foreign economic and trade policy.

Secondly: Develop and implement national security policy, including the establishment and management of armed forces, to ensure the protection, security and defense of Iraq’s borders.

Thirdly: Financial, customs policy making, currency issuance, regulation of trade policy across the borders of the provinces and territories of Iraq, the development of the state budget, monetary policy making and the establishment and management of
the Central Bank.

Fourthly: Regulate measures, scales and weights.

Fifthly: Regulation of nationality, naturalization, residence and political asylum.

Sixthly: Regulating the policy of broadcast frequencies and mail.

Seventhly: Drafting the general and investment budget.

Eighthly: Planning policies on water sources from outside Iraq, ensuring that water flows to Iraq are fairly distributed within Iraq, in accordance with international laws and customs.

Ninthly: Census and general population census.

It can be noted that this article referred in its third paragraph to the regulation of trade policy across the borders of the territories and provinces, but it is not mentioned how to regulate trade with foreign countries.

With regard to the issue of defense and security, it has made of the exclusive jurisdiction of the federal government and it can be emphasized that if the spirit of the Union is pluralistic, the spirit of the defense authority must be centralized and perhaps it is this authority that determines the adequacy of the central authority.

8.4.2 | Secondly: Territory authorities

The regional government, in accordance with the 2005 Permanent Iraqi Constitution, has powers and competencies set in accordance with the constitution. Article (116) of the Permanent Iraqi Constitution referred to (the federal system in the Republic of Iraq consists of a capital, decentralized territories, provinces and local administrations).

With regard to the powers and competencies of the provinces as defined by the 2005 Permanent Iraqi Constitution, they can be addressed as follows:

1. The territory has the right to draft its own constitution that defines its powers, competencies and working mechanisms through which those powers are exercised, provided that the territorial constitution does not conflict with the Federal Constitution (34).

2. Territorial authorities operate in the exercise of legislative, executive and judicial powers in accordance with the provisions of the Federal Constitution, but with the exception of the constitution’s competencies, are exclusive to federal authorities (35).

3. The issue of amending the application of federal law in the Territory, in the event of a contradiction or conflict between federal law and the territory, on an issue that does not fall within the exclusive jurisdiction of the federal authorities is considered one of the important powers entrusted to the Government of The Territory (36).

4. The territorial government is also responsible for establishing and organizing the internal security forces of the province, such as the police, security, regional guards, and all that is required by the administration of the territory (37).

Here we have to give a few notes on these points, the issue of the right of each territory to draft its own constitution with its own powers and competencies is indisputable, but the dispute will be in the event that the constitution of the territory conflicts with the federal constitution, since the constitutional independence of the territories means that there is a possibility that its constitution contains provisions that contradict the provisions of any other constitution of the federal state, so the important thing here is that the constitution of the territory does not conflict with the Federal Constitution.

It enjoys the exercise of powers (legislative, executive and judicial) except for what is specified by the federal authorities and all in accordance with the Constitution and its provisions, but with regard to the amendment of the application of the federal law in relation to an issue that does not interfere with the exclusive jurisdictions of the federal government, this paragraph is considered contrary to the principle of the supreme federal constitution and the laws of the legislature over these territories, as well as the amendment must be on the amendment itself when conflicting and not on application when conflicting.

In addition to all that is mentioned, the provinces and territories allocate a fair share of the revenues collected by the federal, taking into account the resources and needs and the proportion of the population in them and to be sufficient to carry out their
burdens and responsibilities as well, the provinces and territories are provided with offices in embassies and diplomatic missions to follow up cultural, social and development matters, but this, as we mentioned in the previous research, is contrary to the rule that foreign affairs is the exclusive jurisdiction of the federal government and this is customary in the political systems and in all the countries that have adopted the federal system, and this paragraph is also a prelude to the establishment of an embassy for each territory. We cannot fail to mention that article (115) of the Permanent Iraqi Constitution of 2005 stipulated that "all that is not stipulated in the exclusive jurisdictions of the federal authorities shall be the prerogative of the provinces and territories that are irregular and regular in a territory and for the other powers shared by the federal government and the territories, the priority will be for the law of the irregular provinces and territories in the event of disagreement between them) i.e. in general, the government of the irregular province and territories exercises all the competences that have not been defined as the competence of the Federal Government. The formation of the security forces and the police is also possible to organize and create stability and security in the territory, but the guards of the region are important things because will its function be external, i.e. to defend the territory from an external threat or is intended to guard the territory internally.???

8.5 | The second requirement supplement: Independent bodies (38)

The Constitution has specified the following articles clarifying the independent bodies, the mechanisms of their work and their functions of follows:

Article (102): The High Commissioner for Human Rights, the Independent High Electoral Commission and the Integrity Commission are independent bodies, which are controlled by the House of Representatives and regulated by law.

Article (103) Firstly: The Central Bank of Iraq, the Financial Supervisory Authority, the Media and Communications Authority and the Waqf offices are independent financial and administrative bodies, and the law regulates the work of each of them.

Secondly: The Central Bank of Iraq is accountable to the House of Representatives, and the Financial Supervisory Office and the Information and Communications Authority are linked to the House of Representatives.

Thirdly: The endowments offices are linked to the Cabinet.

Article (104) establishes a body called the Martyrs’ Foundation, which is linked to the Cabinet, and regulates its work and competences by law.

Article (105) establishes a public body to guarantee the rights of the provinces and territories that are irregular in a territory, in the family’s participation in the management of various federal state institutions, missions and fellowships, delegations and Regional and international conferences, and it consists of representatives of the federal government, territories and provinces and are regulated by law.

Article (106) establishes by law, a public body to monitor the allocation of federal imports, and consists of experts and representatives of the Federal Government, territories and provinces, and assumes the following responsibilities:

Firstly: Verify the fairness of the distribution of international grants, assistance and loans, under the entitlement of the regions and territories that are not regular in a territory.

Secondly: Check the optimal use and sharing of federal financial resources.

Thirdly: Ensure transparency and fairness when allocating funds to governments, provinces or territories that are irregular in a region, in accordance with the established ratios.

Article (107) establishes a council, called the Federal Public Service Council, which regulates the federal public service, including appointment and promotion, and its composition and competencies is regulated by law.

Article (108), other independent bodies may be created as necessary and need by law.
THE PROBLEM OF THE RELATIONSHIP BETWEEN THE FEDERAL AUTHORITY AND THE TERRITORIAL AUTHORITY IN THE IRAQI CONSTITUTION IN 2005

9 | THE FIFTH TOPIC

9.1 | The Relationship between the Federal Authority and the Territorial Authority

Some federal constitutions refer to the common issues between the federal; State and political units or territories, for example, that the federal government should lay the general foundations for these issues and leave their details to the territorial government, so it can be said that the common jurisdictions are those that are the subject of overlap between the federal government and the territorial governments.

9.2 | The first requirement

9.2.1 | Joint powers between federal and territorial authorities

After we have shown that the Permanent Iraqi Constitution for 2005 came up with a list of federal and territorial jurisdictions, while the article (114) of the Constitution contains the common competencies through which cooperation between the Federal Government and the territorial government is carried out, and this article stipulates that the following jurisdictions are shared by federal and territorial authorities (39):

1. The customs management in coordination with the governments of the provinces and territories that are not regular in a province and this is regulated by a law.
2. Regulation and distribution of major electric power sources.
3. Develop an environmental policy to ensure the protection of the environment from pollution and to maintain its cleanliness in cooperation with the provinces and territories that are not regular in a province.
4. Development and planning general policies.
5. Formulate Public health policy in cooperation with the provinces and territories that are not regular in a province.
6. Formulate a general educational policy in consultation with the provinces and territories that are not regular in a province.
7. Draw up and regulate the policy of internal water resources to ensure fair distribution and this is regulated by a law).

The way in which these articles and texts were formulated based on the adoption of the federalism and administrative centralization systems and their lack of alignment with the Iraqi social and political realities led to the existence of many differences and contradictions. Between the competencies of both the central or federal government and the territorial government, these contradictions have been reflected in the overlap of powers at times, and the refusal to abide by those texts by one or both parties at other times.

9.3 | The second requirement

9.3.1 | The problem of the relationship between the federal authority and the territorial authority

This requirement addresses the most important constitutional problems related to the distribution of competences between the federal government and the territorial government, the fact is that there is a problem within the limits and nature of this relationship and can be felt in the following aspects:

1. The text of the Constitution in determining the federal authorities and the authorities shared between them and the territorial authorities may cause the absence of some competencies from the minds of its framers, which are perceived as present and future, as new functions and competencies must be established in accordance with the year of advanced life, especially in a country such as Iraq, which stores many persistent problems and deep rooted in the life of people as a result of policies organized by the past and wrong in most aspects, which may provoke a little controversy between the federal authorities and the territorial authorities, especially the composition of the territories has been approved by the Iraqi Constitution, and the provision of the powers of the Federation usually leads to the expansion of the powers of the provinces at the expense of the powers of the Federation, whose role becomes exceptional, for example, as stated in article (115) of the Constitution, which states that other powers shared by the Federal Government and the territories, the priority will be
for the provinces and territories law, in the event of disagreement between them (in the event of a dispute between the federal government and the territorial Government on any issue, the priority is for the rule of territorial Law). (40)

2. The provision for the federal government to manage oil and gas extracted from the current fields with the governments of the producing provinces and the territories, did not come to the management of the oil fields that were discovered but are not currently productive, and then what about the oil fields that have not been discovered until the present time, especially since all the signs point to the presence of oil throughout Iraq. Didn’t an oil field be discovered in Sulaimaniyah province?, will the imports of these fields go to the federal government, considering that oil and gas belong to all the Iraqi people in all provinces and territories that were not acquired by the government of the region where these fields are located (41), as well as the constitution did not mention other mineral resources such as sulphur, uranium and other minerals, which are undoubtedly the property of all the Iraqi people, will they leave their property to the territories where they are mined in the future?.

3. Granting the territorial authorities the right to establish and organize the security forces of the territory, such as the police, security and regional guards, will interfere with the development of national security policy, while at the same time promoting regionalism while strengthening the national spirit (42).

4. Considering certain bodies such as the Independent High Electoral Commission and the Integrity Commission, independent bodies, are not justified to be confirmed in the Iraqi constitution because they are temporary bodies, no matter how long they last, as they will be abolished when the need for their tasks is eliminated, moreover, the permanent Iraqi Constitution, as it is known, is a rigid, inflexible and written constitution, meaning that it requires complex procedures to amend it, while those bodies and others can be regulated by a normal law. (43)

5. Although the constitution included the principles of the parliamentary democratic system, it emphasized the distribution of power between the President of the Republic and the Prime Minister, thereby bringing the Iraqi political system closer to the dual system, the presidential parliamentary, as well as the grant of the privileged role to the parliament or the House of Representatives. (44)

6. The Constitution adopted a system of political decentralization represented by federal and territorial authorities, and administrative decentralization represented by the local rent system or the provincial system, the latter, although it has broad administrative and financial powers, it remains linked to the federal central authority. (45)

7. It seems that the motive for taking the form of the federal state of Iraq is not for the reasons that drive the regimes to adopt the federal system, but rather for political and historical considerations, which were behind the federal form of Iraq.

10 | CONCLUSION

With regard to federalism in Iraq, there are things that need to be addressed:

1. The Iraqis are not political and there are many who do not understand the thesis of federalism and what beyond it as it should, because it did not put forward a media proposal or even an academic proposal except within the limits of closed seminars, which gives an impression in the general mentality about the sincerity of the thesis and the extent of its will.

2. The Iraqi politicians also did not agree on a specific meaning of the Iraqi federation, perhaps the political entities adopting the federal approach have laid the first building blocks of the federation that it intends to establish in Iraq, so that Iraq will be the second Arab and Gulf state after the United Arab Emirates to join more than twenty federal countries in Europe, America, Africa and some Asian countries.

It’s customary that the majority of constitutions in federal states define the powers of the Council of the Union as well as the House of Representatives, but these constitutions varied in terms of the extent to which one of the two houses excelled in legislation in a particular issue concerning a certain type of competencies or legislation in any other area, and
what is surprising and wondering is what the Iraqi Constitution stated, which merely provided for the existence of the Council of the Union and entrusted the issue of its composition and organization of its competencies to the law issued by the House of Representatives, which means that the Federation Council had no role in the legislation, as what is regulated by law is amended by a law, so the Council of the Union became at the mercy of the House of Representatives in terms of existence and amendment. The majority of federal constitutions, if not all of them, emphasized a very important issue: the superiority of federal law in all common areas of territory law.

However, what was stated in the Iraqi Constitution for 2005 is opposite to the rule that is common in all federal constitutions, as the provisions of the Constitution emphasize the superiority of the law of the territory over the federal law in the common jurisdiction and not only that, but the provisions of the Constitution indicated that there is the possibility of objection to any federal law in the field of common jurisdictions by one of the territories.

Through the study of the countries that have adopted the federal system of government, we have shown the importance of the Constitution in regulating and distributing the competencies as the backbone of the federal state.

So, it can therefore be said that adherence to the Constitution is a necessity for a democratic state.

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