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Fragmented sovereignty: Iraq as a Model

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Abstract. The theory that the sovereignty is a single unite that cannot be divided has become outdated, or at least it is confined to the framework of a simple state, not a federal one. Sovereignty in the federal state can be divided into shares where the center and its regions each have a share. The new perspective is an American innovation as a result of its historical circumstances, where its states gathered to form a federal state, moving from Confederation to Federalism. In Iraq after its liberation in 2003, the form of the state became a new mode, more commensurate with federal mode. This gave sovereignty a new commensurate with the new perspective and the new form of the state. The relationship between the center in the region (Kurdstan) is not so good. Based on that , the researcher in this paper aims to shed light on this issue in an attempt to discuss the limits of each other's sovereignty without one of them encroaching on the other.

Keywords: Iraq, sovereignty, Federalism, confederation, American perspective.

INTRODUCTION

(It is surprising that whenever a positive atmosphere prevails between the region and Baghdad and the opportunity arises to address the problems, the Federal Court immediately destabilizes this opportunity and aborts this opportunity by issuing a hostile decision, and it has become a reason for complicating disputes, and it seems to be implementing a suspicious agenda and replacing the Revolutionary Court in the former regime.) This statement issued by Mr. Masoud Barzani came in response to the decision of the Federal Supreme Court (17 Federal 2022) that the decisions issued by the Council of Ministers related to the transfer of funds from the federal government to the regional government are invalid!

It is worth noting that the Iraqi constitution in force considered the decisions of the Federal Supreme Court binding on all (without exception). This decision and other decisions such as the decision of unconstitutionality of the Oil and Gas Law for the region No. (22 of 2007), and the decision to withdraw the Iraqi charge d'affaires in Stockholm following the approval of the Government of Sweden to burn the Holy Quran and the Iraqi flag and others. These decisions stand at the borders of the territory and cannot be enforced. In the incident of burning the Qur'an and science, for example, which provoked high official and popular indignation, the Prime Minister (Muhammad Shia Al-Sudani) directed the Ministry of Foreign Affairs to withdraw the Iraqi charge d'affaires from the embassy of the Republic of Iraq from the Swedish capital, and also asked the Swedish ambassador to leave Iraqi territory, at the same time and on the same subject (burning the Qur'an and science) the Kurdistan Government announced another position, as it called for the suspension of the activities and work of the regional government representation in the capital, Stockholm. Two different decisions from one country in one case!

Such a strange case clearly indicates that Iraqi sovereignty is not one, but divided and fragmented!

Is it acceptable and permissible for the division of sovereignty in federal states or is sovereignty a single and indivisible unit? What are the limits of division allowed? Is it that the 2005 constitution laid the foundations for this division so that it made it look like a "state within a state", or was the organization of the state of union between the center and the region successful?

In this study, we try to answer the questions posed, explaining the concept of sovereignty, fragmented sovereignty and the position of Western jurisprudence on it, as well as the position of the Iraqi constitution in several demands .

Search problem

The relationship between Baghdad and Erbil has always been complex and intertwined and adopts the equation of "strong region - weak center" or vice versa. This reflected negatively on the unity of the state and the cohesion of its people, and after the fall of the regime in 2003 and the writing of a new constitution that embraced the federal union, the relationship and its entanglements were not dismantled, but rather became more complicated, and the relationship looks like a relationship between one country and another and not between a region and a state, this prompted us to write about divided sovereignty and try to measure the Iraqi federation with other federations.

The importance of research

The importance of research in revealing the areas of entanglement in the relationship between Baghdad and Erbil and trying to fix the path and put forward a new equation (strong center - strong region) The relationship of the region with the center is like the relationship of the head with a member of the body, the illness in one of them affects the structure of the whole body. Addressing federal distortion and putting things back in order is a real requirement for building a strong federal state.

Research Methodology

The researcher adopted in his research tagged (sovereignty divided between Baghdad and Erbil) comparative approach, where the study of the American federalism and how America moved from the state of non-state to the state of the state and from the state of non-unity to the state of unity and the federal union, which was established in the Constitution of 1787 had a great impact on that transformation, and also was studied the German federal experience and the transition of Germany from the Confederation to the Federation and the contribution of the Basic Law of 1949 in laying the foundations of unity and the state. The analytical approach was also adopted, by placing the relevant texts of the 2005 Iraqi constitution on the table for research and analysis.

Research Plan

The research was divided into two requirements, the first of which was devoted to discussing the concept of sovereignty in several branches, the first of which discussed the definition of sovereignty and its manifestations (internal and external). The second section examined the concept of fragmented or divided sovereignty and its characteristics and distinction from unified sovereignty and distinction from joint sovereignty. The second demand discussed the hegemony of the federal authority, and it was divided into three branches, the first to discuss hegemony in America, the second to discuss hegemony in Germany, and the third to discuss the relationship between Baghdad and Erbil.

FIRST REQUIREMENT

The concept of sovereignty

The concept of sovereignty occupies an important space and receives great attention in the political and legal arenas, and opinions and ideas have differed about this concept, some of them believe that the absence of sovereignty leads to the disappearance and disappearance of the state, and some of them believe the opposite. We will discuss the concept of sovereignty and its characteristics and the jurisprudential difference in its unity and division into branches:

Section I

Definition of sovereignty

First: linguistic definition: the root of the word (sovereignty) is the verb (sad) of Jblack, dam, sovereignty and suedda and suedda it is prevalent and master, and the effect is black (for the transgressor) prevailed person in the sense of greatness, glory and honor and prevailed people any became their master and ruler [1].

Second: Idiomatic definition: The root of the sia goes back to the French word (souveraineté), which is derived from the Latin origin (Superanus), which means highest. Therefore, sovereignty is often defined as the supreme authority. The concept of sovereignty is a relatively new concept, so it did not receive an agreed definition due to the difference in the characteristics and elements of the concept. Sovereignty was not the result of research and studies, but is the result of a long historical conflict between rulers and rulers, especially that historical conflict that occurred between the kings of France in the Middle Ages and the clergy of the two churches. Although the origins of the term sovereignty date back to the Treaty of Westphalia (1948), the historical roots of the idea go back to the ancient Greek era [10]. The jurist Jean Boudin (1530-1596) was the first to use the term sovereignty as an effect of the establishment of the state in his assessment of the types of governments on the basis of who has sovereignty [6].

Professor Lee Ver defines sovereignty as a characteristic of the State that makes it not act or be bound by any obligation except of its own free will [9]. Sovereignty means that the authority of the state is a supreme authority, there is no authority higher than it or parallel to it, it transcends everyone and imposes itself on everyone. It also means that the authority of the state is an original authority that does not derive its origin from another authority, and therefore the administrative bodies in the state, whether local or annex, derive their powers from this supreme authority.

This sovereignty makes the power of the state an indivisible unit, and accordingly, if there are many governing powers in the state, these powers do not share power among themselves, but only share the competencies. Sovereignty is therefore the supreme authority of the peremptory State[2]. There are those who define sovereignty as the legal and political competence of the supreme governing bodies, which is not superseded by any other jurisdiction, that is, the state has authority over anytime that is not subject to anyone and nothing is superior to it, but it has the supreme and last word over other groups and political and administrative bodies. Dr. Tharwat Al-Badawi believes that many researchers confuse power and sovereignty, as sovereignty according to his opinion is in fact only the characteristic that characterizes political power in the state because power is a pillar of the group, whatever this group is equal to the state and other public persons and private groups. Sovereignty is a description or characteristic unique to political power. Thus, a distinction is needed between State authority and sovereignty[5]. In my opinion, the confusion between sovereignty and authority continues until now, even among those who say that sovereignty should not be confused, as they portray sovereignty as a characteristic of authority, and thus they do not separate it from the third pillar of the state (authority). Rather, they make it close to him, and if we know that power is a pillar of the state, in addition to the pillars of the people and the region, the most important question that should be asked is, is sovereignty the characteristic of the state with its three pillars the characteristic of the third pillar only? I believe that sovereignty is the attribute of the state and therefore it is attached to the three pillars, not just the pillar of power.

Section II

Manifestations of sovereignty

Sovereignty has two manifestations, one external and the other internal:

First: Internal appearance: It means that the state enjoys supreme authority over all individuals and bodies on its territory, and the state is unique in this supreme authority and does not share any of it or is the final say in all internal affairs of the state alone [5].

Second: External appearance: It means the independence of the State and its non-dependence on any foreign State or organization, except to the extent imposed by international agreements and treaties to which the State is a party [6]. There has been disagreement among jurists regarding the sovereignty of the state, so is it necessary for the establishment and existence of the state that the authority be sovereign (supreme authority at home, independence abroad) or is it possible for the state to exist and exist even if its sovereignty is incomplete?

In fact, there are two opposing theories on this subject, the first is the French theory, according to which sovereignty is a single indivisible unit, and the opposite leads to the loss of the state of one of its essential elements, which means that it does not exist in the first place. This theory belongs to the traditional constitutional thought based on the simple unified state as it existed in the Middle Ages, so it was said that sovereignty is the form that

gives life to the state and that it is a characteristic close to the state and that sovereignty and the state are synonymous with one meaning. Perhaps the reason for the emergence of the idea of sovereignty in France was to help the king against emperors and popes on the one hand and against feudal lords on the other. The external sovereignty of the State means that the king is not subject to the Pope and others, and internal sovereignty means that the king's authority prevails over all powers, including those of feudal lords[8].

Traditional thought continued for a long time, when the idea of the federal state consisting of small states, each of which had its own internal sovereignty, the idea of sovereignty and being a single indivisible and undistributed unit was reconsidered, hence the emergence of the German theory, which does not require the establishment of the state that sovereignty be absolute and it is sufficient that the authority has the ability to issue binding orders within a certain scope in matters related to the system of government [9]. German jurists have attacked the French theory and considered that it would deny the status of the state even to the important states included in the federal state such as Prussia and Bavaria and transform them from being two states united in a federal state to mere administrative provinces [8]. It is clear that the two theories are based on historical circumstances experienced by both France and Germany, the strengthening of the king's authority and the unity of the French state led to the statement of absolute full sovereignty and the inadmissibility of its fragmentation and derogation, in return led to the desire of the countries included in the Union Germanic to preserve its sovereignty and not turn it into administrative districts to say the possibility of dividing sovereignty and decreasing it.

Section III

Fragmented (divided) sovereignty, its characteristics and distinction from others

In this section, we will look for a definition of divided sovereignty as well as its characteristics and distinction from the rest of the types of sovereignty in the following items:

First: Definition of divided sovereignty: - French professor Elizabeth Zoller (E. Zoller) says: Sovereignty as we understand it in France is not separate from our Monarchy history. In 1789 we replaced the sovereign and turned him from the king to the nation, but we did not make a change in the nature of this sovereignty, with the revolution we considered sovereignty in particular (indivisible unity) according to the formula of the first article of Chapter III of the Constitution of 1793, it is unity in the sense that it can not exist on the territory of the French Republic and in the same Time is several sovereigns, which radically leads to the exclusion of competition and sharing, which is (indivisible) in the sense that it cannot be divided and distributed into many pieces, and this is what excludes the dismantling of the republic into peoples, groups, bodies or countries, this republic does not know if only individuals [4].

So, sovereignty in France is closely linked to its history and the developments of the political and social situation in France. In contrast to France, the American constitutional tradition established a different idea of sovereignty, for many reasons related to the legacy of the Commonwealth, the influence of Protestantism, and the weight of colonial history. In the Federal Constitution of 1787 and in the Declaration of Independence of 1776, the second text was written against the sovereignty of the London Parliament embodied by King George III of England, and the first was liberated against the sovereignty of the states called upon according to the preamble of the Constitution to achieve a more complete union, in both cases the Americans were reviving an old idea (the idea of limited sovereignty). The concept of limited sovereignty is not an American innovation, even under the old regime, the description of sovereignty is absolutely total, but it was relative, as this launch stands at the limits of divine laws and natural law, the Americans have brought about a renewal in the idea of sovereignty that makes it limited even to positive law and through the idea of sovereignty restricted by positive law the Americans created what I consider Alexis de Tocqueville (The great discovery in the world of politics in our days, i.e. federalism [4] .The discovery of federalism led to the generation of the idea of limited sovereignty, as well as began to crystallize the concept of divided sovereignty and unlike the sovereignty of the British Parliament over the colonies, the universe cannot instill the American that it extends its legislative hand and legislates to the American states except within the limits of its constitutionally approved powers. Unlike France, sovereignty in America belongs to the American people. He reserved one part of it to the states, another to the federal government, and reserved for himself the third part. In the first section, the people distributed sovereignty into three pieces, one for Congress, the second for the federal government, and the third for the judiciary. The idea has been established juris prudently and judicially since the Philadelphia Conference, and until now, in 1995 the case (U.S. Term limits, inc.v. Thornton (Judge Kennedy described American sovereignty as "The framers split the atom of sovereignty") and its meaning (the drafters of the Constitution worked to fragment the atom of sovereignty). The American thought and understanding of sovereignty has brought about a great constitutional and political revolution (The preamble to the U.S. Constitution states, "We, the people of the United States, desiring to create a more perfect union and justice, and to ensure internal stability, etc.", and the phrase "more perfect union" in the American understanding means a single body of political body in which many sovereigns coexist), even France (the origin of a single

sovereignty) no longer says that sovereignty is a single and indivisible unit in the preamble to the 1946 Constitution and the phrase "provided reciprocity, France accepts the restrictions on sovereignty that are necessary for the organization and defense of peace" as well as the drafters of the Constitution of the Republic Fourth in the first article is the expression of the undiminished republic instead of the adjective of the one[4] .

The growth of this idea in France is observed even in the Constitution of the Fifth Republic (1958), when international treaties and conventions were given a force superior to that of ordinary law [13].

Federal construction in the United States was constitutionally based on two principles:

First: the principle of the supremacy of federal law in relation to state laws [11].

Second: The principle of the authority of the Supreme Court in the interpretation of federal law.

Through the foregoing, it is possible to create a definition of fragmented or divided sovereignty as the supreme state authority that the people of the federal state (federal) agreed to distribute at two levels (federal and local) so that the states, provinces or regions have the ability to manage their affairs politically, economically and administratively. etc. within the boundaries of the federal state.

Second: Characteristics of divided sovereignty: - From the above definition, a number of characteristics of divided sovereignty can be deduced: -

First: It is the supreme authority of the state that transcends everyone and is led to by all in the state.

Second, it is popular sovereignty, not illiterate sovereignty.

Third, it is the sovereignty of federal states, not unified states.

Fourth: It is a fragmented sovereignty internally at the federal and local levels so that the local part can manage its affairs politically, economically, administratively and otherwise away from the authority and influence of the center, but all of this is within the borders of the federal state and does not exceed it outside the state.

Fifth: The external appearance (independence) of divided sovereignty is linked to the federal state and not to the states within it.

Sixth: It is sovereignty made by the reality experienced by some countries and the circumstances experienced by America and Germany, and not by jurisprudence or the judiciary.

Third : Distinguishing divided sovereignty from the two sovereignty (unified and joint):

1. Distinguishing it from unified sovereignty:
2. In terms of absolute and fragmentation: unified sovereignty is characterized by absolute and indivisible, while divided sovereignty and on the contrary it is not absolute, howmuch it can be divided into pieces in which the federal and local levels.
3. In terms of the sovereign: in a unified sovereignty, the nation is sovereign, while in a fragmented sovereignty, the people are the sovereign.
4. In terms of state form: Unified sovereignty is an attribute of a unified state , while divided sovereignty is an attribute of a federal state.
5. Distinguish it from common sovereignty:
6. In terms of law: Common sovereignty in international law means that a political territory (state or border area) is located in or on which sovereign powers formally agree to share common property and exercise their rights jointly without dividing them into national areas. Current examples include the International Space Station, governed by a complex set of legal, political and financial agreements between all parties, Antarctica, where the parties to the Antarctic Treaty govern sovereignty over the Gulf of Fonseca and territorial waters outside its opening, exercised by El Salvador, Honduras and Nicaragua (triple sovereignty[16]). Thus, common sovereignty is governed by international law, while divided sovereignty is governed by constitutional (internal) law.
7. In terms of parties: Parties to shared sovereignty are states amongwhat parties to divided sovereignty are territories or states.
8. In terms of location: joint sovereignty is exercised over a common space and not an internal space, while divided sovereignty is exercised over the entire area of the federal state.

Second Requirement

Dominance of federal power

During the research, we learned that divided sovereignty is an American innovation, but does this mean dismembering one state and distributing it among its constituent states or states? Of course not, because to say so is to transform the state into a group of free and incompatible fiefdoms, and thus cease to have the status of a unified state. The dominance of the federal authority over the authorities in the regions or states is manifested in more than one place, including the supremacy of federal law over local law, and to say the opposite of this result (the supremacy of local law) leads to one result (the destruction of the character of federalism and federalism).

We will discuss the dominance of federal authority in America, Germany and Iraq, in several branches:

Section I

The dominance of federal power in America

The U.S. Constitution in force followed a method of distributing powers between federal power and the states, by limiting the powers of federal power and leaving everything else to the authorities in the states unless expressly prohibited [11]. But does this mean that the U.S. Constitution recognizes the supremacy of local authorities over federal power? Did it recognize the primacy of local law over federal law? Certainly not, it isthe right of the federal authorities and then the supremacy of federal law over local laws is confirmed in more than one area:

First: One People: The preamble of the American Constitution explicitly affirms the primacy of the character of a federal union within the framework of American unity by stipulating that "We, the people of the United States, desiring to establish a more perfect union, to establish justice, to ensure internal political stability, to provide means of common defense, and to promote the common good. If he wants. The U.S. Constitution changed the predominance of the state of the Union to formulate the phrase in other formulations such as "We the peoples of the United States" and instead of stipulating the establishment of a more perfect union, it could have only mentioned the word union, without using other words indicating the desire of the constitutional legislator to give priority to the state of the Union (common defense, public interest, public security).

In confirmation of this unity, Judge Marshall was addressing fundamentally to the countries of the Union by saying: "You are not subject to a charter, but to a constitution"[4] in order to refer to the exit from the previous state (confederation) and enter into a more organized and stable state (federalism), considering that the confederation is based on a charter in the neighborhood of federalism based on the constitution.

Second: Federal law is supreme: Article VI (F2) clearly and explicitly states that this Constitution and the laws of the United States to be made in accordance with it and all treaties concluded by the United States shall be the supreme law of the land and shall be binding on all judges in each state, notwithstanding the provisions to the contrary contained in the constitution or laws of any state.

Third: Imposing the Republican Form: Article IV (Chapter IV) of the Constitution stipulates that " The United States shall guarantee to each state in this Union a republican form of government. “It is clear that the U.S. Constitution imposes a republican form of government on all states and a state cannot choose a form of monarchy, for example, or otherwise.

Fourth: Broad Powers of Congress: Congress shall have great powers to achieve the purpose for which the Union was established, the most important of which are:

1. Impose taxes and duties provided they are uniform throughout the United States.
2. Regulating trade with foreign countries and between different states.
3. Establish a uniform naturalization system and bankruptcy laws throughout the states.
4. Minting and printing currency, regulating its value and the value of foreign currencies, and determining the standards of scales and measures.
5. Declaration of war, granting authorization to respond to aggression and seizure of goods, and establishing rules relating to the seizure of spoils on land and sea.
6. Establishing armies and securing their expenses.
7. Enact federal laws.

and other powers that unequivocally affirm the supremacy of the federal authorities.

Fifth: Powers of the Federal President: The President has broad powers, which confirms the unity and even primacy of federal power in America. The president has the power to issue regulations as the guardian of the implementation of laws. He is the supreme head of the administrative apparatus and commander-in-chief of the army, he is concerned with the direction of the foreign policy of the United States, he appoints ambassadors and consuls, negotiates and concludes treaties (jointly with the Senate), he is the commander of the army and navy and owns. The power to pardon as well as even to object to laws and so on.

Sixth: The absolute prohibition of the states from exercising competencies other than their own: In affirmation of the state of unity and the supremacy of federal authority, the Constitution prohibits the states from the following matters [11]:

1. Conclusion of treaties.
2. Entering into alliances or other federations.
3. Minting currency and issuing government bonds
4. Issuing a law that provides for conviction and punishment without trial or any retroactive penal law.
5. Repelling the assault and seizing ships .

This prohibition came absolutely without being dependent on the approval of the federal authorities or associated with a specific circumstance, and there is a relative prohibition stipulated in the Constitution conditional on the approval of Congress, such as (the imposition of duties on imports or exports of the state, unless it is absolutely necessary for it to implement its laws on inspection, and be in the interest of the State Treasury and subject toFor congressional review, no state may impose any duties on the tonnage of ships, maintain military forces or warships , enter into any agreement or pact with another state or foreign state, or engage in war unless it has already invaded or there is an imminent danger that delay is not permitted.)

Section II

Dominance of federal power in Germany

Not far from the doctrine of the American constitutional legislator, who wanted a federal union more perfect than the previous union (Confederation), the German constitutional legislator established in the Basic Law (1949) the dominance of the federal authority over local authorities in the states, and this dominance is reflected in several places of the Basic Law:

First: One People: The preamble of the German Basic Law refers to the unity of the German people and not to the peoples of the different states, as the phrase (the German people, under its legislative authority, issued this Basic Law), although it did not neglect to mention the states that make up the Union, but it was followed by the census of the states referring to the unity and freedom of Germany [12]. Article 20 of the Basic Law also indicates that the people (and not the citizens of the Länder) are the source of powers, after confirming the state of the Union by stipulating that the German Republic is a federal, democratic and social State [12]. He also noted that the representation of the entire State would be in the capital, Berlin [12].

Second: Federal law is the highest: With a clear and explicit text that does not accept interpretation or interpretation, the Basic Law indicates under the title (Priority of Federal Legislation) that federal legislation takes precedence over state legislation. It is worth mentioning that the Basic Law defined the powers of the federal legislative authority exclusively and left the rest to the state legislatures and prevented the states from exercising the right of Sharia in the specified areas exclusively unless the Basic Law authorized them to do so and to the extent that they were authorized to do so, while the Basic Law of the States allowed the exercise of legislation in the competitive areas (joint) between the Federation and the states, but a century This is provided that the Union does not exercise its legislative competence and to the extent that the Union has not exercised it (Dr. Munther Al-Shawi, previous source, p. 166).

The bottom line here: although the Basic Law stipulated the supremacy of federal law, it did not stop at that, but also referred to the supremacy of the federal legislative authority in areas of great importance, and even in the common field between the Federation and the Länder, the Union took precedence over the Länder.

Third: Federal Compulsory Authority: Article 37 of the Basic Law provides that (1) If a State fails to perform the binding duties of the Federation in accordance with the Basic Law or any other federal law, the Federal Government may, with the consent of the Bundesrat, take the necessary measures to use the mandatory power of the Federation to urge the State concerned to In fulfilment of these duties and in implementation of the mandatory authority of the Federation, the Federal Government or its Commissioner may instruct all states and their official departments. This text is crystal clear, as it prevents the states from violating the Basic Law and federal laws, and in the event of failure to do so, it may be used. The power to oblige to restore the violating mandate to the constitutional and legal avenue.

The bottom line: the hegemony of federal power in Germany makes us think that this state is a state of the people, before it is a state of states .

SECTION III

The relationship between the federal authority and the regional authority in Iraq

Looking at the historical political development of America and Germany, we find that they moved from a state of non-state to a unified state, and from a confederation to a federation, as the confederation was not a sufficient formula to achieve a strong union between the American states, as was the case for theGermans. Both America and Germany have gone beyond federalism as state or local states, and have become a people's state, or nation-state.

In Iraq, the idea of federalism was not raised in its royal and republican eras, it was not taken by the successive constitutions of Iraq (the 1925 constitution and the temporary constitutions in the republican era), the state was embracing administrative centralization, and then the experience of autonomy for the Kurdistan region was

known within one state (Dr. Munther Al-Shawi, previous source, p. 166), and after the overthrow of the regime in 2003, the constitutional and legal foundations for federal construction were laid (According to the first item of the political process agreement signed in October 2003 by the Governing Council and Paul Bremer, the Governing Council, in consultation with the Coalition Provisional Authority, shall write the Basic Law to be a constitution for the interim transitional period and the federation was adopted as one of the pillars of this law, it was stated in Article (4) of the law (The system of government in Iraq is a federal republic). It is based on geographical and historical facts and the separation of powers and not on race, ethnicity, nationality or sect. See Dr. Munther al-Shawi, ibid., pp. 172-173.). It seems that the opposition forces, especially the Shiite and Kurdish, had agreed earlier (since the early nineties) in the London conferences and others on the form of the state, and each of these forces had reasons, motives and goals to adopt the federal formula, the Shiite forces were thinking of salvation from the dictatorial regime and the rule of the minority of the majority, and the governance of the Sunni community because Saddam Hussein was a Sunni (this is a misconception such as the belief The political forces holding power today represent the Shiites) and because the fear of the future is due to the crisis of the mentality of these forces, they were thinking that the existence of a Shiite region represents a sure guarantee for these areas, the Kurdish forces shared the Shiite forces' orientation, but with other motives, the dream of the Kurdish state is engraved in the mentality of the Kurds, so the first step towards Achieving their dream will be in federalism. It goes without saying that Iraq was one simple state and was not a group of states or regions intersecting and conflicting, so it seems that the professionals of federal construction in Iraq wanted Iraq to move in a direction opposite to the course of the countries that embraced federalism in order to seek unity and move from non-state to state, and from the state of disintegration to the state of unity. A unified Iraq must move towards the Iraq of components, and Iraq must move to the Iraq of non-state, as if this is the fate of Iraqis and their fate. Inevitable! Unfortunately, this reality was engineered under the slogans of democracy, freedom and the rule of the people.

The so-called founding fathers have distorted federalism as a concept, practice and rules, federalism as a concept means a company of states with internal relations among themselves, that is, a constitutional law, under which a higher state is established above the participating states), according to Andre Horio, and according to Marcel Brelo, it is "a group of states that cede some of their powers to a unified central authority (federal authority).In return, it retains broad constitutional, legal and administrative autonomy [7]. As for practice, the experience of nineteen years ago tells us about the extent of the deterioration of the relationship between the regional center, the mentality of the strongest (the center or the region) is in control at the expense of the balance equation in the relationship. As for the general rules, the general rule is that priority should be given to federal legislation and decisions. Federal and not vice versa, but the constitutional legislator went against this trend in the Constitution in force 2005, and we will show the places of deterioration of the relationship in several items:

First: The supremacy of local law: - One of the strangest texts that can be observed in the 2005 Constitution is the text of Article (121/II), which allows the regional authority to amend the application of federal law in the region in the event of a contradiction or conflict between federal law and local law in the region regarding a matter that does not fall within the exclusive competence of the federal authorities. This approach is not provided for in any other federal system [3].

The logical question that can be asked here is: Why did the legislator move towards this strange trend despite the fact that the federal legislative authority represents all the Iraqi people and it is assumed that what it issues expresses the will of all Iraqis? It is clear that this text and others are intended to go beyond federalism, assuming that a particular legislation was completed without the representatives of the region, the boundaries of this legislation stand at the geographical and political borders of the region. This represents a violation of democracy from our point of view, because the legislation issued by the will of the Federal Council of Representatives must be expressive of all the Iraqi people and effective in all the geography of the state and not clash with a local veto of the current region or other regions that may be formed in the future.

Article (121) of the Constitution has made the region an adversary and a judge to assess whether federal law contradicts or conflicts with the law of the region in a matter other than the exclusive competences of the federal authorities. This non-unitary democratic orientation can be read in another text, which is the text of Article (115) of the Constitution, which indicated that all that is not stipulated Therefore, in the exclusive competences of the federal authorities, it shall be the competence of the regions and governorates that are not organized in a region, and other powers shared between the federal government and the regions shall have priority in the law of the region and the governorates not organized in a region in case of disagreement between them.

Second: Minority dictatorship: - Article 142 of the Constitution indicates that the House of Representatives forms at the beginning of its work a committee of its members to be representative of its main components to submit a report on the constitutional amendments to be made within a period of four months as a maximum, then the amendments are submitted to the House of Representatives for approval by an absolute majority of the number of members of the Council, then a popular referendum is held and the referendum is successful. If the majority of voters vote on it and if two-thirds of the voters in three governorates do not reject it.

Despite the attempt to hide the Kurdish political actor behind the provinces this time, and did not appear in the explicit appearance (region), but his will is crystal clear in the fourth of the day, this text reached the size of the region exactly and was covered by the general (i.e. three provinces and not necessarily Kurdish) and I do not know by what logic the (no) voters in three provinces are stronger than (yes) the people in sixteen other provinces!

This text is tantamount to imposing a political administration on the rest of the wills, and this is the main reason that delayed the amendment of the constitution for nearly two decades, despite the importance of making the first amendment to it.

It is worth noting that the original text of the amendment issued Article (126) of the Constitution, did not refer to this veto, meaning the possibility of making the amendment, overcoming the obstacle of two-thirds of voters in three governorates. The decision of the Federal Supreme Court No. 54 Federation for the year 2017 made the passage of Article 132 a condition for making constitutional amendments and their validity.

Fourth: The decisions of the Federal Court are binding except in the region: Article 49 of the Constitution stipulates that "the decisions of the Federal Court are final and binding on all authorities", meaning that they are binding on the federal and local authorities throughout the country. However, the regional authority had positions against the decisions of the Federal Court, For example, the court's decision on the unconstitutionality of the Oil and Gas Law No. 22 of 2007 in the region was answered by the Regional Judicial Council on May 30, 2022 (The actions of the Kurdistan Regional Government of Iraq regarding oil and gas operations are in accordance with the Iraqi Constitution of 2005, and the provisions of the Oil and Gas Law No. 22 of 2007 issued by the Kurdistan Regional Parliament do not violate the provisions of the Iraqi Constitution,... Therefore, the provisions of the Oil and Gas Law remain in force.) The statement concludes by stating that "the court that issued the decision on 15 February 2022 with the intention of repealing the Oil and Gas Law has no constitutional authority to do so [17].

In another situation, when the Federal Court ruled that the decisions of the Council of Ministers to send sums of money to finance monthly salaries in the region were unconstitutional, Massoud Barzani criticized the court, describing it as "this court seems to be implementing a suspicious agenda and is replacing the Revolutionary Court under the former regime."[18].

With regard to the Court's special decision on the unconstitutionality of some articles of the Kurdistan Region Parliament Elections Law No. 1 of 1992, the reduction of the number of members of the Regional Parliament from 111 to 100 and the replacement of the High Electoral Commission with the High Commission for the Elections of the Parliament of Iraqi Kurdistan [15], it was also rejected by the ruling party in Erbil [19].

The rebellion of the region against the federal system is no less dangerous than the acquisition of the center in it. Judge Holmes argues that "we do not think much that the United States will end if we lose our power to declare federal laws contrary to the Federal Constitution unconstitutional, and we even think that the Union risks collapse if we lose our power to declare state laws unconstitutional."(Dr. Issam Saeed Abed Ahmed, Oversight of the Constitutionality of Laws, 1st Edition, Modern Book Foundation, 2013, Lebanon, p 376)

THE END

Through the research, we reached a number of results and recommendations: -

First: Results

1. It seemed to us through research that Iraq is moving in the opposite direction to the goal of federalism, as federalism was the lever of dispersed and disjointed states to reach the state of unity and statehood, while we find it in Iraq moving towards the dismantling of one state into small states.
2. It appeared to us through research that the relationship between the center and the region is a relationship characterized by tension and attraction constantly, the authority in the region wants to shift from federalism in the state to the confederation with the state and the center is always trying to control and extend influence on the region.
3. It became clear to us through research that the constitution in force established an abnormal relationship and planted the seed of separation in more than one place, including the supremacy of local law at the expense of federal law as well as the veto of the minority (two-thirds of voters in three governorates).

Second: Recommendations

1. The relationship between the center and the region should be resolved by all diplomatic means, and the region should choose between secession to face its fate alone with neighboring countries or accepting federalism according to sound constitutional and legal foundations.

2. It became necessary to amend the constitution to redraw the relationship between the center and the region based on the equation (strong status - strong region).
3. The first amendment to the constitution must raise the supremacy of local law over federal law and restore things to normal by making federal law higher than local law, as well as lift the first amendment (minority veto), as it is not reasonable for a two-thirds minority of voters in three provinces to control the majority of the Iraqi people.

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