

# **The Question of Constitution and Engineering State Building**

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## **Introduction**

The nature of the question related to the relationship between civil state and constitutional documents in the Arab countries in general and in modern and contemporary Iraq in particular, is of a cluster in nature from which a number of questions may branch out, including:

- Was Iraq and is still living the ‘State’ or living the dream of a ‘Civil State’?
- Were the successive Iraqi constitutions the product of a national constitutional movement, or were the constitutions expressing foreign desires?
- Were these successive constitutions issued as a result of whims and hasty decisions, or were they issued after patient transformations?
- What were the constitutional obstacles that opposed building the civil state in modern and contemporary Iraq?
- What were the constitutional changes that supported building the modern state in modern and contemporary Iraq?

## **I. Iraq the ‘State’: Between the Ease of Establishment and the Difficulty of Being**

Descriptions of political units abounded after Hegel’s theory on the ‘State’ stresses that it is (given from the data of modernity), while political units and the powers of their management were clear before the era of industrial capitalism, clearly in their designations and descriptions from the single ‘State’ to be called the ‘City-State’ among the ancient Greeks and the ‘State of Kingdoms’ or the ‘Kingdom’ or the ‘Empire’ in ancient and medieval

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times, and to a lesser extent than the kingdom or empire, were small political units called the 'State', 'Emirate', or 'Metropolis'.

Iraq knew these designations for political entities over the years of its being, from city-states to kingdoms, empires, metropolises, states and emirates. The project of the modern state of Iraq was born at the hands of Prince (Faisal bin Al-Hussein), who was prepared with the permission of the Iraqi and British wills. Although Britain at that time was the authorized power for the birth of the project of modern state in Iraq.

Without going into the circumstances, controversy and conflict between the two wills, and the fragmentation and unification, on the one hand; and between the Iraqi political identity and sub-political identities, on the other hand, the controversy over these terms is wide indeed. However, it is clear to the eye that the establishment of Iraq was easy, but it went through stumbling paths for the period between the announcement of its establishment on August 23, 1921, until to this day. Therefore, we believe that Iraq has deserved the title of what we call the "*dream project*" because it is a project whose construction has not been completed on the ground due to the many obstacles and challenges it has gone through and is still going through to this day.

So we are celebrating today the 100<sup>th</sup> anniversary of the establishment of a dream state that has not yet been realized, and the launch of the project of building a modern state, and not the 100<sup>th</sup> anniversary of the emergence and existence of a modern state. Between the dream and the obstacles of construction, we must fully realize that the construction process is a matter of paths, not decisions. It is a process of preparing elements and requirements that should not be controlled by desires or whims.

In order to achieve the dream of the 'state' in Iraq, it is necessary to put down the illusion that was spread that Iraq was a state whose construction was completed at the hands of the monarchical rule and the integration of its renewal at the hands of the successive republics, and that its modernity continued after getting rid of the totalitarian republics in 2003. Indeed, this dream that we aspire to was and still is a project whose paths have deviated and the continuity of its structure has been interrupted. Its crookedness increased, its obstacles multiplied, and its retreats accelerated.

The question of the 'state' in Iraq opens horizons for minds to think about the future more than thinking about the past. There shall be no place for Iraq as a 'state' in the future unless it is able to reach the levels of relative self-sufficiency in producing goods and services for its people. Therefore, we have the right to ask: When will Iraq recover and leave the difficulty of being its desired state which was establishment a century ago? When will the

crookedness of the process of being and construction be repaired and corrected, and its harshness and distortions through the reigns of the monarchical rule and successive republics? And when will Iraq be saved from indulging in the chaos that suffocates freedoms and encourages the proliferation of unlicensed weapons?

## **II. Iraq and the Militarization of the ‘State’**

Revolutions derive their term from either causes or results. From where did the events of July 14, 1958 derive its term?

Iraq at the time of the Ottoman occupation was an entity divided into three states (Mosul, Baghdad, and Basra), then came the British occupation which unified these states and then controlled them and granted them the status of ‘*state*’ so that Iraq would become a democratic parliamentary state with a constitutional monarchy. But the situation in Iraq has not improved. Therefore, we believe that the events of July 1958 derived the term ‘*revolution*’ from its societal, political, economic, social, and cultural causes that made Iraq a place saturated with misery, anger and cruelty throughout its previous years.

But the liberal democratic moments that royal Iraq has experienced, the building of a modern state remained a conscious choice for the intellectuals, and a violent act for the military. Between this choice and that act, misery mixed with anger, pain and cruelty accompanied by murder and blood has occurred . The events of July 1958 erupted to shift Iraq from Constitutional Monarchy to a Republic. It started as a ‘*revolution*’ with its causes, but ended in a ‘*coup*’, and later followed by another republican coups. All these regimes did not employ the middle class in correcting the course of building the state.

The militarization of power, the urbanization of cities, hostility to partisan pluralism, the rejection of the peaceful transfer of power and the meaningless wars represented the most prominent distinguishing features of the (Iraqi republics of fear), starting from the first Republic of July in 1958 until the Republic of July 1968. Those were the most prominent factors that caused the rupture between the democratic moments of monarchical Iraq and the democracy of republican Iraq today.

Since the modern formation of the Iraqi state, the middle groups and their successive generations have lived in a state of fragmentation, decomposition and shattering. They have lived in the context of a comprehensive impoverishment process for them, along with the groups that were already classified as poor.

The middle class in Iraq has grown rapidly during the three decades of the founding of the modern state, and this class invaded state institutions from below, but remained excluded from above.

After the end of the monarchy, this class was able - as the Iraqi sociologist Faleh Abdul-Jabbar sees - to penetrate senior state positions, but at the hands of the military middle classes, i.e. what was called the '*political soldier*'.

In monarchical Iraq, there was the possibility of building a new society based on a modern civil constitution, but without the availability of the appropriate ground for such a civil society, i.e. a ground based on capitalist production relations as it is in Europe and America according to - Kadhim Habib - as he wrote about tyranny and cruelty in Iraq. Thus, this class became a (paradise of division), as Faleh Abdel-Jabbar sees it, because it brought together modern educated classes and traditional craftsmen, some of which depended on real estate capital ownership, while others depended on the government salary. It is also divided in terms of income into upper, middle and lower levels. In terms of components, it was divided into ethnicities, religions, and sects that intersect with social distinctions, so the class became subject to fragmentation, division, and warfare. This class occupied its position between the have-nots and the big owners. This class included officers in the army, but the largest percentage of the categories of this class are not independent from the state, but rather they are contained by it, and this state has practiced with them and with civil society institutions a policy of '*swallow up*', so this state has become the largest employer on the one hand and an instrument of control on the other.

However, this class has obtained a strong role, its social mobility depended on education and on government salaries after the military-security state absorbed the bulk of it, so this class became more attached than others to the military-security state.

Because of this attraction that affected the urban movements of the middle and working classes in Iraq, the political weight shifted to the role and activity of the military (the organizers of violence) within the state, as its size increased, but its role weakened after it lived on (the honey of the oil boom revenue) and little government support. Thus the revolution of 1958 -as we believe- ended in a coup.

After this brief clarification, are the events of 1958 considered a revolution or a coup? A question that will continue to be asked by many researchers!!

### **III. Iraq and the Antagonist Thought of the State**

The stories of formation recounted by the human mind throughout the ages are polemical and not collaborative and competitive. They are stories of paths and processes, not decisions and whims.

Iraq, as everyone knows, is a country for settlement, not a country of passage. It witnessed five pre-Islamic civilizations, the Islamic civilization, the Ottoman domination, the British occupation, authoritarian and totalitarianism throughout the republican era, and lately the American-British occupation, leading to a fragile independence and democracy that has not yet been completed!

In this Iraqi community (historical, social, economic, political and cultural), three political cultures were formed (traditional, subject, and participant cultures) according to the classification of the German sociologist (Max Weber). The weakest method of thinking were the methods of scientific thinking, where mythical and then religious methods prevailed until Iraq entered the era of national state building in the early twenties of the past century.

When Iraq entered this phase, the map of thought and thinking became divided between thought and inherited thinking, on the one hand; thinking and conciliatory thinking between the inherited and the newcomer, on the other hand.

In the royal era, the pluralistic newcomer was politically dominant and the inherited was socially dominant, and in Republican eras, the authoritarian (nationalist-leftist) was politically dominant and the inherited was socially dominant. After 2003, the pluralistic newcomer, in its liberal form and traditional content, was politically dominant, while the traditional heritage was socially dominant.

This is the map of thought and thinking in its general outlines and not in its details, because the formation is polemical, and the debate was not a competitive dialogue, but rather it was and still is often bloody combative. Therefore, the history of the Iraqi present, as is its past, is a history of cruelty and pain!

How to get Iraq out being a country of combative debate to a country of competitive dialogue debates?

If Iraq wants to have a place under the sun in the future, it must work on:

- relative self-sufficiency in food,
- relative self-sufficiency in medication,
- relative self-sufficiency in knowledge.

Starting from this point begins the journey of paving the way towards building the state in Iraq, and from here begins the path of reforming Iraq from one or more political entities to a real state. A state that evokes history in order to leave it, not to live in it and live at its expense. A state that produces citizens, not subjects, followers, or clients. A state that believes that all mountain peaks are pointed, except for three that are not, rather they are large enough to accommodate everyone. These peaks are: *faith*, *knowledge*, and *patriotism*.

Iraqi society is diverse on the basis of religions, sects and ethnicities. Those who believe that diversity management is based on moral and ideological grounds only are mistaken. Managing diversity is a matter of constitutional rights for all components. They are also legal rights regulating diversities. In addition to being institutional rights that enable all components of the people to hold public office.

Therefore, we believe that those concerned with the Iraqi issue post 2003 should have thought and thinking based on not being afraid of the multiplicity of its trends, whether new coming, conciliatory, or even inherited, as long as the debate among them become a competitive, non-combative, and bloodless ones. The debate should lay the groundwork for building a modern state away from transitional chaos and repressive domination. This matter does not concern Iraq only, but concerns every political entity in the region that wants to be a true state.

#### **IV. Iraq and the Deep Non-State**

No matter how many the terms of the political units are and how diverse their descriptions are, the contemporary terminology settled on three terms, namely: the *state*, the *deep state*, and the *deep non-state*, and since we want to warn against organized and unorganized combative chaos, and to be beware of unenlightened emotional populism and authoritarian minorities with weapons or money, then let us get to know what the *deep non-state* is.

Before getting to know the essence of the deep non-state, we have to realize that in terms of its existence, it is prior rather than subsequent to the existence of the constitutional state. As far as Iraq is concerned, its historical political entity has not yet reached the status of an already established state. Therefore, it is too early to talk about the depth of the non-state in Iraq.

Basing on the above mentioned, we may talk about the deep non-state in Iraq instead of the deep state in Iraq. Therefore, it is useful to get acquainted with what the deep non-state is in terms of being a deep state, on the one hand; and being a parallel entity of a deep state, on the other hand, in terms of their: concepts, characteristics, and the motives of their formations.

How can the deep state and the parallel entity invade the constitutional state?

The deep state means the control of the functions of constitutional institutions by political, military, media, economic and social elites whose intertwined interests unite to make them an elite that controls sovereign and non-sovereign political decisions. External parties may interfere in making or supporting deep state groups when those external international parties want to fight local and international projects that do not serve their interests in a strategically important country for them, so they support or establish organizational networks outside the official frameworks of the state. A parallel entity may correspond to or overlap with the deep state, and the term parallel entity of the state refers to a social movement established to generate populist social influence and enter the field of political life according to a long-term vision under which it is committed to forming a broad social incubator that rotates in the path of a founding leader. The establishment of this basic incubating ground for the parallel entity of the state comes due to the absence of a political intellectual platform that pushes towards playing a national political role, which leads, due to the weakness or absence of this platform, to quota polarizations of the political scene.

Then the parallel entity circles its sole leader who established this social movement with political, economic and social extensions after he began to choose the social path to establish influence within society, and then crawls toward the political circles through guidance, reporting, education, housing, health, financial and media service institutions.

Despite the huge social, economic and populist media influence of the leader and his non-political group surrounding him, he refrains from direct political action and leaves it to his supporters to influence the decision-making circles after opening channels for alliance with political parties and forces participating in power and being able to mobilize politicians in various state institutions. But soon he disagrees with them, and the alliance turns into containment or confrontation.

The parallel entity here constitutes an alternative to the deep state or the second stage of the deep state. In any case, the deep state and the parallel entity have not yet formed in Iraq, because the state has not yet come, and because the motives for the existence of the deep non-state are strongly available through the following indicators:

- The strength of the deep non-state is inversely proportional to the weakness of the constitutional institutions.

- The power of the deep non-state is proportional to the high rate of corruption and the proliferation of illegal weapons.
- The power of the deep non-state coincides with the militarization of the legitimate authority.
- The outgrowth of deep non-state power coincides with the rise of populism.
- The deep non-state strengthens when active political opposition is weak or absent.
- The power of the deep non-state flourishes when the supremacy of political consensus comes at the expense of the supremacy of the constitution.
- The deep state grows and hardens when internal forces are strengthened by external forces, ignoring, with or without intent, the homeland, patriotism, citizenship, and the necessity of strengthening and empowering them.
- The deep non-state takes hold when statesmen are excluded from leadership and chances are given to people who have no professional and political experience occupy senior power positions. Finally, as far as Iraq is concerned, the importance of the deep non-state is magnified when the political forces look at Iraq through the eyes of their sects, ethnicities, or narrow regionalism, and not through the broad national eyes that look at one unified Iraq.

#### **what to do?**

In short, no prayers nor supplication will save us, no national leader nor foreign intervention will help us as well. Rather, the savior and helper we find in the elections and by continuing the elections that are based on a fair law, truly independent administration, a fair observer, a citizen candidate and a politically aware voter. Otherwise, the deep non-state will remain, and the deep state and the parallel entity of the state will come.

### **V. Iraq and the Obstruction of the Term ‘Components’ in the 2005 Constitution**

The quota system has been constitutionalized through the not-so-innocent term ‘*components*’, which was mentioned four times in the permanent Iraqi constitution of 2005, namely:

1. Article (9-First-A) related to the formation of the armed forces and security agencies. It provides for religious, sectarian and ethnic quotas,



which makes these Iraqi institutions a victim shared by the components and not national institutions to which citizens voluntarily belong. The said article states that *“The Iraqi armed forces and security services will be composed of the components of the Iraqi people with due consideration given to their balance and representation without discrimination or exclusion...”*

Based on the text of the aforementioned article, the military institution as well as the security agencies have been subject to a policy of distributing quotas and positions among the winning political parties, according to sectarian and ethnic divisions of positions. As the position of Minister of Defense belongs to the Sunni Arabs, while the Minister of the Interior belongs to the Shiite Arabs. As for the Chief of Staff of the Army Forces and the Deputy Minister of the Interior, belong to the Kurds.

The idea of quota descends down to the commanders of divisions and brigades, and even to the number of students in the Military Academy.

2. **Article (12-First)** related to the Iraqi flag, national anthem, and emblem enshrined ethnic quotas, as the aforementioned article stated *“The flag, national anthem, and emblem of Iraq shall be regulated by law in a way that symbolizes the components of the Iraqi people”*
3. **Article (125)** enshrines the term ‘*components*’ of the political rights of Iraqi ethnicities, i.e. the consecration of quotas in political rights, instead of citizenship and the political rights of citizens within the diversity in its various forms The said article states: *“This Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law”*.
4. **Article (142-First)** related to amending the Constitution, enshrines the term ‘*components*’: it stipulates that: *“The Council of Representatives shall form at the beginning of its work a committee from its members representing the principal components of the Iraqi society with the mission of presenting to the Council of Representatives, within a period not to exceed four months, a report that contains recommendations of the necessary amendments that could be made to the Constitution, and the committee shall be dissolved after a decision is made regarding its proposals”*.

- The presence of repulsive pluralism and the absence of harmonious pluralism, which made the Iraqi issue a matter of a society of emotions and not a society of interactions, a society of bloody dissension and not a society of diversity and peaceful difference, a society escaping from restrictions and not a society free from restrictions.
- Sectarianizing politics in a country that has moved from a time when there was no freedom to a time of savage freedoms, and in this situation we are witnessing violent and various violations (the violation of places of worship and their worshipers, the violation of houses of justice and its men, the violation of educational institutions and assaults on their teachers and professors, and the violation of markets and their customers). As a result, political Sectarianization took on the risks of violence and terrorism to stir up civil war, division, or both.

Sectarianism in Iraq is linked to everything related to power, and it is largely political in nature. It was intended to turn into more dangerous, by which we mean '*societal sectarianism*' as a result of the American-British occupation and the weakness of national mechanisms for integrating the components of the Iraqi people within the framework of the comprehensive national identity and unity. The American-British occupation has realigned Iraqi society on the basis of its sectarian and ethnic identities, which constitute a real obstruction to building democracy. Civil society is fragile and weak, and the Iraqi political forces and parties are more like partisan sects or sectarian parties. Indeed, sectarianism has transferred Iraq from (military occupation to contractual occupation), and from (rough occupation to soft occupation), through a series of agreements, including *The U.S.–Iraq Status of Forces Agreement*, and *The Strategic Framework Agreement* of 2008.

The basis of the sectarian problem is not religion or it has to do with religiosity, but subordination of religion to personal interests - sectarian. A policy of survival, self-interest and development at the expense of other sects and ethnic groups. Likewise, the majority here is not a political numerical majority, but rather a fixed and unchangeable religious and ethnic majority, i.e. work for the favor of sectarian and ethnic quota system, instead of the political quota.

Distortions occurred in the constitution, and it became a constitution full of obstacles and problems, as there were distortions in the elections, which

requires the adoption of a new and real electoral system for legislative elections, and another for the elections of the regions and governorates that are not organized in a region, which adopts the principle of citizenship, and that Iraq to be a single electoral district. An electoral system that does not perpetuate the fragmentation of Iraqi people on sectarian, ethnic and regional grounds.

Moreover, another distortions occurred in partisan pluralism, so it is necessary to adopt a new and real law for partisan pluralism (the Political Parties Law) based on civil political foundations and standards that accept parties that adopt the principle of peaceful transfer of power and transparent financing, and do not accept partisan organizations that embrace armed military or paramilitary structures within them. It does not accept religious sectarian quotas and national intolerance, in order to overcome distortions in this regard. Adding to that, there is a need for a free press law that guarantees the principle of pluralism of opinion and freedom of expression.

These reforms to the distortions of the political process should be accompanied by a process of national reconciliation, and whoever wants to be an Iraqi citizen living and participating in a civil state must call and work for the national interest. On the other hand, the political system must be more open in a way that allows the formation of social forces that are not based on local sub-cultures, but rather on a participant culture that is consistent with the philosophy of the political system on which it was formed post 2003.

Based on the foregoing, and since the society in Iraq is ethnically, religiously and sectarianly diverse, then only the culture, values and concepts of civil society are the ones that can extract the Iraqi individual from the enforcement of his ethnicity, religion and sect, to put him on the path of citizenship, so that his feeling of loyalty to his country becomes stronger than his feeling of ethnicity, religion, sect or clan, and at that time he will stop distinguishing individuals by saying, for example: This is Shiite, that is Sunni, and the third is Christian, or this is an Arab, or a Kurdish, or a Turkman, etc., but it is enough to say: "He is an Iraqi citizen".

## **VI. Constitutional Description of the ‘*State*’ in Iraq**

A deep reading of the articles of the Iraqi constitution issued in 2005 shows us that the term “*civil state*” is absent, and that “*civilian*” was never

mentioned in its texts. Rather, the term ‘state’ was mentioned 30 times, as detailed in the following table:

No.	Role	Article	Function
1	Federal State	1	<i>The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.</i>
2	Religion of the State	2	<i>Islam is the official religion of the State and is a foundation source of legislation.</i>
3	The state is committed	7 (Second)	<i>The State shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, pathway, or field for terrorist activities.</i>
4	The state guarantees	22 (Third)	<i>The State shall guarantee the right to form and join unions and professional associations, and this shall be regulated by law.</i>
5	The state guarantees	24	<i>The State shall guarantee freedom of movement of Iraqi manpower, goods, and capital between regions and governorates, and this shall be regulated by law.</i>
6	The state guarantees	25	<i>The State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources, and the encouragement and development of the private sector.</i>
7	The state guarantees	26	<i>The State shall guarantee the encouragement of investment in the various sectors, and this shall be regulated by law.</i>
8	The state maintains	29 (First-A)	<i>The family is the foundation of society; the State shall preserve it and its religious, moral, and national values.</i>
9	The state guarantees	29 (First-B)	<i>The State shall guarantee the protection of motherhood, childhood and old age, shall care for children and youth, and shall provide them with the appropriate conditions to develop their talents and abilities.</i>
10	The state Guarantees	30 (First)	<i>The State shall guarantee to the individual and the family - especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing.</i>
11	The state Guarantees	30 (Second)	<i>The State shall guarantee social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphanhood, or unemployment, shall work to protect them from ignorance, fear and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law.</i>
12	The state Maintains	31 (First)	<i>Every citizen has the right to health care. The State shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and</i>

			<i>health institutions.</i>
13	The State Supervises	31 (Second)	<i>Individuals and entities have the right to build hospitals, clinics, or private health care centers under the supervision of the State, and this shall be regulated by law.</i>
14	The state Undertakes	32	<i>Individuals and entities have the right to build hospitals, clinics, or private health care centers under the supervision of the State, and this shall be regulated by law.</i>
15	The state guarantees	33 (Second)	<i>The State shall undertake the protection and preservation of the environment and its biological diversity.</i>
16	The state Guarantee s	34 (First)	<i>Education is a fundamental factor for the progress of society and is a right guaranteed by the state.</i>
17	The state guarantees	34 (First)	<i>.. state guarantees that it shall combat illiteracy.</i>
18	The State Encourage s	34 (Third)	<i>The State shall encourage scientific research for peaceful purposes that serve humanity and shall support excellence, creativity, invention, and different aspects of ingenuity.</i>
19	The State Promotes	35	<i>The state shall promote cultural activities and institutions in a manner that befits the civilizational and cultural history of Iraq, and it shall seek to support indigenous Iraqi cultural orientations.</i>
20	The State Encourage s	36	<i>Practicing sports is a right of every Iraqi and the state shall encourage and care for such activities and shall provide for their requirements.</i>
21	The State guarantees	37 (Second)	<i>The State shall guarantee protection of the individual from intellectual, political and religious coercion.</i>
22	The State guarantees	38 (First, Second, Third)	<i>The State shall guarantee in a way that does not violate public order and morality:</i> <b>First:</b> Freedom of expression using all means. <b>Second:</b> Freedom of press, printing, advertisement, media and publication. <b>Third:</b> Freedom of assembly and peaceful demonstration, and this shall be regulated by law.
23	The State guarantees	43 (Second)	<i>The State shall guarantee freedom of worship and the protection of places of worship.</i>
24	The State Seeks	45 (First)	<i>The State shall seek to strengthen the role of civil society institutions, and to support, develop and preserve their independence in a way that is consistent with peaceful means to achieve their legitimate goals, and this shall be regulated by law.</i>
25	The State Seeks	45 (Second)	<i>The State shall seek the advancement of the Iraqi clans and tribes, shall attend to their affairs in a manner that is consistent with religion and the law, and shall uphold their noble human values in a way that contributes to the development of society. The State shall prohibit the tribal traditions that are in contradiction with human rights.</i>

26	The President	67	<i>The President of the Republic is the Head of the State and a symbol of the unity of the country and represents the sovereignty of the country. He shall guarantee the commitment to the Constitution and the preservation of Iraq's independence, sovereignty, unity, and the safety of its territories, in accordance with the provisions of the Constitution.</i>
27	The State Council	101	<i>A State Council may be established, specialized in functions of the administrative judiciary, issuing opinions, drafting, and representing the State and various public commissions before the courts except those exempted by law.</i>
28	State Properties and Assets	127	<i>The President of the Republic, the Prime Minister, members of the Council of Ministers, the Speaker of the Council of Representatives, his two Deputies, members of the Council of Representatives, members of the Judicial Authority, and people of special grades may not use their influence to buy or rent any state properties, to rent or sell any of their assets to the state, to sue the state for these assets, or to conclude a contract with the state under the pretense of being building contractors, suppliers, or concessionaires.</i>
29	The State Guarantees	132 (First)	<i>The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime.</i>
30	The State Guarantees	132 (Second)	<i>The State shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts.</i>

## VII. Amending the constitution to Ensure a Civil State in Iraq

Amending the constitution is the basic procedure for reshaping the future of the political system as well as the democratic political process in Iraq if the intention is to have a civil state. However, The crucial question is: which constitutional texts require amendment?

Before answering the question related to amendment of the Constitution, we are keen to mention the golden commandments in order to make the Constitution the common denominator among all members of the Iraqi society regardless of their affiliations. These commandments are:

- **The first commandment:** The function of the constitutional rule is to settle differences and disputes and not to reproduce them in the political community.

- **The second commandment:** The relationship between general satisfaction and full acceptance of the constitutional document and the large number of exclusions and exceptions in the texts of this document is an inverse relationship. The greater the exclusions and exceptions, the less complete acceptability and the less general satisfaction with this document.
- **The third commandment:** The constitutional document should include general principles and starting points that guarantee compatibility and thus partnership between all components of the political community on the one hand, and on the other hand, the texts of this document should avoid - as much as possible - preoccupation with details because they often raise disputes and disagreements.
- **The Fourth Commandment:** Setting a correct constitutional rule that is not applicable today but would be applicable in the future is much better than setting an incomplete and incorrect constitutional rule that is applicable today and that applying it after this day under the pretext of (realism) would be disastrous. Not everything that is (a reality) is true, and not everything that is true is (a reality). What is most important for the constitution, is to include everything that is true today and tomorrow, whether this true is a tangible reality today, or a tangible truth in future.
- **The Fifth Commandment** It happens that the constitutional document contains unforeseen obstacles at the time of its writing. However, the danger lies in the mechanism of amendment in the future. Therefore, the makers of the constitution and those working to amend it must beware of such cases and be more careful and accurate when drafting constitutional articles, especially those that are subject of disagreement between the components of a pluralistic society.
- **The Sixth Commandment:** All democratic constitutional documents are based on consensual principles. These consensual principles are political in nature, they are based on civil political criteria and not the criteria of racial, sectarian and clan quotas -as found in the Iraqi texts. The latter criteria made the Iraqi constitutional document look modern in its form, but traditional in its content.

- **The Seventh Commandment:** The manufacture of democratic constitutional documents and their applications are based on the principle of partnership and participation, and not on the basis of exclusivity and hegemony for one party over others in the political community. Failure to work in the formula of one team will make each group of these parties in the political community think and act on the basis that it is victorious in this constitutional document over the other parties. In fact, thinking in this way and this behavior is the beginning of defeat and the beginning of loss for all parties.
- **The Eighth Commandment:** The democratic constitutional document is the foundational and basic requirement for building a strong state (with) the citizen, and it has no possibility of being (against) the citizen.
- **The Ninth Commandment:** The democratic constitutional document of a federal state does not allow the division of political power nor its concentration in the hands of the central government, but rather allows the distribution of powers: legislative, executive and judicial between the federal government and the governments of regions, states and provinces.
- **The Tenth Commandment:** The existence of a constitutional text affirming the independence of the state, its sovereignty, unity of land, and its people makes the demand for complete independence and the completion of sovereignty a legitimate demand and an endeavor that has no objection to it. It is better for there to be a constitutional text that allows the citizen to demand the completion of the sovereignty and independence of his country rather than just granting him the freedom of assembly and expression of opinion.

We make these commandments and hope that they will gain the attention of the Parliamentary Constitutional Amendment Committee.

### **The Constitutional texts that require amendment:**

The constitution carries within it, especially in its preamble, an acceptable general framework for the philosophy on which it is based. Despite its rhetorical, constructive and confused nature, and its attention to the past more than its aspiration towards the future, it included important basic principles and starting points.



- Every Iraqi citizen who wants to defend Iraq's independence and sovereignty must rely on this document (The preamble as well as Articles 1, 50, and 67).
- Every Iraqi citizen who wants to defend the unity of Iraq in terms of its people, land, and sovereignty must rely on this constitution (The Preamble).
- Every Iraqi who wants to defend the state of law, national unity, peaceful transfer of power, the principle of equitable distribution of wealth, the principle of equal opportunities for all, and the principle of citizenship) can rely on this constitution (The Preamble and Article 18).
- Those who want to combat sectarianism and racism must resort to this constitution (The Preamble).
- Whoever wants to renounce and combat terrorism and keep Iraq away from being a headquarters, channels or arena for terrorist activity must adopt this constitution (Article 7- Second).
- We can see the principle of the '*internationalization*' of the Iraqi Constitution not in the sense of lacking national values, but rather in the sense of ensuring the international acceptability of this national constitutional document (Articles 8, 9- e, and Article 21- Third).
- We find in this constitution the principle of supremacy of the constitution (Article 13) and the principle of political equality between men and women in voting and candidacy (Article 20).

The foregoing represents some of the advantages mentioned in the constitution. As for the failures and obstacles contained in the articles of this document, they are many, and they must be addressed in the next amendment. We hereby mention the most prominent of them:

#### **1. The principle of citizenship:**

It was stated in Article 9 (First-A and B) that:

- A. *"The Iraqi armed forces and security services will be composed of the components of the Iraqi people.."* We believe it is correct to suggest that the word '*components*' be removed and be replaced by the word '*citizens*', because '*components*' may be interpreted in a way that

makes the armed forces and security service agencies of nationalities, sects and clans under the pretext that they are components.

- B. *"The formation of military militias outside the framework of the armed forces is prohibited"*. The correct proposal as we believe is to ban the formation of military militias inside and outside the framework of the armed forces.

## **2. The obstruction to liberal democracy:**

This obstruction is represented by Article (29- First-A), which states that *"The family is the foundation of society..."* We believe that the correct proposal to amend this text is by suggesting that *'the individual is the foundation of society'* and to add that the *'citizen is the foundation of the state'*.

## **3. The Social chaos:**

This problem that is contradicted with the civil social system is represented by (Article 41). It states that *"Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law."* This text calls upon Iraqis to be free to bind and restrict themselves to their personal status according to their religion, sect, beliefs or choices. The most dangerous in this text is the consecration of customs and norms inherited in a male-dominated society such as the Iraqi society. These uncivil values lead to social chaos because they conflict with the most basic human rights and with the rights and freedoms due to women as a citizen of the free citizens. The best proposal is to abolish this article in the first place.

## **4. Tribes and civil society organizations:**

The Iraqi Democratic Constitution linked traditional and civil values in one article. This is what was stipulates in Article 45. It strangely combined the state's keenness to *"strengthen the role of civil society institutions"* and *"advance the Iraqi tribes and clans"*. This strange combination does not consistent with the general orientation of the philosophy of the new political system of Iraq which is intended to be democratic, pluralistic on a civil basis. The best proposal as we see is to abolish the part that is concerned with the traditional values in the first place.

## **5. Composition of the Federal Supreme Court**

This problem is represented by (Article 92 - Second), which states that the Federal Supreme Court consists of “*The Federal Supreme Court shall be made up of a number of judges, experts in Islamic jurisprudence, and legal scholars, ..*”. We suggest that the membership in this court be made up of judges and jurists from different religions and sects.

## **6. Oil and gas**

This obstruction is represented by (Article 111), which states that “*Oil and gas are owned by all the people of Iraq in all the regions and governorates*”. The fundamental question is: What about the rest of the natural resources other than oil and gas? Therefore, we suggest that the amendment stipulate “all natural resources...”

## **7. Oil and gas (currently extracted)**

This obstruction is represented by (Article 112), which limited the federal government only manage the oil and gas extracted from the existing fields. The fundamental question is: What about the oil and gas fields that will be discovered in the future? The practical proposal related to this article is to cancel it from the constitution so that it will not be a problem in the future.

## **8. The supremacy of the law of the regions and provinces over the federal laws**

This obstruction was mentioned in (Article 115) in its reference to the case of dispute between the federal government and the regions and governorates with regard to joint powers, in which priority is given to the law of the regions and governorates that are not organized in a region. The said article stated that “*All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute*”. The correct proposal is to leave the case of determining priority to the Federal Supreme Court.

## **9. An easy condition for a complex and dangerous subject**

The easy condition for a complex as well as dangerous subject is what is stated in (Article 118), which states that *“The Council of Representatives shall enact, in a period not to exceed six months from the date of its first session, a law that defines the executive procedures to form regions, by a simple majority of the members present”*, which means a majority of ( 51%) of those present. It is indeed an easy condition to achieve a complex and difficult issue.

Moreover, (Article 131) confirmed this easy condition for the same complex and dangerous issue, as it asserted that *“Every referendum mentioned in this Constitution is deemed successful with the approval of the majority of the voters unless otherwise stipulated”*. In the sense that the success of the referendum to form a region depends on achieving the condition of (majority of the voters), which is an easy condition for a complex and dangerous subject.

#### **10. Application of federal law in the region**

The numerous paragraphs of (Article 121), perpetuates two main problems and obstacles, namely paragraphs (IV) and (V):

**(Paragraph IV)** states that *“Offices for the regions and governorates shall be established in embassies and diplomatic missions, in order to follow cultural, social, and developmental affairs..”* The issue of establishing offices for regions and provinces in diplomatic missions is something that Belgian legislators invented and later was copied by Iraqi legislators without realizing the size of problems that would result in these missions if this paragraph was applied.

**(paragraph V)**, states that *“The regional government shall be responsible for all the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region”*. The term ‘regional guards’ mentioned in the said paragraph could easily be interpreted as the (regional army), especially since this military force is equipped with heavy weapons. The correct amendment of this term - as we believe - is to delete the term ‘regional guard’ and insist on the term

(internal security forces of the region) to include the police and local security forces only.

## **Conclusion**

We conclude to affirm that the civil state is a presumption in its existence and continuity, and before that in its establishment, with a vision with the most prominent characteristics:

- It should be futuristic, and this vision is missing in Iraq as long as political Iraq retreats to the state of traditional components after overcoming the authoritarian state, so we find the general situation today evokes history in order to live in it and to live at its expense, and not to leave it.
- The civil state is a state of citizenship, however, the case in Iraq is different in the sense that its individuals are distributed among subjects, followers, and clients.

## References:

1. Iraqi Constitution of 2005.
2. Abbas Radi Al-Amiri, Obstacles to Democratic Transformation in Iraq, Dialogue of Thought Journal, Baghdad: Iraqi Institute for Dialogue of Thought, 2013. (Arabic)
3. Abdullhussein Shaaban, The Controversy of Identities in Iraq (State and Citizenship), Dar Beirut: Arab Science, 2010. (Arabic)
4. Ali Hassan Al-Rubaie, Challenges of Building the Iraqi State, Arab Future Journal, Vol. No. 337, Beirut: 2007. (Arabic)
5. Amer Hassan Fayyad, Iraq and the Dream of the State, Baghdad: Anki publications, 2020. (Arabic)
6. Amer Hassan Fayyad, Narratives of Reason and the Misery of Democratic Transformation in Contemporary Iraq, Baghdad: Al-Subh Al-Thaqafi Book, 2016. (Arabic)
7. Amer Hassan Fayyad, The Islamized States of Evil, Beirut: Arab House, 2019. (Arabic)
8. Burhan GHalun, The sectarian issue and the problem of minorities, Beirut: Dar Altalia, 1979. (Arabic)
9. Jabir Habib Jabir, State and identity struggle in Iraq, Iraq, Alnajaf: Dar Aldhia, 2009, (Arabic)
10. Mahdi Al-Shara, The Political Components of Sectarianism in Iraq, Oriental Affairs Journal, Vol. No. 1, Center for Arab Orient Studies: 2008. (Arabic)
11. Mazen Marsool Muhammad, The Sociology of Crisis (Iraqi Society as a Model), Beirut: Al-Aref Foundation, 2005. (Arabic)
12. Nazih Al-Ayoubi, Expanding the Arab State, Arab Organization for Translation, Beirut: 2010. (Arabic)
13. Salim Matar, The Wounded Self: Problems of Identity in Iraq and the Arab World, Beirut: The Arab Institute for Studies and Publishing, 1997. (Arabic)