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The legal nature of conflicts of jurisdiction in federal states

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Summary
Federalism is a constitutional mechanism for distributing power among the various levels of government, whereby political units enjoy true, constitutionally guaranteed autonomy in various areas and share power in accordance with the constitutional rules establishing the federal state. The constitutional distribution of powers between the federal government and state governments constitutes the essence of federalism. Since the constitutional texts regulating the distribution of powers are flexible in nature, aiming to adapt them to modern developments in the federal state, the possibility of a conflict of jurisdiction arising between the federal government and the states is very likely. This necessitates the existence of a constitutional mechanism to resolve conflicts of jurisdiction.
The dispute over jurisdiction in federal systems aims to analyze the causes and forms of conflicts resulting from the distribution of powers between the central government and regional governments and to study the mechanisms for resolving them in comparative federal systems. The most important reason for conflicts of jurisdiction in federal systems is the lack of clarity in the distribution of powers between levels of government, which leads to duplication or conflict in the exercise of powers.
This research revolves around this idea, which addresses the legal nature of conflicts of jurisdiction.

Introduction:
Maintaining the continuity of the balance of power, especially between the central government and the regional governments , and the equality of powers are among the most important reasons for the success of the federal form.For the state . Federal constitution makers usually make efforts to establish a kind of balance when distributing powers between levels of government . Given the constitutional organization of the distribution of powers between levels of government in broad outlines without going into detail, conflicts often arise that focus on the distribution of powers or any other matter. This is because conflicts are inherent in the federal system , as the distribution of powers between different .levels raises conflicts, and the latter is a distinctive feature of the federal system
There is no doubt that the distribution of powers between the federal authority and the state authorities is a constitutional process that, when implemented, raises a very important problem, which is the possibility of interference between the powers of the federal authority and the state governments. The distribution of powers leads to a duality in the exercise of powers.
In this research entitled (The Legal Nature of Conflict of Jurisdiction in Federal States) we will shed light on the concept of conflict of jurisdiction in federal states, its origin and development.

Research problem and questions
Academic discussions on federalism in recent years have witnessed a strong tendency to focus on finding a new reading of the conflicts that occur. At the heart of the federal system, this reading calls

for the adoption of constitutional measures that achieve justice between levels of government. : Accordingly, the following main question arises

What are the constitutional tools created by federal constitutions in order to... Managing conflicts - between levels of government?

sub-questions branch off from this main question:

What is meant by conflict of jurisdiction in federal states?

Does the conflict of jurisdiction in federal states take one form, or are there different forms of - conflict of jurisdiction ? Specialization?

Importance of research:

The importance of this research lies in its analysis and foundation of the disputes related to jurisdictions in the constitutions of federal states, given that the distribution of jurisdictions carries within it the possibility of a dispute arising over jurisdictions between the central and regional authorities in federal states. Meaning the existence of a contradiction or duality and perhaps a conflict . in the exercise of these powers

The research objectives:

The research aims, from a scientific perspective, to study the concept of conflict of jurisdiction in federal states and to establish its nature and origin, and in addition to that, to study the jurisdictions . that are subject to conflict in federal states

Research methodology:

The aim of this research is to provide a scientific answer to the research problem and its questions. The researcher follows the analytical approach by studying each part of the research and explaining its various constitutional aspects . He also follows the comparative approach with the aim of explaining the conflict of jurisdiction in federal states through the comparative mechanism, leading to an . assessment of the results and related proposals. For the research topic

Research plan :

The scientific study of the research topic requires dividing it according to the following

first requirement : the distribution of jurisdictions as an inevitable prelude to the emergence of a conflict of jurisdiction.

section : Definition of conflict of jurisdiction technically

branch :Constitutional jurisdictions subject to jurisdictional disputes in federal states

The second requirement: The emergence and development of the conflict of jurisdiction in comparative federal states.

The first section: The emergence of conflicts of jurisdiction in comparative federal states

The second section: The development of the conflict of jurisdiction in comparative federal states.

Conclusion

requirement : The distribution of jurisdictions is an inevitable introduction to the emergence of a conflict of jurisdiction.

The first section: Definition of conflict of jurisdiction technically:

The technical meaning of conflict refers to a disagreement or clash between multiple trends. This is due to the inextricable nature of the interests that unite these trends. Conflict occurs between at least two parties within a single state when one of the concerned parties rejects an existing status quo within the state and attempts to change it. The term conflict appears in various branches of law.In administrative law, jurisprudence applies the term "administrative dispute" to any dispute in which the administration is a party, whether it is a dispute between two administrative authorities or between the administration and individuals. This also appears in the rules of public international law, such as disputes arising from the interpretation of an international treaty or disputes related to the assessment of damage resulting from a breach of the provisions of international law. At the same time, it appears: Private international law scholars define conflict as “the clash and difference between the laws of two

or more countries in connection with a legal relationship that belongs to one or more of its elements to " [1] these countries.

Accordingly, lack of jurisdiction is the legal inability to make a specific decision, due to the necessity of it being issued by another member or body. The Administrative Judiciary also defined the defect of lack of jurisdiction as (the inability to carry out work A specific legal matter that the legislator has made within the jurisdiction of another authority or individual.

In the field of constitutional law, conflicts arise between public authorities , each of which claims the right to exercise a certain jurisdiction. What distinguishes conflicts in the field of constitutional law is that they are based directly, and in most cases , on the provisions of the constitution itself. While ordinary legal texts are used , constitutional conflicts are also conflicts between the general principles defined by the constitutions of states , since they are essentially not related to the specific procedures . of each authority

It is worth noting that the jurisdiction that refers to the conflict is defined by a section of jurisprudence as (determining the group of actions and transactions that every person or public body has the right to practice legally in a manner that is recognized by Sharia, such that none of them may exceed this ([3])Specialization.(

1Prof. Dr. Abdul Rasool Abdul Redha Al-Asadi, Private International Law, Al-Sanhouri Library - . Baghdad 2013, p. 212

Dr. Mohsen Khalil. Cancellation Judiciary , First Edition, University Publications House , -2 . p. 72.Alexandria, Egypt , 1989

Dr. Saeed Nahili and Dr. Issa Al-Hassan, Administrative Law (Administrative Activity), Aleppo -3 . University Publications - Aleppo - Syria 2007 - p. 236

The second branch: Constitutional jurisdictions subject to jurisdictional disputes in federal :states

Although there are some common issues among contemporary federal systems regarding the definition of powers allocated to each level of government, there are also fundamental differences between them .(1)

Federal constitutions vary in the methods they adopt in distributing constitutional powers betweenExclusive , joint and residual jurisdictions , often refer to joint and residual jurisdictions more .than others ,Since the joint powers do not define a clear scope for federal and local activity

matter depends on the position of the federal legislator alone. As for the remaining powers , they become a cause for conflict when the constitution stipulates granting them to the states , given that most federal governments seek to strengthen their role and expand their powers.Calculating the powers of the states, to enable them to keep pace with developments and expected life circumstances on the local and international arenas, which constitutes another challenge to the distribution of constitutional .powers within the federal state

.for respect for human rights also increase pressure on state practices

Like the death penalty , for example in the United States of America the death penalty does not representIt represents a violation of international conventions. Some state constitutions and laws stipulate a violation of the federal constitution . Rather, it is viewed as a legal penalty, and knowledge of the most constitutional jurisdictions that are open to interpretation and interpretation and are likely .to be a cause for the outbreak ofThe problem of conflict of jurisdiction within the federal state

We must investigate the scope of the distribution of constitutional powers in the various federal systems .The local and international levels, by examining in some detail the constitutional and important powers that may be included in the constitutional powers related to organizing foreign .affairs, and the constitutional powers related to organizing the internal affairs of the federal state

George Anderson . Introduction to Federalism - Referenced in Rasha Abdel Baqi Murad's MA -1 .thesis - Faculty of Law - University of Damascus, p. 43, Damascus 2023

Raoul Blindnbacher and Evele Ostein, Dialogues on the Legislative, Executive and Judicial -2 .Domains of Governance in Federal StatesPart Three, p. 45 - Baghdad 2024

:First : Competencies related to foreign affairs

Since the unity of the international personality is the most important thing that distinguishes the federal union from all other unions , as the personality of the constituent states appearsThe union has a new international personality, namely the union , which necessarily requires that the states are not able to conclude international treaties and independent external representation . Based on that, most federal constitutions have gone The central government is responsible for managing the foreign affairs of the federal state, without interference from state governments. The federal authority often exercises all international powers. It typically handles foreign relations with foreign countries and international organizations, establishes diplomatic representation with other countries , concludes and ratifies international treaties , and ensures its sovereignty.On the laws of the Union and the states alike , as well as the declaration of war [1]

Based on the above , the competencies related to foreign affairs in the federal state will be addressed as :follows

:Diplomatic representation -1

Since the unity of diplomatic representation is considered one of the important matters that achieve the unity of the federal state , most federal constitutions are keen to make the practice of the manifestations of international personality one of the exclusive powers of the federal government, given its impact on supporting and strengthening the union, so that it alone has the right to send diplomatic representatives . It receives them and participates in international conferences . It represents the Union to foreign countries and international organizations, and it also accredits diplomatic representatives . [2] Hence, the American Constitution has given the central government the authority to conduct foreign affairs and diplomatic representation , and granted these powers to the President of the . [3] Republic, provided that it is coupled with the approval of the Senate

Perhaps the reason behind this is that each of the states that make up the American Federation , in accordance with the Constitution , has relinquished to the federal government the exercise of external sovereignty. Hence , the issue of diplomatic representation became the exclusive responsibility of the President of the Republic and the Senate ([4]) · Here too, it must be noted that in the Federal Republic of Germany , the Basic Law of 1949 emphasized the preservation of the unity of the Federation in the field of foreign affairs and diplomatic representation .By making it one of the exclusive powers of the federal government, as Article 59 , paragraph one, stipulates that the federal president is the one who represents the union on the international scene and organizes diplomatic representation affairs and .international relations

In Iraq, the Iraqi Constitution of 2005 addressed the issue of diplomatic representation in more than one article, as it considered it to be one of the exclusive powers of the federal government, in accordance with the text of Article (110) first, but at the same time, it confirmed, in accordance with Article (121/Fourth), the necessity of establishing offices affiliated with the regions and governorates not organized into a region, in embassies and diplomatic missions , for the purpose of following up on social, cultural and developmental affairs. There is no doubt that the federal constitutions did not include such a text, in addition to the fact that it became the subject of criticism from the .jurisprudence

The presence of such an article in the core of the federal constitution would make it closer to a confederation, according to which the units that make it up retain part of their external sovereignty. It can be said that the regions' enjoyment of the right to diplomatic representation means that they enjoy . [5] a hidden international personality

1- Mohamed Bakr Hussein, Federal Union between Theory and Practice , Cairo University, .Egyptp. 226

2- Abdul Rahman Al-Bazzaz, The Unified State and the Federal State, Cairo , Egypt. Dar Al-.Qalam: p. 65
3- This is in accordance with what is stipulated in the second paragraph of Article II of the US .Constitution of 1887
4- It is worth noting that the US President can, in practice, bypass the Senate's approval regarding .the issue of diplomatic representation by sending personal envoys
5- Hassan Ghariba Al-Abidi, Organization of Treaties in the Constitutions of States, PhD Thesis, .University of Baghdad, College of Law, Baghdad, Iraq 1988 - p. 60

As for Iraq, the Iraqi Constitution of 2005 restricted the authority to conclude international agreements and treaties . However , the authorities (federal , legislative and executive) stipulate, as Article 110 , paragraph one, stipulates that the federal authorities have exclusive jurisdiction to negotiate .international treaties

In conclusion, the federal authorities, according to the Iraqi Constitution, have the exclusive authority to conclude international treaties, as there is no text in the Constitution granting the regions and governorates the right to do so.Irregular in the territory of the authority to conclude any kind of international treaties or agreements , and even If it was within the limits of its legislative jurisdiction and constitutional powers , and despite the explicitness of the constitutional text , this jurisdiction is considered a subject of dispute between the government The Federal Government and the Kurdistan Regional Government, given that this government has concluded a number of International agreements especially in the oil field [(1)] and thisIt constitutes an infringement on the exclusive jurisdiction of the , . federal government in this area

It is noteworthy that the Kurdistan Regional Government of Iraq has signed a number of - 1 agreements in the oil sector, specifically in the field of (exploration and logistics services) , infrastructure development and energy resource trade , including the agreement it concluded with the Russian oil company (Rosneft) on (6-3-2017) and extending for a period of twenty years. Years , which resulted in the St. Petersburg International Economic Forum , and it had previously signed an agreement with the same company , to purchase the Russian company’s crude oil , for the purpose of .processing it in its factories , on 2/12/2017

Research published on the websitewww.manbabaa Lorg\arabic/rights/111428

Dr. Rawaf D. Al - Tayyar , The Legitimacy of the Oil Agreement between Russia and the Kurdistan -2 .Region for the Year 2017 , Center for Strategic Studies, University of Karbala, Iraq

:Concluding international treaties -2

Concluding international treaties is a manifestation of the exercise of external sovereignty in the state , so the fully sovereign state has absolute authority to To manage and define its foreign affairs, and conclude international treaties , unlike states with incomplete sovereignty, such as a protected, dependent, or occupied state , which International treaties are subject to the authority of a foreign state in their conclusion . Since the established rule for regulating international treaties , according to public international law, does not specify the authority competent to conclude treaties within the state in question , then this matter is left to the constitutional rules . In every country, whether unitary (simple) or federal (Federalism) , accordingly , federal constitutions lead to the authority to define foreign affairs and conclude international treaties in the interest of the central government as a general rule , which is consistent with the purpose of establishing the federal union : namely , to unify foreign policy and concentrate it in the hands ofOne body representing all the states as if it were a simple, unified . [(1)] state

However, the limits of this jurisdiction vary from one federal state to another.To another, as the states in most federations retain some of the powers in the field of international relations , provided that these powers are surrounded by ...The powers with constitutional restrictions constitute an important

guarantee for the sovereignty of the federal state [2]. As for non- political treaties, some federal constitutions have stipulated that the states are granted the authority to conclude them , whether among themselves or between foreign states, given that these treaties do not affect the state's foreign policy. It is worth noting that granting the states this right is not a matter ofAbsolutely free from any restrictions, but rather it is required that these treaties do not conflict with the rights of other states or with the Constitution and federal laws or with the treaties concluded by the federal government [3]This is how the Argentine Constitution of 1994 proceeded. Article 124 of it stipulated that the provinces have the power to conclude agreements, provided that they do not contradict the foreign policy of the Argentine state, or infringe upon the powers assigned to the federal government. As for the United States of America, the American Constitution stipulated in Article 2, paragraph two, that the power to conclude international treaties is vested in the President of the Republic with the advice and consent of the Senate, provided that two-thirds of its members present agree. The President of the Republic is the first constitutionally responsible for his country's relations with other countries, and he is assisted in this by the Secretary of State, who in the United States of America is called
B (Secretary of State) so that he often seeks his assistance, in addition to the Senate's participation in .some other matters

Dr. Muhammad Bashir Al-Shafi'i, Constitutional Law and Sudanese Political Systems. Khartoum -1 .Library, Sudan . pp. 134-135
Dr. Omar Mahdi Saleh Al-Kubaisi , Distribution of Constitutional Powers in the Federal State, -2 . College of Law, University of Baghdad, Baghdad, Iraq, 2007, p. 266
. The text of the American Constitution (1787), in Article 1, Paragraph 10 thereof -3

The second requirement: The emergence of the conflict of jurisdiction in the federal state, its :comparative nature and its development

of federalism is very old , Greece is credited with the emergence of both the theoretical and practical aspects of federalism, which was known there from the fifth century AD, as the federal movement did not appear in Greece until classical history. In ancient Greece, a distinction was made between the organizations of semagi , sema, and polis . There was a fundamental difference between each of them . While the first went little beyond the military union , the second was more profound , as it included participation in political life . This implied the existence of a central government and a division of power between it and the local governments in the cities.There was dual citizenship and dual loyalty , one to the federal government and the other to the local government , while the central government was responsible for foreign affairs and defense, and it was up to it to return. The jurisdiction over crimes of treason , the other jurisdictions were the responsibility of the local government [1] and many constitutional law scholars agree that the system adopted by the United States of America under the Constitution, which was established at the Philadelphia Convention in 1787 AD, is the first federal system. In the modern era [2] this constitution introduced a new model of government.It is based on the division of power between the central government and the state governments, thus creating a type of .(2) dual sovereignty that combines the advantages of union and independence
a question arises about how this union emerged and the circumstances of the union 's emergence .The , :Feder in the world notes that it goes back to two styles
The first method is characterized by several independent states agreeing to join each other and form a single state that will be destroyed . It has its international character , and this method is called (the union).By joining or gathering) This type of union is often preceded by the confederation stage that arises between several countries, pursuant to an international treaty) and according to this method the countries entering the union give up their full external sovereignty , and some of their internal powers, so that their foreign affairs are handled by the union state on the basis of the federal constitution , and it is oftenThe reality of these countries' union is due to the closeness of their peoples in terms of

history, civilization and culture, or the feeling of these countries ' need for union to repel aggression .(5)

Dr. Firas Walid Yousef Al-Labadi - The Impact of Political Decentralization on the Unity and -1 .Cohesion of the State. Arab Open University, Amman, Jordan, 2006, p. 16
Dr. Ali Madlul Mohsen , Controls for Exercising the Legislative Function in Federal Constitutions -2 (Comparative Study), PhD Thesis , Faculty of Law and Political Science, Beirut Arab University, .Beirut, Lebanon, 2016, p. 10
Dr. Jamila Muslim Al- Sharbaji . The Federal Union : An Applied Study on the Arab World. PhD -3 Thesis , Cairo University , Faculty of Law, Cairo, Egypt , 2003.p. 17
Dr. Omar Mahdi Saleh Al- Kubaisi - Distribution of Constitutional Powers in the Federal State. - 4 .Previous reference, p. 115
Dr. Ihsan Al-Mufarji and Dr. Katran Zaghir Ne'ma, The General Theory of Constitutional Law in - 5 .Iraq, Al-Atik Library, Cairo, Egypt, 2011, p. 102
According to this method, the oldest federations in the world arose, so it is considered the origin of the establishment of the federal state . Among the countries that established it in this way is the United States of America, according to Constitution of 1787 AD, the Federal Republic of Germany under the Basic Law of 1949 AD, and Switzerland in its ConstitutionIn 1828 AD, as well as the United Arab Emirates, according to its constitution. The temporary one of 1971 AD, which was approved .permanently in 1996 AD
As for the second method, it comes as a result of the disintegration of a simple (united) state into several units with independent constitutional entities, with their desire to be linked together in the form of a federal (central) union based on a federal constitution (1) . Jurisprudence calls this method unity".)Union without separation or disintegration) Among the federal states that arose in this way " are: the Soviet Union , which arose as a result of the disintegration of the Tsarist Russian state in 1981, .1893 Brazil in 1891 , and Venezuela in
The transformation of a simple (united) state in its political system into a federal state (federalism) is often the result of various political and economic crises that push some regions to achieve more self-rule that achieves for them a part of sovereignty (2) . Returning to the nature of the federal union and what it requires in terms of the necessity of reconciling conflicting goals and interests, We find that the conflict of constitutional jurisdiction arose in conjunction with the emergence of unions between states, and was even one of the most important reasons that led to the development of the federal union. Those who follow the emergence of the federal system note the importance of the role played by the federal courts in establishing a number of important principles that contributed to preserving the unity and continuity of this system, through resolving the conflict of constitutional jurisdiction between the different levels of government . As is known, the most difficult challenges facing comparative federal states lie in the issue of conflict . On constitutional powers , which constitute the . main dilemma for the founders of the federal union

Dr. Muhammad Al- Hamawandi , Federalism and Democracy in Iraq (An Original Political and -1 . Legal Study)) Iraq, Baghdad, p. 185
Federalism is established as a result of force or political pressure on the central government by -2 ethnic minorities (racial, linguistic or religious), which seek to achieve a kind of independence from the central government, such that it does not reach the point of declaring secession and complete exploitation , but rather the desire of these regions to enjoy some powers of a political nature in administration .The region does not trust administrative decentralization as a system.It achieves local ambitions , and the distribution of powers depends on the depth of the separatist tendency .amongRegions

Section One: The Origin and Development of the Conflict of Constitutional Jurisdiction in :Comparative Federal States

This section will discuss the emergence of conflicts of constitutional jurisdiction in comparative federal states such as the United States of America, the Federal Republic of Germany, and the .Republic of Iraq

:First: The emergence of the conflict of jurisdiction in the United States of America

There is no doubt that the federal system in the United States of America did not emerge overnight, but rather was the result of two stages that directly preceded it. The first stage was represented by what is officially known as the War of Independence, which broke out on 7/6/1775, when thirteen British .(1) colonies on the coast of North America revolted against the United Kingdom

This clash continued until 1776, when the Continental Congress was held in Philadelphia , and resulted in the Declarationof Independence of the thirteen states from the British Crown on 7/4/1776 (2) . Accordingly, each state proceeded to issue its own constitution and establish organizations and governments, each within its regional scope . Thus, for the first time on the American continent, .(thirteen independent sovereign states appeared (3

As for the second stageIt was represented in the stage of confederation(inconfederacy) as it began while wars were raging between the states (colonies) and Britain, as a natural result of the unilateral declaration of independence , which forced the independent states to form a military alliance among themselves, to be able to continue the war against the British. Given the scarcity of powers granted to this alliance, and the weakness and inability of the Confederation at times , it was necessary to find a new central body that could achieve a degree of connection between these states after their ties had weakened with the declaration of their independence from the British government . The jurisdiction of both the central body and the state governments would be clearly defined, and there was no judicial or non- judicial body to resolve any dispute that might arise regarding this jurisdiction . Despite the shortcomings of its texts , it was able to reach a peace agreement with Britain , in which it recognized the independence of the thirteen colonies within the borders separating these countries from the . colonies affiliated with the Spanish Empire at that time

The United States of America, about a century and a half before its independence from England, -1 consisted of thirteen colonies, and each colony enjoyed what was called self - governance , meaning a degreeof freedom .and independence in managing its internal affairs

Dr. Abdul Hamid Y.D.A specialist in constitutional law and political systems, with a comparison to -2 . constitutional principles in Islamic law

. pp . 2-4-9 ,First Edition - The Origin of Alexandrian Knowledge ,Egypt 1975

Dr. Muhammad Salem Al-Mashhadani , Political Systems , Dar Al-Hikma for Printing and -3 . Publishing, Baghdad, Iraq , 1991 , p. 159

D, Jamila Muslim Al-Sharbaji , The Federal Union: An Applied Study on the Arab World, previous -4 .reference, p. 352

Rhode Island , ,The states that declared their independence were thirteen states, namely (New York -5 Massachusetts , Pennsylvania , New Jersey ,Georgia , Connecticut , Virginia , New Hampshire , North (Carolina, South Carolina, Delaware , Maryland

It is worth noting that problems and disputes began to escalate between the states after the end of the . war and the establishment of peace

Because each of these states had its own distinct interests, and the motive for unity and consolidation had ended. Each of them began to practice its absolute policy, ignoring the interests of the other states. This led to economic competition between them, to the point that some states imposed restrictions and fees on the entry of goods from other states into their territories, and preferred European goods over American goods. Not content with that , each state also minted its own currency, which led to (1). disruption of the monetary system. And a lot of debt

Union texts The Confederation on achieving the desired goals In order to unite and address economic problems between the states, the latter resorted to concluding bilateral agreements with the aim of finding a solution to the problems that arose between them. Whatever the subject of those agreements , the mere resort to them is considered an expression of On the need for a new constitutional system more coherent than the confederation , and for a central authority Stronger and more extensive than the authority of Congress that was established under its shadow (2), but establishing such an authority was not an easy matter, as the states would not accept relinquishing their sovereignty easily, placing it in the hands of a new central authority. Despite all of this, the matter ended with the formation of a federal union, stemming from their common interests and under the influence of (George Washington).(3)On May 14 , 1787 , fifty - five delegates from the states met in a constituent assembly in Philadelphia with the aim of reviewing the articles of the Union and examining ways to reform and strengthen it, without aiming to find a new governmental formula . Perhaps the most prominent issues that sparked stormy discussions in this meeting were represented in determining the nature of the relationship between the central body and the state governments. And findmechanismTo resolve any disputes that may arise regarding the jurisdiction of each of them, as well as to determine the competent authority to consider these disputes .It is considered one of the most dangerous discussions . Which arose between those who wanted to preserve the sovereignty and independence of the states on .the one hand , and the supporters of authority on the other. Strong centralization on the other hand
Virginia Project , with its proposals, was the first attempt to solve this problem on clear foundations, as it proposed to give the central Congress the right to veto state legislation if it violated the text of the Articles of Confederation , and to expand the powers of the central legislative council by granting it the right to legislate on all matters that require... A unified policy in view of its national importance and it is evidentFrom what was previously mentioned, these proposals were directed towards resolving the problem of conflict of jurisdiction by granting the central Congress the authority to define its own constitutional domain and that of the states alike. In addition, the legislator stipulated that the central Congress should have the authority to compel the states to implement their federal obligations through .the use of force

1- Dr. Jamila Muslim Al-Sharbaji,Federal Union: An Applied Study on the Arab World - Previous Reference, p. 49

2- Dr. Ahmed Kamal Abu Al-Majd ,Oversight of the constitutionality of laws in the United States of America The Egyptian Region, Egyptian Renaissance Library, Cairo, Egypt, 1960, p. 51

3- Dr. Ali Youssef Abdul Nabi Al-Shukri, Head of State in the Federal Union (Comparative Study), .PhD Thesis, College of Law , University of Baghdad , Iraq, 1998, p. 14

4- Dr .Muhammad Anwar Ahmad Abd al-Salam , The development of the American federal movement until the establishment of the federal state and its division. The Modern Arab Federal .Movement, PhD Thesis , Faculty of Law , Cairo University, Egypt, 1977, p. 104

It seems that this proposal and the unifying ideas it contained, which sought to strengthen the center, did not achieve success in this conference, as it was rejected because it affected the sovereignty of the states and their independence in an exaggerated manner . This sparked a long debate during the discussions that ended...Without The project did not obtain the necessary support , and thus the real problem of the federal idea remained without drawing the boundaries of the jurisdiction of both the central government and the states , until the compromise project between the Virginia and New Jersey project was presented by Roger Sherman and William Johnson , which was known in the history of the American Constitution as the " Great Reconciliation" due to the role it played in saving the Philadelphia Convention from failure , as it reconciled the conflicting demands of the large and small states by achieving real equality in the House of Representatives . To satisfy the large states, the Constitution of the United States of America was approved by a majority of 39 votes out of 55 votes . on September 17, 1787.He also introduced legal equality in the Senate to satisfy the small states

It came into effect in January 1789 AD , which established a federal systemby distributing constitutional powers and jurisdictions between the central government and state governments , and assigned the federal judiciary jurisdiction over cultural affairs , and in particular the authority to consider disputes arising between the central government and state governments . It seems that the American Constitution has stipulated the conflict of constitutional jurisdiction , in addition to appointing the authority responsible for resolving it , represented by the federal courts , especially the Supreme Court. This is considered one of the essential matters that led to the preservation of this new system from division and dispersion , and maintaining its cohesion, as it has remained in place since its .approval in 1787 AD until today , to be the oldest written constitution in the world

:Section Two: The development of conflict of jurisdiction in federal states

:First: The development of jurisdictional conflict in the United States of America

has gone through several stages, as several theories have emerged . To settle these disputes in the American judiciary as well as jurisprudence , due to the different trends of the Supreme Court In changing the constitutional texts related to the distribution of constitutional powers , it did not have a unified direction , as opinions differed on this matter, influenced by political and social circumstances , . . in addition to the time period in which those interpretations and opinions were issued

Anyone familiar with American constitutional history will notice the existence of three theories in this :regard , which can be summarized as follows

A- Marshall's theory or the pure federal theory: This theory is based on a legal idea that the constitution, federal laws , and treaties concluded by the federal government are considered the supreme law in the country , and when the central government exercises one of its powers stipulated in It is stipulated in the Constitution in a way that allows for the interpretation of these powers . The states are not permitted to object to this on the pretext that this activity of theirs lacks the powers of the states by interfering in some aspects of the activity that the states were accustomed to before they were .(1) able to carry it out alone

It is worth noting that the credit for establishing the foundations of this theory goes to Chief Justice Which relies in its . and 1835 1802 John Marshall, President of the US Supreme Court between interpretation of the American federal system on ArticleArticle 6 of the Constitution, which stipulates the supremacy of the Federal Court , and there is no doubt that Judge John Marshall was the first Chief Justice to interpret the Constitution with brilliant understanding, as his ideas at that time revealed thatThe political implications of the American legal system , as well as the political philosophy at the (2) . heart of legal legislation

B - The dualfederal : theory or Tany theory

Perhaps the basic idea on which this theory is based is that the American federal system is based on dual sovereignty and the division of powers and competencies between the central government and the state governments, within the limits of the competencies.Drawn for each of them in accordance with . the provisions of the Constitution

, This theory was established by Justice TanyChief Justice of the Supreme Court from 1826 to 1864, .who assumed this position after the death of Justice Marshall

theory considered the Supreme Court to be a body characterized by neutrality and independence from the federal government, which lies in achieving a balance between the two levels of government. . (3) Within the limits drawn by the Constitution

Court confirmed this theory in its ruling issued immediately after the Civil War in 1859 AD, in which it stated that “the judicial authority was rightly considered indispensable not only to preserve the sovereignty of federal laws, but also to protect the states from any aggression that might befall them by ” . (4) the central government

Dr. Ahmed Kamal Abu Al-Majd, Oversight of the Constitutionality of Laws in the United States of -1 .America and the Egyptian Region, previous reference, p. 84

Norton Frisch, Richard West, American Political Thought, translated by Hisham Abdullah , General -2 .Organization for Studies and Publishing, Cairo , Egypt, 1991, pp. 81-82
Dr. Ahmed Kamal Abu Al-Majd, Oversight of the Constitutionality of Laws in the United States of -3 .America and the Egyptian Region, previous reference, p. 84
People repeat: (Marshall Court and Taney Court) and perhaps the reason behind that is the -4 difference in the answer to the important question behind each issue presented to it, which is: to what ?extent is the nation greater than the states

!B Cooperative Federal Theory
And he seesThe founder of this theory is that the relationship between the federal government and the state governments is not a relationship of constitutional conflict, whether equal or unequal , but rather a relationship of cooperation and integration in order to achieve the desired goals of the Constitution. Based on that, the Supreme Court must assess the constitutionality of the activity of both the central government and the state governments in light of this theory, and in other words, verify the extent to which this activity achieves the positive goals of the federal constitution without being bound by the .literal text of this constitution
This theory appeared after the collapse of the dual federalism theory with the election of (Franklin Roosevelt) was elected President of the United States in 1922. The supporter of this theory points out that the Supreme Court has adopted this approach in a number of its rulings during Its long history , as is clearly shown in its ruling issued in 1912 in the case (Hook v . United States of America) , which stated that the duality in our federal system has led to many manifestations of complexity and confusion , due to the difference area The jurisdiction of both the federal government and the state governments. It must not be forgotten that we are one people and that all the powers that the states , have retained and those that have been granted to the federal government
What is meant by it is that these governments undertake it individually or in cooperation to achieve . (1) public welfare in its material and spiritual aspects
: Third : Origin Conflict of jurisdiction in the Federal Republic of Germany and its development
:The emergence of the conflict of jurisdiction in the Federal Republic of Germany -1
The German federal system is one of the It is a model experiment in the field of federal systems, due to its distinctive method of integrating the various sectors that were formed in Germany after the war , and requires research into the emergence and development of the conflict of jurisdiction in the Federal . Republic of Germany
Germans have lived since ancient times in multiple, independent states , and Germany did not reach the effective and successful federal system and free democracy it has today until after experiencing many historical setbacks . It was difficult in The medieval system spoke of a unified German state with .· its own independence and autonomy
If the United States of America had transformed from a confederation to a federal state after its independence from
The British Crown, by virtue of the will of the founding fathers and with the ratification of the states entering into this union, was fully independent . However, the situation is different with regard to the Federal State of Germany , as it was established and founded while under occupation and at the request of the states.Victorious in World War II, which divided Germany into four spheres of influence, and . (2) later decided to establish a federal systemUnder the Basic Law of 1949
: The development of the conflict of jurisdiction in the Federal Republic of Germany -2
The conflict of constitutional jurisdiction in federal Germany has developed into an important factor in strengthening the union and its cohesion, thanks to the role played by the Constitutional Court as the competent authority to resolve the conflict of jurisdiction between the federal government and the state . (4) government

Baron, A Concise Guide to Constitutional Law, translated by Muhammad Mustafa Ghanem, Dar Al -1 .Nahda Al Arabiya - Cairo, Egypt, 202, p. 102
Raoul Blendenbacher and Abigail Ostaine, Dialogues on Legislative, Executive and Judicial -2 Governance in Federal States, Canada, Forum of Federations and International Association of Federal .Studies Centres, 2007, p. 18
Dr. Anmar Kazim Al-Rubaie,German Federalism and the Proposed Federal Project in Iraq (A -3 Comparative Study, Research by Shor in the Journal of Law, Issue 40, Center for International Studies, .Baghdad, Iraq) 2017- p. 135
Pursuant to Article 93 , Paragraph 1 of the Basic Law of 1941 for the Federal Republic of Germany -4 .

This is done by establishing a number of important principles. Some jurisprudence indicates that this court has formulated and established what is called the principle of "federal comity," which has become one of the foundations upon which the German federal system is based. According to this principle, each level of authority is obligated to take into account the interests and interests of the other .party when each of them acts within the scope of its powers defined by the Federal Constitution

Among the important rulings issued by the German Constitutional Court in the exercise of its original jurisdiction : In order to resolve the conflict of constitutional powers between the federal government and the state governments, it ruled in its decision No. 6 issued on 3/16/1957 that the states are not obligated to observe the rules and provisions relating to education contained in the agreement concluded between the German Reich and the Catholic Church (Holy See, 1993), explaining its ruling by saying that the states alone are responsible for managing educational affairs, in accordance with the country's basic law , and also what the Federal Constitutional Court ruled in its decisionNo. 8 issued on 7/30/1958 regarding A dispute arose between the Union and one of the states, as it was decided that matters of defense were the exclusive jurisdiction of the Union , and therefore the residents of the . [1] states did not have the right to hold a referendum on a matter related to defense

: Fourth : The conflict of jurisdiction in the Republic of Iraq and its development

The emergence of a conflict of jurisdiction in the Republic of Iraq -1

is one of the countries that has not known real stability in the political and legal situation, asIt was plagued by a series of political problems resulting from the occupation and internal and external wars, as Iraq had been under Ottoman control since 1524 AD . The Ottoman Empire granted the countries subject to it - including Iraq - local governments to manage their national affairs, as close as possible . to self-rule within the framework of the Ottoman Empire

However, the undeniable truth is that since that historical era, Iraq has lost its unity and its effective .and influential role

Iraq was administratively divided into three states (Baghdad - Basra - Mosul) administered by (administrative centralization). After the First World War, Britain occupied Iraq on (11/3/1917).To end the era of Ottoman rule, which lasted for about

Four centuries

Since Britain's interests at that time conflicted with keeping Iraq divided, it resorted to unifying those states into one country called Iraq, with its current borders and composition, with Percy Cox in charge .of the civil administration therein

.the style of administrative centralizationAs a representative of the British Crown

In 1921, the first Iraqi national state was established , in the form of a simple, unified state consisting .of several governorates, which were then called districts

By examining the constitutional history of Iraq, we find that all Iraqi constitutions, which began their journey with the first constitution of the Iraqi state issued in 1925, or what is called the Basic Law of were moving towards a method of severe central , 1970 and ended with the constitution of , 1925 in the administration of the Iraqi state, despite the adoption of a method of (3) administration . decentralization

Administrative At the heart of the Iraqi constitutions , there is no doubt that administrative decentralization remains a theoretical idea that lacks its essence if it is practically suspended or . constantly contradicted

Decision of the German Federal Constitutional Court No. 8 of 1958 on the electronic link -1 Germablas warchive.iascom.org

Dr. Ihsan Al- Mufariji and Dr. Katran Zaghir Nimah, The General Theory of Constitutional Law in -2 .Iraq , Dar Al-Hikma, Baghdad, Iraq, 1990, p. 29

This system requires concentrating the practice of the administrative function in the hands of the -3 central authority in the capital , through employees affiliated with it , according to an organized administrative ladder . In which every subordinate is subject to the authority of his superior, from the lowest to the highest, except for the highest administrative head in whose hands the administrative authority is based. Dr. Hassan Mustafa Al -Bahri , Constitutional Law and Political Systems. . Reference above , p. 235

This is what followed the laws , starting with the Law of Administration of the Brigade No. 58 of which is considered the first law for the administration of the country issued under national rule , ,1928 and ending with the Law of the Governorates No. 195 of 1969 AD , and although the apparent texts of those laws indicate that they are included within the principles of administrative decentralization , whoever examines their texts related to the method of forming local councils will see that they cancel .(1) the essence of administrative decentralization

Perhaps the most prominent event that occurred during the Republican era in the Iraqi administrative system was the implementation of the self-rule system in the Kurdistan region of Iraq in 1974 , pursuant to the Kurdish Autonomy Agreement signed by the Iraqi government and the Kurdish leadership on March 11, 1970. Some scholars believe that the adoption of the system of government in Iraq was a result of the growth and development of administrative decentralization . Here, the researcher agrees with those who believe that the beginnings of administrative decentralization came into existence in Iraq when the Kurdistan region of Iraq was granted self-rule. The Kurdistan region was officially recognized pursuant to the Interim Constitution of the Republic of Iraq of 1970, which states in Article 5, Paragraph (b): “The Iraqi people consist of two main nationalities , the Arab nationality and the Kurdish nationality. This constitution recognizes the national rights of the Kurdish people and the legitimate rights of all minorities within Iraqi unity to self-rule in accordance with what is determined by law.” Article 8, Paragraph (c) also states that : “The region whose population is majority Kurdish shall enjoy The Kurds, according to what is determined by law), and the Kurdish language was recognized as an official language, in accordance with what was stated in Article Seven of the Constitution, which states that:(The Kurdish language will be an official language alongside the Arabic language. There is no doubt that adopting the system of self- rule in Iraq is an important step towards implementing administrative decentralization in a country with multiple nationalities and ethnicities , as a peaceful solution to the Iraqi Kurdish issue by enabling them to be independent in managing their own affairs, while keeping them under the supervision of the central political authority After the collapse of the Iraqi system of government inOn 4/9/2003 , at the hands of the American . occupation , a state of political and constitutional vacuum appeared in the country , as the American civil governor (Paul Brem) was appointed by the United States government as head of the Provisional Coalition Authority, which in turn issued a set of orders and decisions ,Perhaps the most prominent of these regulations is the regulation issued in13/7/2003, which included the formation of a Governing Council whose mission was to establish a mechanism for forming an Iraqi government that represents all components of the Iraqi people , as well as laying the foundations for drafting the country’s permanent constitution .A permanent constitution was drawn up for the state, which in turn worked on the Iraqi State Administration Law for the Transitional Period , which was voted on unanimously by .the Council on 3/1/2004 and issued on 3/8/2004

Transitional State Administration Law is the first advanced constitution. It enshrines the rules of the federal system ,According to it, Iraq was transformed from a simple, unified state into a complex, federal state, based on the division of power into three levels of government (the federal government, the regions, and the governorates not organized into a region), which is a new principle not included in previous constitutional legislation. After the issuance of the 2005 Constitution, the federal system was .one of the basic foundations upon which this Constitution was based

Dr. Munther Al-Shawi,Theory of Constitutional Law (Theory of the State) Publications of the Legal -1 Research Center, Baghdad, Iraq , 1981 - p. 230

:The development of the conflict of jurisdiction in the Republic of Iraq -2

The conflict of constitutional jurisdiction had its first roots since the change in the system of government in Iraq and the adoption of the federal system , in accordance with the Iraqi Administrative Law for the Transitional Period .For the year 2004, which established the Federative System based on[(1)] The question that arises in this regard is what is the standard of geographical and historical facts on which the federal system should be founded ? Perhaps this question is sufficient to make the basis on which the Iraqi federal system is based ambiguous and unclear . It is worth noting that the Iraqi State Administration Law for the Transitional Period adopted political decentralization and administrative decentralization simultaneously , without drawing clear boundaries to differentiate between them, which in turn led to dire consequences whose features became clear through the weakness of the Iraqi state in managing the crises of the transitional period, which formed a fertile . basis for creating many jurisdictional disputes.B Y N different levels of government

He was also keen to grant broad powers to the regions and governorates that are not organized into a region, in a manner that goes beyond the scope of political decentralization .And administrative, under the pretext of preventing the return of severe centralized systems by not concentrating power in the . hands of the central government

In addition, by referring to the texts related to the distribution of constitutional powers between the federal government and the regions and governorates not organized into a region , it becomes clear that they were the primary source of conflict over constitutional powers . Between levels of governmentGiven the flaws and shortcomings it contains , as well as its lack of precision and clarity , and as is known, the original text of the Iraqi State Administration Law for the Transitional Period was written in English and then translated into Arabic, which negatively affects the understanding of what .the texts of this law mean

of the Iraqi Transitional Administrative Law stipulates the formation of the Federal Supreme Court 24 which will have direct jurisdiction to adjudicate disputes over constitutional jurisdiction between the , different levels of government. This reflects the legislator’s keenness to resolve these disputes through legal means , with the aim of preserving the balance and cohesion of the Iraqi federal system through . the effective role played by this court in this regard

Article Four stipulates that: (The system of government in Iraq is republican, federal, federal, - 1 democratic, and pluralistic, and powers are shared between the federal government , regional governments , governorates, municipalities , and local administrations . The federal system is based on geographical and historical facts and the separation betweenThe authorities are not based on origin , .race, ethnicity, nationality or sect

Article 14 of the Iraqi State Administration Law for the Transitional Period stipulates that (A - The -2 court shall be formed in IraqIn law , the Federal Supreme Court is called: jurisdictionThe court Supreme Federal Court : - The original exclusive jurisdiction for the lawsuit between the Iraqi Transitional Government , the regional governments, and the governorate administrations . .Municipalities and local administrations

transitional phase ended with the issuance of the 2005 Constitution, which is the legal basis for the federal system in Iraq. Article 1 of Part One of the Constitution states that : “ The Republic of Iraq is a single, independent federal state .” Article 166 also states: “The federal system in the Republic of Iraq

consists of a capital, regions, decentralized governorates, and local administrations." The Iraqi legislator moved towards making governorates political units, sometimes equal to regions in constitutional powers. They were also granted the right to representation in the Federal Council, in addition to the equality of their bodies with the federal government, by granting them great independence in confronting it. Therefore, the Iraqi constitutional legislator did not keep pace with the majority of the treaty federal systems, which are based on the division of power between the levels of government, i.e. between the federal government and the state governments, so that the federal . government is located at the first level , and the state governments are located at the second level

We also conclude that the Constitution has reinforced political and administrative decentralization, a .step that represents a qualitative shift

In the Iraqi political and constitutional history , it is considered the first Iraqi constitution established. A political system based on federalism , pluralism and democracy. The constitutional document includes real guarantees that ensure the independence of the regions and governorates . Unorganized in a region, and granted them broad powers. This independence is primarily evident in the fact that members of governments

The regions and provincial councils are not appointed by the center, but rather through elections as a democratic method of conferring power. They are therefore directly accountable to the voters. Without a doubt, the electoral entitlement will give the local authorities the legal and moral strength that enables them to stand up to the central authorities as equals, and will push them to pay greater .attention to the interests of the region's residents and its development

: Conclusion

We have researched and studied the idea of the legal nature of conflict of jurisdiction in federal states, and we have touched upon the origin and development of conflict of jurisdiction. In conclusion, we :have arrived at the following results and proposals

:First - Results

The distribution of powers between the federal authority and the state authorities is a constitutional -1 process that, when applied, raises the possibility of overlapping the powers of the federal authority and .the state governments

There is a discrepancy between federal constitutions regarding the distribution of constitutional -2 .powers between exclusive, shared and residual

Shared and residual jurisdictions indicate a greater likelihood of jurisdictional conflict than others, -3 .as shared jurisdictions do not define a clear scope for local federal activity

The issue of conflict of constitutional jurisdiction is an inevitable matter between the two levels of -3 .authority in federal states due to the duality of public powers

Disputes over jurisdiction between the federal government and state governments constitute a -4 .serious reflection on the cohesion of the federal state

:Second - Proposals

The constitutional texts related to the distribution of powers must be formulated in a clear and -1 precise manner, as well as being formulated in a manner that is consistent with the method of .establishing federal states

Making the exclusive powers of the states, while the remaining powers of the federal government, -2 .to be the newly created powers of the federal government

The necessity of regulating the relationship between the region and the central government in Iraq, -3 and resorting to the constitution to resolve all disputes and problems through constitutional and legal .means

Activating judicial and non-judicial mechanisms to deal with jurisdictional disputes between the -4 .federal government and state governments