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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

The federal form has gained wide application among the countries of our contemporary world, given what it has achieved in terms of political and constitutional structures. Maintaining the continuity of balance between the working forces, especially between the central government and state governments, since then, federal constitution makers exert great effort in creating some kind of distinction when distributing competencies or any of that, so that a structure is created in the system and the application of distributing powers between different levels of participation in that as a distinctive and guaranteed feature.

What is undoubtedly true is that the distribution of competencies between the federal authority and the authorities of the constituent states represents constitutional instructions that, when applied, create a problem of utmost importance, which is likely to indicate the allocation of federal authority and state governments. Thus, the distribution of powers leads to duplication in the exercise of powers.

Therefore, we possess the right of authority in this research entitled "The Legal Nature of Conflicts of Jurisdiction in Federal States" to shed light on the concept of conflicts of jurisdiction in federal states and their complete emergence.

Research Problem and Questions

Academic discussions about federal unions in recent years have witnessed a strong tendency to issue a new reading of the disputes that occur under the strict system, and since this reading will rely independently on judicial decisions between levels of government. Consequently, the main question arises:

What are the constitutional mechanisms that federal constitutions have created to manage between levels of government?

The following secondary questions branch from this main question:

What is meant by conflicts of jurisdiction in the United States?

Does conflicts of jurisdiction in the United States of America constitute one form or are there different treatments for conflicts of jurisdiction?

Research Importance

The importance of the research lies in addressing the analytical and original study of disputes related to competencies in the constitutions of federal states. According to the absence of emergency case distribution in its potential states, the federal state can be divided between the central and regional authorities in federal states, meaning contradiction or duplication and can conflict in these competencies.

Research Objectives

The research has been conducted scientifically to study the concept of conflicts of jurisdiction in federal states and their original emergence, where consequently the study of competencies subject to disputes in federal states.

Research Methodology

Scientific answers have been prepared for the research problem and its questions. The researcher follows the analytical process by studying each particle of the research particles and explaining their different constitutional aspects, and also follows the comparative approach to show conflicts of jurisdiction in modern federal states, reaching the proposed results and suggestions related to the research topic.

Research Plan

The scientific study of the research topic requires dividing it as follows:

First Requirement: Distribution of Competencies as an Inevitable Introduction to the Emergence of Conflicts of Jurisdiction

First Branch: Definition of Conflicts of Jurisdiction Terminologically
Second Branch: Constitutional Jurisdiction Subject to Conflicts of Competencies in Federal States

Second Requirement: The Emergence of Conflicts of Jurisdiction in Federal States - Comparative Study

First Branch: The Emergence of Conflicts of Jurisdiction in the United States
Second Section: The Story of Conflicts of Jurisdiction in Comparative Federal States

Conclusion

First Requirement: Distribution of Competencies as Inevitable Protection for the Emergence of Conflicts of Jurisdiction

First Section: Definition of Conflicts of Jurisdiction Terminologically

The terminological meaning of conflict refers to difference or overlap between multiple directions. Therefore, this matter that brings together these directions is not excluded, and conflict occurs between at least two parties within one state when one party refuses to adopt and an existing situation in the state tries to change it. The term conflict appears in different legal terminologies. In absolute law, jurisprudence launches the term administrative dispute or disputed over every dispute in which the administration is a party, whether the litigation is between two administrative authorities or between the

administration and individuals. It also appears in the rules of public international law, such as disputes arising from the interpretation of optional treaties or disputes related to assessing damage resulting from the provisions of international law at the same time, as private international law jurists define conflict as "the competition and difference of the law of two or more states to determine the relationship with one or more elements belonging to these states."[1]

Completely, lack of competence legally cannot decide something specific, due to the necessity of its issuance by another member or body. The judiciary also defined the defect of lack of competence as "the inability to take direct legal action that the legislator has made the competence of another authority or individual."[2]

In the field of constitutional law, conflict appears between public authorities, each claiming its right to exercise competence assigned to us. Since what highlights conflict in constitutional law is that it is based directly and often on constitutional texts. Constitutional conflict enjoys recourse to legal texts in addition to the fact that constitutional conflict is a conflict between authorities that state constitutions recognize; the principle is not related to the special procedures of each authority.

The exception is that the competence that refers to conflict is defined by some jurisprudence as "determining the set of works and employment that each person or public body legally has the right to claim legitimately so that none of them may prevent this competence."[3]

Second Branch: Constitutional Jurisdiction Subject to Conflicts of Jurisdiction in Federal States

Despite the existence of some issues that cooperate between contemporary revolutionary systems regarding the technique of competencies that suit different levels of government, there are also fundamental differences afterward.[4]

Federal constitutions vary in what they adopt as methods for distributing constitutional competencies between exclusive, shared, and residual, particularly referring to shared and residual competencies creating conflicts of jurisdiction more than others, as shared competencies do not draw a clear area for economic and local activities.

Because they stopped depending on the situation of the one commanded. As for residual competencies, they become a cause for conflict when the constitution formulates them for Americans, because there is a federal woman there toward healthcare allocated to her according to the competencies of the United States, to be able to keep pace with the aspirations and circumstances of expected life on both exchange arenas, which presents another challenge to the distribution of constitutional competencies within the federal state.

Also, global demands for respecting human rights from pressure on practices. For example, the death penalty, in the United States of America, the death penalty does not represent that it represents international covenants that will help some of its constitutions and laws provide them to the constitution. Rather, they were arrested by the comprehensive ban on more constitutional amendments for interpretation and jurisprudence and candidates to be a reason for the emergence of conflicts of competencies within the federal state. We must research the scope of distributing constitutional competencies in various federal systems at both local levels of services by standing on the details of constitutional competencies and important ones that can participate in constitutional competence related to organizing foreign affairs, and constitutional competence regarding federal internal affairs.

[1] Prof. Dr. Abdul Rasoul Abdul Reading Private International Law, Al-Sanhouri Library - Baghdad 2013, p. 212.

[2] Dr. Mohsen Khalil, Nullification Judiciary, First Edition, French Publications House, Alexandria, Egypt 1989, p. 72.

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

[4] George Anderson. Protection of Human Rights - referred to in the master's thesis of Rasha Abdul Baqi Murad - Faculty of Law - University of Damascus p.43 Damascus 2023.

First: Competencies Related to Foreign Affairs

International unity was the most important thing facing the Union furnished from following other unions where the personality of the states composing a new union is witnessed in the United States of America, which is that the Union, which necessarily requires the inability to conclude international treaties and independent external representation. Based on this, most federal constitutions went to assign the central government with managing foreign affairs, without the intervention of state governments in this matter. The federal authority practices in most cases all international differences. Where it usually handles foreign relations with foreign countries and international organizations, and represents diplomatic embodiment with other countries as it concludes international treaties and ratifies them, in addition to its sovereignty over federal and state laws alike, in addition to declaring war.[1]

What relates to matters concerning foreign affairs in the federal state and the following jurisprudence:

1- Diplomatic Representation:

Diplomacy is considered one of the important matters achieved by the unity of the useful state. Most federal constitutions are keen on practicing manifestations of international personality as exclusive competencies and compensating them, including assistance in the union and strengthening it so that it alone has the right to send and receive diplomatic representatives, participate in international conferences. It represents the union to foreign countries and also accredits diplomatic representatives.[2] From here, the American Constitution assigned the central government the power to conduct foreign affairs and diplomatic representation, granting this competence to the president, provided it is coupled with the consent of the Senate.[3]

The reason behind this is that every state of emergency situations and foreign policy applications may give up their impact on public health. Then the principle of diplomatic operation from the competence of the president and the Senate exclusively,[4] and here is a reference that must be made to the fact that in the German Republic, the Basic Law of 1949 emphasized maintaining the unity of the Union in the field of foreign affairs and diplomatic extraction, as one of the exclusive competencies of the federation where Article 59 Section One stated that the federal president is the one who represents the union on the international scene and manages diplomatic diversity affairs and international relations.

Undoubtedly, French constitutions did not know such a text, in addition to the fact that it became learned by jurisprudence. Such an article exists in the strong constitution that can be closer to the confederal union under which units fall, and they have part of their external sovereignty and can be said to enjoy diplomatic representative activities, meaning enjoying them with independent personality.[5]

As for Iraq, the Iraqi Constitution of 2005 restricted the power to conclude international agreements and treaties to the federal authorities (legislative and executive), as Article 110/Section One states that the federal authorities have exclusive competence to negotiate regarding international agreements.

In conclusion, the federal authorities assigned by the Iraqi Constitution are the ones with exclusive competence to conclude international treaties, as no text appeared in the constitution on the right of regions and non-regional governorates to have the power to conclude any type of events or international treaties, even if not within the scope of their constitutional competencies and powers. Despite the explicitness of the constitutional document, this competence is considered a subject of dispute between the federal government and the Kurdistan Region government, due to the latter's conclusion of several international agreements, especially in the oil field,[6] and this is an encroachment on the exclusive competence of the federal government in this scope [7].

1. Muhammad Bakr Hussein, The State of Union between Permanent and Applied, Cairo University, Egypt p. 226.
2. Abdul Rahman Al-Bazzaz, The United State of Emergency and Cairo Egypt, Dar Al-Qalam: p. 65.
3. According to what the second paragraph of the American article of the American Constitution of 1887 stipulated.
4. Given that the American president can therefore have Senate approval regarding diplomatic representation accounts through personal correspondents.
5. Hassan Ghariba Al-Obaidi, Organization of Treaties in State Constitutions, PhD Dissertation, University of Baghdad, Faculty of Law, Baghdad Iraq 1988 - p. 60.
6. Research published on the website www.manbabaa.org\arabic\rights\111428
7. Dr. Rawaf Al-Tayyara, The Extent of Legitimacy of the Oil Agreement between Russia and Kurdistan Region 2017, Center for Public Studies, University of Karbala, Iraq.

2- Concluding International Treaties:

Concluding international treaties is considered a manifestation of state sovereignty in the state, to be of complete and absolute sovereignty in the state managing its foreign affairs and defining them, and concluding international treaties, unlike states with deficient sovereignty such as the protected, dependent or occupied state, which resort in concluding international treaties to the authorities of a foreign state. Since the contracting institution regulates international treaties, and distributed internationally the general principle of non-signing before impediment to concluding treaties within the general state, and then this matter is left to constitutional rules in each state whether unified (simple) or federal (federal). Based on this, federal constitutions determine the power to define foreign affairs and conclude international treaties allocated to the general central government, which is consistent with the purpose of establishing the federal union: namely unifying policy and concentrating it in the hands of one body representing all world citizens except simple costumes.[1]

However, the limits of this competence differ from one federal state to another, where the principle in the federal rule of competencies in the field of international relations, that these are surrounded except what relates to state policy, this competence is not absolute, the United States must stipulate in these treaties that they do not conflict with other rights or with the constitution and federal laws or with treaties concluded by the useful government.[2] Thus, the Argentine Constitution of 1994 proceeded, as Article 124 stated improving competencies to conclude provided they do not contradict the geography of the cosmic state, or affect the ruling judicial jurisdiction. In the United States of America, the effective constitution stated in Article 2, paragraph two, that the competence even for international treaties to be concluded by the presidency with the Senate and its approval, provided that two-thirds of its present members accept, and the president is constitutionally responsible first for his state's relationship with his state at that time, which is called in the state,

b (Secretary of State) attracting so that he is appointed by him in many cases, in addition to the Senate's participation in some other topics.

1. Dr. Muhammad Bashir Al-Shafi'i, Constitutional Law of Sudanese Politics, Khartoum Library Sudan. p. 134-135.
2. Dr. Omar Mahdi Saleh Al-Kubaisi, Distribution of Constitutional Inability in Federal Government, Faculty of Law, University of Baghdad, Baghdad Iraq 2007 p. 266.
3. The American Constitution stipulated, of 1787 in Article 1 paragraph 10.

Second Requirement: The Emergence of Conflicts of Jurisdiction in Federal States and Their Great Nature

The winning deal for the very medium American idea, as credit goes to Greece in the emergence of all the theoretical and practical advantages of federalism, which was known there from the fifth century AD, as the federal movement in Greece was not perfected except in classical history. In ancient Greece, training was conducted between organizing Samagia, Saim and Politia, and there was a fundamental difference between each of them. While the first was far from the military union, the second was deeper as it began participation in political life, and this implicitly requires the existence of a central government and power sharing afterward and from local countries in cities and the existence of dual citizenship and dual loyalty, one final to federal existence for its local existence, and the central government still specializes in foreign affairs and defense, and to it the United States returns competence in treason crimes, other competencies returned completely to the local.[1] Many constitutional law jurists also insist that the system adopted by the United States of America under the constitution established at the Philadelphia Convention in 1787 is the first federal system in the modern era,[2] where this constitution presented a new pattern of government based on power sharing between the central government and state governments, wisely adopting a type of Palestinian sovereignty that prevails between the advantages of union and independence.[2]

From the previous presentation, a question arises about how this union emerged. The follower of the circumstances of the emergence of federal union in the world notices that they return to two methods:

The first method is characterized by the agreement of several independent states to join each other and form one state in which international personality is built, and this method is called (union for accession or adaptation). This type of union is most often preceded by the confederal stage that was decided between several states, under the shade of differences. In accordance with this method, the states entering the union give up their sovereignty abroad completely, some of their internal powers provided that the union state undertakes their foreign affairs on the basis of the federal constitution, often the need of these states for the union complements with their peoples including military and cultural civilization, or the need of those states for union to repel aggression.[5]

This can be evidenced by the emergence in the United States, therefore connecting with the emergence of the federal state, and among the states that were established by this method, the United States of America based on the general instructions of 1787, the Federal Republic of Germany with the Basic Law of 1949, and Switzerland in its constitution of 1828, in addition to the United Arab Emirates according to its temporary constitution of 1971 and decided in the photograph of 1996.

1. Dr. Firas Walid Yusuf Al-Labadi - The Effectiveness of Political Decentralization on State Unity and Its Advocacy, Amman Arab University, Amman Jordan 2006 p. 16.
2. Dr. Ali Madloul Mohsen, Controls for Exercising Function in Federal Constitutions (Comparative Study) PhD Dissertation at Faculty of Law, Sciences and Physics, Arab University of Beirut, Beirut Lebanon 2016 p. 10.
3. Dr. Jamila Muslim Al-Sharbjy, Union Covering Applied Issue on the Arab World, PhD Dissertation, Cairo University, Faculty of Law, Cairo, Egypt 2003 p. 17.
4. Dr. Omar Mahdi Saleh Al-Kubaisi - Distribution of Constitutional Competencies in Federal State. Previous reference, p. 115.
5. Dr. Ihsan Al-Mufraji and Dr. Katran Zaghir Na'ma, General Prospective in Constitutional Law in Iraq, Al-Atak Library Cairo Egypt 2011 p. 102.

The second became, it comes as a result of dismantling a simple (unified) state into several independent constitutional entities, while creating justice connection together in the form of a federal (central) union on the basis of federal rules.[1] Jurisprudence calls this recognition (Alliance by Separation or Disintegration). Among the federal states that emerged by this method: the Socialist Union which was established as a result of the disintegration of the Tsarist Russian state in 1981, Brazil in 1891, and Venezuela in 1893.

The (unified modern) state in its political system transformed into a federal (federal) state, most often as a result of various crises and economic ones that pushed some to achieve more autonomy that achieves leadership for them.[2] Returning to the diversity of union and what it requires from the necessity of success between conflicting goals and interests, we find that constitutional principle conflict emerged simultaneously with the emergence of unions between states, but was more comprehensive than what led to the emergence of revolutionary unions. The follower of the emergence of the federal system notices the role played by criminal courts in establishing the most important ones that were achieved in achieving the unity of this system and its continuity, through adjudication in constitutional competence conflicts between different levels of government. As is known, the most difficult challenges faced by federal states to reach the issue of conflict over constitutional competencies, in which the main muscles of union institutions multiply.

1. Dr. Muhammad Hamawandi, Federalism and Democracy for Iraq (Political and Legal Impact Study) Iraq, Baghdad, p. 185.
2. Federalism arises as a result of force or pressure on the central government by ethnic minorities (racial, linguistic or religious), which there is a way to achieve some kind of independence from the central government, so as not to reach the point of exemption, separation and major exploitation. The coming wants this election to enjoy competencies in the Philippine nature in the region's administrations trusted with administrative decentralization as a system of competencies confirmed on the depth of separatist tendency among regions.

First Section: The Emergence of Constitutional Competence Conflict in Comprehensive States and Beyond

The United States of America is like the United States and the Federal Republic of Germany and the Republic of Iraq.

First: The Emergence of Conflicts of Jurisdiction in the United States of America

There is no doubt that the political system in the United States emerged into the space of existence between what explains it, but was the fruit of two stages that preceded it. The first stage was directly represented when it took responsibility for the War of Independence which broke out on 7/6/1775, when twenty-three colonies on the North American coast fought against the United Kingdom.[1]

This clash continued until 1776, in which the Continental Congress was held in Philadelphia, resulting in the Declaration of Independence of the thirteen from the British Crown on 7/4/1776.[2] Based on this, each state initiated issuing its own constitution, and organizations and formations each within its distinguished territorial scope, then returned to the first three years in learning, and contributed to that.[3]

The second stage was represented in the Confederal Union stage (confederal inconfeition) where the United States began when the war was raging between the (colonies) and Britain, as a natural result of the declaration of independence from one side, which forced the states and declared to conclude a military alliance afterward, to be able to implement the war against the English. Due to the scarcity of powers granted to this extraordinary, the weakness of Congress and its inability in some cases, it was necessary to find a new central body with clear powers to achieve by force of connection between these after the weakening of their ties by declaring their independence from the British government, exclusive privilege of each of the central body and defined global governments, as there was no judicial or non-judicial body to adjudicate what might arise from disagreement about this except for special shortcomings, except that reaching peace with Britain and recognizing the independence of the thirteen colonies with the boundaries separating these states and between the colonies belonging to the Spanish Empire at that time.

They saw that differences and disputes began to reach agreement between them after the end of the war and the establishment of peace.

1. The United States of America before its independence from England began in the century and half consisted of thirteen colonies, including each colony enjoying what it has of self-government (i.e., a portion of freedom and independence in managing its affairs).
2. Dr. Abdul Hamid Mutawalli, Constitutional Law and Classical Systems with Constitutional Terms in Islamic Sharia, First Edition - Alexandria Knowledge House, Egypt 1975, p. 249.
3. Dr. Muhammad Salem Al-Sajani, Political Systems, Dar Al-Hikma for Printing and Publishing Baghdad Iraq, 1991, p. 159.
4. Dr. Jamila Muslim Al-Sharbjy, Union Covering Applied on the Arab World, Previous Reference, p. 352.
5. The states that declared their independence were thirteen states: (New York, Rhode Island, Massachusetts, Pennsylvania, New Jersey, Georgia, Connecticut, Virginia, New Hampshire, North Carolina, South Carolina, Delaware, Maryland).

Because each of these states aspired to its distinguished status, in addition to its motive for unity and bloc having ended. The United States each sought its absolute policy varied, refusing to give up the rest of this orientation to economic competition for vacation, but some imposed restrictions on entry fees for other products to their territories, and preferred European products over American products, and was not satisfied with that, but each state proceeded to mint its own currency, which affects the monetary system complexity and many debts.[1]

As a result of the inability of the Confederal Union texts to reach the desired union and change the economic issues between them, the latter resorted to concluding an agreement between them to find a solution to the problems that affected except for this, and whatever the subject of those agreements, their mere resort to them is an expression of the need for a new constitutional system more than the Confederal Union, and to the central application and broader scope than the power of work under it.[2] But creating such authority was not an easy matter, as it was not to accept giving up its sovereignty easily so as to place it in the hands of a new central authority, and all this the matter may end with a federal union motivated by their common interests and influenced by (George Washington).[3] The United States of America met on May 14, 1787, fifty-five delegates, for a constituent assembly in Philadelphia aimed at reviewing the texts of the Union, and researching ways to reform and strengthen it, without planning to find a new famous popular designation. The most prominent projects that developed discussion characterized by this represents determining the difference of the main body and states, and finding mechanisms to solve what may arise from disputes over the specializations of each of them, in addition to determining the judicial authority in these disputes, and these are considered among the most serious discussions that began between supporters of state restrictions on the beginning of competition and its independence on one hand, and between supporters of central authority on the other hand.

Virginia's project with what it included in terms of treatments is considered the first attempt to solve this problem on the basis of recommendation, as it proposed to give the central Congress the right to object to applications that violated the Union text and on vessels, the central legal council authorities by granting it legal right in all matters that need to appear unified for their national importance. It appears from the above that these proposals tended to solve the problem of competence conflict through the Canadian federal judicial jurisdiction of the constitutional scope special to it and to the states alike, in addition to what the legislator stipulated that the central Congress should have the power to force compliance with Union obligations through the use of force.

It seems that this proposed proposal and what it carried of ideas of unification to the center did not meet success in this conference as it was rejected because it affects evening and its independence in an integrated manner, and this took a long time during discussions ending in not obtaining project support. Therefore, Jersey decided the true idea based without drawing boundaries for the competence of each of the central government, to present the compromise project between Virginia's project and New from Roger Sherman and William Johnson, which was known in the history of the American Constitution as (the Great Currency) for what it played in reducing Philadelphia afterward, as it succeeded between the conflicting demands until the end, large and small through a real equality in the House of Representatives for great satisfaction and with the approval of that the United States the regulatory rules by majority votes /39/ from the original /55/ votes on 17 and 1788, as it took in the Senate legal equality to satisfy the small.

1. Dr. Jamila Muslim Al-Sharbjy, Union Covering Applied Arab World - Previous Reference p. 49.
2. Dr. Ahmad Kamal Abu Al-Majd, Except Basic Rules of Laws in the United States of America and the Region, Egyptian Pioneer Library, Cairo Egypt 1960 p. 51.
3. Dr. Ali Yusuf Abdul Nabi Al-Shukri, Head of State in the Soviet Union (Comparative Study) Master's Thesis in Law - University of Baghdad - Iraq 1998 - p. 14.
4. Dr. Muhammad Anwar Ahmad Abdul Salam, American Renaissance Movement until the American Federal Union and Federal Communications Authority and its marking of the Modern Arab Federal Movement, PhD Dissertation - Faculty of Law - Cairo University, Egypt 1977, p. 104.

First: Development of Conflicts of Jurisdiction in the United States

Constitutional conflict in the United States of America passed through several stages, as several theories emerged to settle these disputes in the American judiciary as well as jurisprudence, due to the different developed higher directions in changing the constitution texts regarding the distribution of constitutional competencies. They did not contain a unified direction where opinions varied affecting this with political, social and social circumstances, the time period in which those interpretations and opinions were modified.The observer of the American Constitution drafting notices that there are three theories in this regard that can be summarized as follows:

Dam Marshall or the Pure Emerging Theory: This preparation was based on the principle of cooperation that the constitution and federal laws and treaties concluded by the federal government are considered the supreme law in the country, and that the central government practices its powers as the American Constitution states in a way that allows interpreting these powers, Americans should not resort to that under the pretext of practicing this activity on powers by interfering in some activities that they had before being singled out to practice.[1]

The establishment of these foundations necessarily led to the great judge (John Marshall) Chief Justice of the American Supreme Court between 1802-1835, who relied in his interpretation of the monetary policy case on Article Six of the Constitution which decides the supremacy of the federal court. Undoubtedly, Judge (John Marshall) was the first chief justice under the constitution with skillful understanding, where his rulings wanted about him the political contents of the varied American rule, as well as about the strict liberal legal philosophy.[2]

b- Numerous Operations or Tanny Theory (Federal Dal Tanny):

Because the basic idea on which this is based is that the American political system is based on the principle of dual sovereignty and division of powers and competencies between the central government and state governments within the limits of jurisdiction drawn for each of them according to constitutional provisions.

This judiciary was based on Tanny, chief justice of the Supreme Court between 1826-1864, as he took this position after the death of Judge Marshall.

This considered that the supreme judicial authority is a neutral and independent body from the federal government existing to achieve attendance between us for ruling within the limits drawn by the constitution.[3]

This judicial jurisdiction was determined in its ruling issued immediately after the civil war in 1859 and mentioned in it that (the judicial authority is rightly considered American indispensable from federal law laws, as it also decides likewise demanding any aggression to stop it by the central government.[4]

1. Dr. Ahmad Kamal Abu Al-Majd, Rules of laws in the United States and the Egyptian Region, previous reference, p. 84.
2. Norton Fresh, Richard Westvenir, Political Thought, translated by Hisham Abdullah, General Institution for Publishing, Cairo - Egypt 1991 - p. 81-82.
3. Dr. Ahmad Kamal Abu Al-Majd, Rules of laws in the United States and the Egyptian Region, previous reference, p. 84.
4. People responded: (Marshall Court and Tanny Court) for the reason behind that, but in answering the important question for the priest namely whether each issue presented to it, namely, to what extent is the greatest nation more important than? By the federal union!

And the founder of this sees the interests between the federal government and state governments are not a constitutional opposition relationship whether equal or unequal, but it is a relationship of cooperation and integration to achieve control over the desired constitution. Based on this, the Supreme Court must assess the extent of activity of each central government and state governments in light of these matters, in other words, verifying the extent to which this activity achieves the positive goals of the constitution and federal without being restricted by the literalism of this constitution's specificity.

This subsequent came after the collapse of the federal theory and the creation of (Franklin Roosevelt) President of the United States of America in 1922. As a result, this orientation to the judicial authority appears strong to have adopted this direction in a number of directives issued by it during its long history, and this result was evident in its ruling in 192 in the case of (Hawk vs. United States of America) which stated that the duplication in our federal system has led to many manifestations of complexity and confusion, due to the difference in the scope of jurisdiction of each of the government of the United States federal and state governments, so it should not be forgotten that the people are one and that all the powers that undertake to do so were granted the government and achieve

What I mean is that those women practice it individually or cooperate for the public welfare in its material and moral manifestation.[1]

Third: The Emergence and Development of Competence Conflict in the Federal Republic of Germany

1- The Emergence of Competence Conflict in the Federal Republic of Germany

The German system is considered one of the exemplary models in the field of federal system, due to its distinguished method in merging the different formations that formed in Germany after the war. Research into the emergence of conflict except in the comprehensive Federal Republic of Germany requires addressing it.

Germans have lived since ancient times in multiple and independent principalities from each other, and Germany did not reach what it reached today of an effective and successful federal system and free democracy except after passing through many historical setbacks. It was difficult in the medieval system to have concepts about a unified state with its independence and its own self.[2]

The United States of America in the United States became able to transform the Confedal Union into a federal state after its independence from it.

The British Crown basically by the will of the founders and ratification by the states entering this union, which are diverse in their independence. However, the situation is different for the Federal Republic of Germany, as it was created and established under occupation and by the desire of the countries victorious in World War II, which divided Germany into four visual zones, and decided afterward to establish a guiding system under the Basic Law of 1949.[2]

2- The Experience of Competency Conflicts in the Federal Republic of Germany:

The development of constitutional jurisdictional conflict in Federal Germany represented an important factor in strengthening Germany's power and its advocacy thanks to the great role determined by the Constitutional Court under its judicial authority to adjudicate jurisdictional conflicts between the federal government and the government.[4]

1. Baron, Brief in Constitutional Law, translated by Muhammad Mustafa Ghoneim, Arab Renaissance House - Cairo, Egypt 2002, p. 102.
2. Raoul Blindnacher Abigel Ostein, Dialogues on the Scope of Governance, Implementation and Judiciary in Federal States, Canada, Federal Federation Forum and International Association of Federal Studies Centers, 2007, p. 18.
3. Dr. Anmarzm Kazem Al-Rabii, German Federal Agreement and the Proposed Project in Iraq (Comparative Study), research published in Law Journal, Issue 40 International Studies Center, Baghdad Iraq 2017 - p. 135.
4. According to Article /93 paragraph one of the Basic Law of 1941 for the Federal Republic of Germany.

This was done through establishing a number of important principles, as some jurisprudence refers to the fact that this court has formulated and established what is called the principle of (Federal Bundle) which has become one of the foundations on which the German judicial system is based. According to this, each of the two sides of authority is committed to taking into account the interests of the other party and its interests when participating in all this within the scope of its competencies according to the federal constitution.

Among the important rulings written by the Constitutional Court wisely in the course of its practice of its original competence of the United States of America for constitutional competency conflicts between the federal government and state governments, what it ruled in its decision number /6/ and strongest on 16/3/1957 that they are not bound to observe the instructions and provisions related to education contained in the agreement concluded between the ray tends general ecclesiastical and as a result (the Apostolic See, in 1993, its ruling that only as long as education affairs management, according to the country's basic law, and what is equivalent to the federal constitutional ruling in its decision) numbered /8/ Telegraph on (30/7/1958) and inheritance of a dispute that erupted between the United States union and one of them, as a defense orders were issued are among the exclusive competencies of the union, and therefore the population does not have the right to elect a referendum on the defense issue.[1]

Fourth: Conflicts except in the Recent Republic of Iraq

1- The Emergence of Conflicts except in the Republic of Iraq

Iraq is considered among the countries that did not know real stability in the constitutional and legal situation, as it was swept by a series of creative sports differences about occupation and internal palace wars, where Iraq was subject to Austria since 1524, as one of the states under Ottoman financial rule - including Iraq, employment governments running their national affairs closest to self-rule within the framework of the Ottoman Empire.

However, the truth that cannot be denied is that Iraq since that historical period could be its effective and influential unity.

Iraq was administratively divided into three states (Baghdad - Basra - Mosul) administered through (central administration), and after World War I, Britain chose Iraq on (11/3/1917), to end the era of Ottoman rule which lasted about four centuries.

Since British interests meanwhile conflicted with Iraq remaining divided, it resorted to unifying those in one state called Iraq, with its current borders and composition, provided that (Percy Cox) would undertake civil administration in it as a representative of the British Crown.

In 1921, the first Iraqi state was established, in the form of a unified simple state consisting of thousands of governorates which cannot reach brigades.

By reviewing the constitutional constitution of Iraq, we find that all Iraqi constitutions which began their journey with the first Iraqi constitution for Iraq in (1925) or known as the Basic Law of 1925 and ending with the constitution of (1970), were equipped toward the main administrative method (3) strict in managing the Iraqi state despite adopting the method of administrative decentralization in some Iraqi constitutions. Undoubtedly, administrative decentralization continues to be theoretical ideas lacking their essence if practically preceded or contradicted.

1. Decision of the German Constitutional Court, number 8 in 1958 on the electronic link Germablas War Archive .iascom.org.
2. Dr. Ihsan Al-Mufraji and Dr. Katran Zaghir Na'ma, General Prospective in Constitutional Law in Iraq, Dar Al-Hikma, Baghdad Iraq 1990 p. 029.
3. This system requires concentrating the practice of administrative administrative function supported in the capital, through authority employees affiliated with it, according to an administrative system in which each head is subject to the authority of his superior from light to highest, except there is the highest executive president who depends on administrative authority Dr. Hassan Mustafa Ibhri, Constitutional Law and Political System. Previous reference. p. 235.

This is what was followed by the subsequent laws, starting with the Brigade Administration Law No. 58 of 1928 which remained the first invention throughout the world under national rule, and ending with the Governorates Law No. /195/ of 1969, although the apparent texts of those laws indicate that they include principles of administrative decentralization, but careful examination of the texts related to them in a ready way local councils shows him the cancellation of the essence of administrative decentralization.[1]

Thanks to what happened through the revolutionary era in the Iraqi administrative system was represented in applying the system of self-rule in the Kurdistan region of Iraq in 1974, according to the use of self for Kurds which highlighted the meeting of the Iraqi government and leadership on 11/3/1970. Some jurisprudence goes to the adoption of the self-rule system in Iraq was a result of the extension of administrative decentralization continues, and the researcher represents general rule one who sees that the beginnings of administrative centralization had emerged into space in Iraq when the Kurdistan region of Iraq was granted self-rule. This was officially recognized for Kurdistan according to the Interim Constitution of the Republic of Iraq 1970, where Article Five (b) stated: (The Iraqi people consists of two main sects, where the Arab people and the national conference, and this constitution acknowledges the rights of the Kurdish people national and legitimate rights of all minorities united within Iraqi unity with self-rule according to what the law determines) as Article Eight for the region / c / stated that: the region whose population is Kurdish enjoys according to what the law determines), as it is recognized in the meeting as a language, according to what came in Article Seven of the Constitution which states that: (communication language becomes a language alongside the Arabic language. Undoubtedly, the complete adoption of self-rule in Iraq is considered an important step toward applying administrative decentralization in a multi-national country like Iraq, as a peaceful solution for the vocabulary translated conversation through granting them some independence in managing their self-affairs, while remaining under the supervision of the central political authority. After the collapse of the Iraqi system on 9/4/2003 at the hands of the United States American occupation, it witnessed a state of parliament Poland and constitutional in the country, since the American civil governor (Paul Bremer) was assigned by the US government as head of the Coalition Authority, which began now a set of initiatives and decisions, for which the most prominent was the regulation issued on 13/7/2003, including the formation of a governing council whose task is to establish a police mechanism for an Iraqi government representing all components of the Iraqi people, as well as establishing foundations for drafting the permanent constitution of the country, and establishing permanent rules, which the designer must undertake to manage the Iraqi state for the transitional period which was unanimously voted by the council on 1/3/2004 and issued on 8/3/2004.

To manage the Law of State Administration for the Transitional Period, the first elegant constitution applying federal system requirements, and under which Iraq transformed from a unified simple state to a federal state, adopting the division of power into three levels of government (federal government, resulting, and non-regional governorates in more) which is considered new to its participation in previous constitutional law. After the issuance of the 2005 constitution, the system was one of the basic foundations on which this constitution was based.

1.Dr. Mundhir Al-Shawi, Constitutional Law Theory (The State) Legal Center Publications, Baghdad Iraq, 1981 - p. 230.

2- Conflicts in the Republic of Iraq:

Constitutional competence conflict had its first roots since the change of the regime in Iraq and adoption of the judicial system, according to the Iraqi State Administration Law for the Transitional Period of 2004, which established a federal system based on geographical and heritage understanding away from ethnic, national, national or sectarian considerations.[1] And what confirms itself in this and what is known as the geographical and heritage reality on which the system should be based? Because the Iraqi State Administration Law for the Transitional Period took clear economic decentralization and administrative decentralization at the same time, without drawing presidential boundaries for the other team, which leads to dire consequences for its stages through the weakness of the Iraqi state in managing transitional period crises, which fundamentally forms fertile ground for creating many partial disputes between different levels of government.

They are also particularly keen on the competencies of major delegates and unexpected governorates in more than that, and they go beyond the scope of decentralized policy and administration, under the pretext of combating extreme central liberalism through not intensifying power in the hands of the central government.

In addition to returning to the texts related to distributing constitutional competencies between the federal government and provisions and non-external governorates in a region, it appears that they were the first source of constitutional competency conflicts between levels of government for what they contain of defects and deficiencies, in addition to their lack of accuracy and clarity. As is known, the original text of the Iraqi State Administration Law for the Transitional Period had been written in traditional language, and then translated into Arabic, affecting understanding of what the texts of this law mean.

The Iraqi State Administration Law for the Transitional Period stipulated in Article /24/ "the formation of the Supreme Court, which has direct basis for adjudicating constitutional competency disputes between different levels of government" which reflects the legislator's keenness to resolve these disputes through legal transition, aiming to provide the Iraqi encouraging system and its display through what this technique has of effective role in this regard.

1 - Article Four stated that: (The system of government in Iraq is republican, federal, federal, democratic, pluralistic, and powers are shared between the federal government and neighboring governments, governorates, municipalities and local administrations, and the federal system depends on geographical basis and hereditary reality and between basic powers on original or race or ethnicity or nationality or sect..).

2 - Article /14) of the Iraqi State Administration Law for the Transitional Period stated that (a - climate change in Iraq in law and the Supreme Court is called b: court competencies and confirmed the supremacy: - no exclusive original competence for lawsuits between the transitional Iraqi government and governments of administrations governorates and municipalities and local administrations.

The transitional period ended with the issuance of the 2005 constitution, which is considered the chronic foundation for participation in Iraq. Article /1/ of the first section of the constitution stated that (the Republic of Iraq is a unified federal state independent..) as Article /166/ stated that: (the federal system in the Republic of Iraq consists of a capital and months and decentralized governorates and local administrations) where the Iraqi legislator went to political and equal lines for others completing competency distribution constitutional, as it granted the right to embody them in the Federal Council, and ensures equality of their bodies with the multiple government, by granting them great independence in their confrontation. Then the Iraqi constitutional legislator did not follow by sending known federal signals, which are based on drawing power between ancient government, i.e. between the federal government and state governments, until reaching the first level the federal government, and consequently the second level state governments.

We also conclude from the constitution that it came reinforced for classical centralization and administrative decentralization, in a step that constituted a shift.

In the history of Yemen and Iraqi constitutional, it is considered the first Iraqi constitution since its establishment of a diplomatic political system based on federalism, reconstruction and democracy, and has an insurance document constitution real guarantees ensuring the independence of oxides and unprecedented governorates in a region, and granted them public specializations. This independence is manifested primarily in that members of governments

Election and council bodies of governorates not their appointment by the center is decided through election as a democratic method for assigning power and then it stands directly before members without doubt that the electoral entitlement would grant local authorities the moderate legal legal power that allows them to keep pace with central authorities in an equal position, and push them more greatly from glass with the interests of the region and its development.

Conclusion

We addressed in research and study the idea of the legal nature of conflicts of jurisdiction in nutritional states and sensed the emergence of conflicts of jurisdiction and reached the following results and suggestions:

Summary - Results

1. The distribution of competencies between federal authority and authorities becomes the guiding principle i.e. when applied, the possibility of overlap of federal competencies and state governments.
2. There is variation between federal constitutions regarding the distribution of constitutional competencies between exclusive, shared and residual.
3. Shared and residual competencies indicate the possibility of competence conflicts more than others, as shared competencies do not clearly draw for local economic activities.
4. The issue of constitutional competence conflict is considered inevitable between the two sides of power in federal states due to the duplication of public authorities.
5. Jurisdictional disputes between the federal government and state governments constitute a serious reflection on the service of the federal state.

With - Suggestions

1. The necessity of drafting constitutional texts related to distributing competencies in specific and precise determination, in addition to drafting them in a way that suits the method of emergence of federal states.
2. Making judicial jurisdiction exclusive to Americans while residual jurisdiction is for cadmium federal judicial jurisdiction.
3. The necessity of settling differences between the region and the central government in Iraq, and resorting to resolving all differences and problems through constitutional legal means.
4. Activating judicial lawsuits and other matters related to judicial jurisdiction between federal bodies and governments.