



# THE EFFECTIVENESS OF POLITICAL BALANCE IN THE FEDERAL CONSTITUTION AND THE STANCE OF THE IRAQI CONSTITUTION FOR 2005

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Article history:		Abstract:
<b>Received:</b>	30 <sup>th</sup> October 2024	<i>The federal system inherently necessitates a degree of political balance within the parliaments of federal states. A balance that can be achieved through the interplay of supreme parliamentary councils, which is represented by the council of parliament, and lower parliamentary councils, that is represented by the council of representatives. The aim of this study is to analyze the mechanisms of political participation in comparative federal systems to understand how they achieve political equilibrium. Additionally, it seeks to address the imbalance caused by the absence of a parliamentary council in Iraq's Constitution, where relevant issues remain unresolved due to the lack of legislative action to date. This research employs an analytical and comparative method, drawing upon constitutional texts from several federal states: the U.S. Constitution of 1787, the Swiss Constitution of 1999, the German Constitution of 1949, the Argentine Constitution of 1994, the UAE Constitution of 1971, and the Iraqi Constitution of 2005.</i>
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## INTRODUCTION

The federal constitution aims to achieve political balance between federal authorities and provincial entities within a federal state (Ali, 2007, p. 1). Such balance is grounded in two key dimensions: political participation and political parties. Among which, political participation holds particular significance due to its active and critical role in fostering the desired political equilibrium.

The importance of political participation in a federal constitution can be understood through two perspectives. The theoretical dimension explores the structure and selection of supreme and lower parliamentary councils and their influence on the nature of the political system. The practical dimension addresses potential solutions for rectifying imbalances in political participation mechanisms, as observed in the Iraqi Constitution of 2005. This dual focus highlights the study's relevance in understanding and improving political structures within federal systems.

The primary motivation for selecting this topic lies in the desire to examine the principles governing the political participation of provinces within federal parliamentary systems. Additionally, it seeks to explore the extent to which these principles align with federalism, with the ultimate goal of addressing key deficiencies in the provisions of the Iraqi Constitution of 2005 related to the study's focus.

The research hypothesizes that political participation serves as a pivotal mechanism for achieving political balance within the federal parliament. The research problem centers on the mechanisms adopted by the Iraqi Constitution, which differ significantly from those used in other federal states regarding provincial representation in federal parliaments. Specifically, the absence of provincial representation in a parliamentary council has resulted in an imbalance within Iraq's legislative authority.

This study employs analytical and comparative methodologies, utilizing constitutional texts from the United States, Switzerland, Germany, Argentina, the United Arab Emirates, and Iraq (2005). These comparative analyses aim to highlight variations and best practices in federal governance.

The study is divided into two sections. The first section explores the concept of federalism and its relationship to political participation. The second section examines the mechanisms of political representation for provinces within federal parliaments, focusing on supreme and lower parliamentary councils, with specific reference to the Iraqi Constitution of 2005. The study concludes with a summary of key findings and suggestions for future research aimed at enhancing governance practices in Iraq.

## **I. Federalism and its Relationship to Political Participation**

Political participation is a cornerstone of federalism. Therefore, understanding the concept of federalism and its connection to political participation is essential to the study of federal constitutional systems. This section highlights the interdependence of federalism and political participation, discussed through two key aspects.

### **A. Definition of Federalism**

Defining federalism poses linguistic challenges, as the term encompasses four principal meanings: (a) alliance, (b) league or association, (c) confederation, and (d) union in the strict sense. The term is derived from Latin, emphasizing the idea of a binding agreement (Ali, year?? p. 8-9). Federalism, as a governmental practice, is commonly defined as a constitutional relationship between a central authority and provincial or state authorities, whereby the latter relinquish external sovereignty and parts of their internal powers to the central government. This definition is widely accepted in political science literature, as exemplified by the *American Historical Political Encyclopedia* (Finkelman & Wallenstein, 2001, p. 14).

### **B. The Relationship between Federalism and Political Participation**

Horizontal power allocation is fundamental to fostering political participation among citizens in the governance of a federal state (Mouloud, 1995, p. 741-742). The connection between federalism and political participation is evident in the geographic distribution of power, which necessitates the involvement of a broad spectrum of individuals in the administration of regional authorities. Federalism is predicated on the principle of power-sharing and pluralism, in contrast to centralized monopolization of power (reference??).

### **C. Variance between Federalism and Political Contribution**

The distinction between federalism and political contribution lies in their approach to power distribution. In federalism, power is allocated among a specific number of citizens residing in distinct geographical regions. In contrast, political contribution involves a broader participation of citizens, typically representing diverse geographical units (Al-Saouri, 1990, p. 114).

It is evident that constitutional legislators aim to limit power in federalism while simultaneously encouraging citizen participation in governance. This is achieved by providing mechanisms for citizens to exercise influence in various ways. Federalism and political contribution are interconnected; when fully practiced, federalism facilitates political contribution. A positive relationship exists between the two concepts, as the presence of federalism creates opportunities for political participation. However, this participation is shaped by the prevailing political system, whether at the local level or both the local and national levels (Al-Saouri, 1990, p. 115).

## **II. Political Contribution of Provinces in the Federal Parliament and the Iraqi Constitution's Stance for 2005**

### **A. Contribution of the Supreme Council in the Federal Parliament and the Stance of the Iraqi Constitution (2005)**

#### **1. Contribution of the Supreme Council in Comparative Federal Constitutions**

The Supreme Council, often referred to as the Senate or an equivalent body, reflects the federal character of a state's political system more than the Lower Council, which is typically represented by a House of Representatives. The Supreme Council serves as an essential mechanism for expressing the interests of constituent provinces or political units. It plays a distinguished role in federal legislation and the exercise of federal authority, acting as a safeguard for provinces and their residents against harmful or inappropriate federal actions (Boye & Frederick, n.d., p. 7).

In most federal states, equality in representation within the Supreme Council is a fundamental principle. However, some countries adopt different approaches (Fahmi, 1990, p. 61). For instance, in the U.S., smaller states' insistence on equal representation nearly derailed the Philadelphia Conference. The issue was resolved by granting each state two votes, irrespective of population size. Similarly, during the drafting of the Swiss Constitution in 1848, a comparable compromise was reached, with each Swiss canton receiving two votes in the Supreme Council and half-cantons receiving one vote. This arrangement was made despite significant population disparities between cantons, which were even greater than those among U.S. states (Boye & Frederick, n.d., p. 53).

This principle of equal representation has also been adopted in Mexico, Argentina, Brazil, and Venezuela (Basioni, 2002, p. 109). For example, Article 54 of the 1994 Argentine Constitution states, "The Parliament Council includes three senators from each province and three from the city of Buenos Aires, the capital.. Each member of the Parliament Council has one vote." Similarly, Article 46 of 1971, the UAE Constitution specifies that the Supreme Council of the Union consists of the rulers of all emirates or their representatives, with each emirate having one vote in council discussions.

In the Federal Republic of Germany, the Basic Law, Article 51, modifies representation based on population. Each state sends three members to the Bundesrat. States with populations exceeding two million send four members, and those with more than six million send five (Fahmi, 1990, p. 61).

#### **2. Equality and Superiority of Councils in Federal Systems**

In the United States, the two councils, i.e. House of Representatives and Senate Are equal in legislative authority. Both must approve federal laws before enactment. However, the Senate possesses certain superior powers, such as ratifying treaties and approving executive appointments. While legislative equality is maintained, the Senate's executive responsibilities enhance its influence in federal governance.

### **B. Contribution of the Supreme Council in Federal Constitutions**

#### **1. Power Balance in Comparative Constitutions**

In the Swiss Federal Constitution of 1998, Articles 148 and 157, explicitly grant equal powers to the People's Assembly and the Council of Cantons. However, the constitution also establishes situations where one council has superiority over the other. For instance, Article 157 mandates that both councils convene under the leadership of the President of the People's Assembly to perform specific functions such as conducting elections, resolving jurisdictional conflicts among federal authorities, and granting pardons. Decisions in these joint sessions are governed by Article 159, which requires a majority vote from both councils to achieve a legal quorum.

The German Federal Constitution of 1949 exhibits a notable power imbalance between the two councils. While the Bundesrat (Federal Council) plays a significant role in legislative processes, its powers are often subordinate to those of the Bundestag (Federal Parliament). For example, the Bundestag can override Bundesrat objections in a second vote to pass legislation (Bassiouni, n.d., p. 110–111). However, certain laws, particularly those concerning the federal government's relationship with internal public bodies, require Bundesrat approval, without which the laws cannot be enacted (Mayer-Blaschke, 1973, p. 87). Furthermore, several provisions in the Basic Law necessitate Bundesrat approval, highlighting its crucial role in federal governance.

The Argentine Constitution of 1994, in contrast, emphasizes equality between its two legislative chambers. Article 52 specifies that all revenue and military recruitment bills must originate in the House of Representatives. Article 53 grants the Chamber of Deputies exclusive authority to bring impeachment charges against high-ranking officials, including the President and Supreme Court judges, requiring a two-thirds majority. Chapter III of the Constitution outlines conditions applicable to both councils, ensuring legislative collaboration while maintaining their distinct functions.

## **2. Federation Council Participation in the Republic of Iraq's 2005 Constitution**

The Iraqi Constitution of 2005 adopts a unique approach to organizing the federal legislative authority, diverging from traditional federal constitutions. Typically, federal systems establish a second legislative council, such as a Senate or Federation Council, to represent the interests of regions or provinces on an equal footing regardless of size or population (Rossikhin et al., 2024, p. 161). However, the Iraqi constitutional framework integrates elements of administrative and political decentralization, creating a hybrid structure.

Article 48 of the Iraqi Constitution identifies the federal legislative authority as comprising the Council of Representatives and the Federation Council. Article 65 further stipulates that the Federation Council's organization, membership, and functions are to be determined by a special law requiring a two-thirds majority in the Council of Representatives. Despite this mandate, the Federation Council remains nonfunctional due to the lack of enabling legislation.

Article 137 of the Constitution initially deferred the council's establishment until the first parliamentary session, yet no law has been enacted to date. This delay stems from political disagreements among federal authorities, creating a legislative and institutional void. A draft law for the Federation Council was proposed by the former President in 2014 but was later withdrawn in 2015, leaving the council's implementation in limbo. This failure to operationalize the Federation Council undermines the constitutional balance between central and regional authorities, weakening federal governance in Iraq.

## **3. Addressing Legislative Authority and Political Crises in Iraq's Federal System**

The absence of the Federation Council in Iraq impedes the legislative authority's ability to mediate political crises between the central government and provinces. This failure is attributed to a lack of dialogue and political flexibility among various factions (Naseer, 2015, p. 131). This situation underscores the distinct challenges faced by Iraq as a federal state, shaped by its unique political and constitutional circumstances (Alshamayleh, 2024, p. 870).

## **III. Participation of the Lower House in Comparative Federal Constitutions and the Iraqi Constitution of 2005**

### **A. Participation of the Lower House in Comparative Federal Constitutions**

In most federal systems, the lower house of the legislature represents the entire population of the federal state, contrasting with the upper house, which often reflects the autonomy of constituent units. The lower house, also referred to as the House of the People or the House of Representatives, is typically elected by the populace at large. Its composition is based on demographic representation, with seats allocated according to population size. This design ensures proportional representation, allowing the lower house to play a dominant role in shaping public policy. In several federal systems, the importance of the lower house surpasses that of the upper house, emphasizing its centrality in legislative and governance functions.

### **B. Participation of the Iraqi House of Representatives Under the 2005 Constitution**

The Iraqi Constitution of 2005 adopts a parliamentary system, characterized by a directly elected legislature that embodies representative democracy (Saleh, 2005, p. 36; Saleh, 2012, p. 40). Article 49 establishes the House of Representatives, stipulating that it comprises members elected at a ratio of one representative per 100,000 citizens through direct secret ballot. This structure aims to ensure representation of all components of Iraqi society.

The Constitution assigns the House of Representatives legislative, financial, and oversight responsibilities, as outlined in Article 61. These exclusive powers underscore the house's role in Iraq's political system. However, the absence of participation by a Federation Council in these processes highlights the reliance on political consensus to resolve conflicts within the government and between federal and regional authorities. Such conflicts can result in functional paralysis, disrupting the political system (Mansour, 2023, p. 9). To avoid these challenges, Iraq must adopt peaceful and democratic mechanisms aligned with practices in other federal systems (Islam, Zubair, & Haider, 2019, p. 100).

## **CONCLUSION**

The present study concludes that the role of federalism is to establish a constitutional framework where power is shared between the central government and constituent states. It ensures state independence in internal affairs while maintaining unity at the federal level.

Hence, the relationship between federalism and political participation is tight in the sense that a balanced federal system promotes democracy by granting provinces relative autonomy and encouraging their participation in legislative processes. This fosters the acceptance of central decisions and enhances governance stability.

The current study recommends establishing the Federation Council, and amending the Iraqi Constitution in accordance with Article 142 to establish a Federation Council. This body should represent provinces on an equal basis, with its structure and functions defined by a specialized law that ensures political decentralization. The study also recommends the revisions to the House of Representatives' Powers, amend constitutional provisions to redefine the powers of the Iraqi House of Representatives, and aligning them with the practices of advanced federal systems to enhance the functionality and balance of Iraq's federal governance structure.

## REFERENCES

1. *A Brief Legal Study in Defining the Concept of Federalism and its Characteristics*, Vol. 16, No. 03, July-September 2024.
2. Al-Sa'ouri, Hassan Ali (1990). "Political Participation in Sudan," in the Strategic Studies Series titled "Federalism in Sudan," Issue No. 7, Center for Strategic Studies, Khartoum.
3. Al-Tabataba'i, Adel. "Self-Governance of Federal State States," *Journal of Law and Sharia, Dar Sader*, no.1, (1980).
4. Basyuni Abdullah, Abdelghani, *Political Systems*, 4<sup>th</sup> edition, Dar Al Fikr Al Arabi for Printing, Al Jalal Printing Company, 2002.
5. Bowie, Robert and Friedrich, Carl. *Studies in Federal State*, Vol. 1, Dar Al-Sharqiya for Printing and Publishing, Beirut-New York.
6. Fahmi, Mustafa Abu Zeid, *The General Theory of the State*, University Publications House, Alexandria, 1990.
7. *Federally Administered Tribal Areas (FATA): Impacts of Militarization and War Crimes on Tribal Women and Children*, Vol. 7, No. 4, October 2015.
8. Fikelman, Paul and Wallenstein, Peter. *The Encyclopedia of American Political History*, Congressional Press, Washington DC, 2001.
9. Foedus (Ali, Aryan Muhammad). *Amendment of the Federal Constitution*,
10. Mansour, Heba Neama. "The Actual Suspension of the 2005 Constitution of the Republic of Iraq and its Relation to the Principle of Legitimacy," *Journal of Legal and Political Sciences*, Issue 38 (2023). College of Law, University of Baghdad.
11. Mouloud, Mohammed Omar, *Federalism and its Applicability in Iraq*, 2<sup>nd</sup> edition, Ministry of Education Printing Press, Erbil, Maukrian Printing and Publishing Foundation, 1995.
12. *Parliamentary Elections and the Gender Aspect: A Comparative Analysis of the Experience of Ukraine and Sweden*, Vol. 16, No. 01, January-March 2024.
13. Pleisske, Elmer. *The Government of Contemporary Germany*. Translated by Muhammad Haqqi, Franklin Printing Foundation, Cairo-New York, 1973.
14. Shabr, Rafaa Khader Saleh, *Nature of the Political System in the Iraqi System: A Study According to the 2005 Constitution*, Baghdad, 2010.
15. Shabr, Rafaa Khader Saleh, *Separation of Executive and Legislative Powers in the Parliamentary System in Iraq*, 1<sup>st</sup> edition, Al-Sanhuri Library, Baghdad, 2012.
16. *The Parliament of Pakistan and its Role in the War on Terror*, Vol. 11, No. 4, October 2019.
17. Constitutions:
18. Argentine Nation Constitution, 1994.
19. Republic of Iraq Constitution, 2005.
20. United States Constitution, 1787.
21. Swiss Constitution, 1998.
22. Federal Republic of Germany Basic Law, 1949.