

THE IMPACT OF SUCCESSIVE LEGAL SYSTEMS ON THE ADMINISTRATIVE DECISION-MAKING PROCESS IN IRAQ

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Abstract

This article aims to assess the effect of successive legal systems on administrative decision-making in Iraq. Particularly, it examines how these legal systems influence decision-making and their implications for individual rights and freedoms. Given its law-oriented nature, this article employs a qualitative, analytic research methodology. It is based on laws, constitutions, textbooks, journals, newspaper reports and case law. It identifies administrative decisions, laws, and other measures and then conducts a rigorous analysis. A key finding is that successive legal systems have endowed the ruling authorities with extensive administrative decision-making power, which these authorities have retained despite the development of Iraq's legal systems. Therefore, it is suggested that the new legal system's decision-making process be governed by the principle of legality and the rule of law. Further, the principle of legality contributes decisively to maintaining a balance between individual rights and the rule of law. Additionally, it activates the principle of separation of powers, ensuring that each body performs its function under the applicable constitution.

Keywords: Legal system; Administrative decision-making; Principle of legality; Constitution; Iraq.

1. Introduction

The legal system is a part and parcel of a state's social structure. Thus, it reflects the social, economic, cultural and political characteristics of a society. Understanding the legal system outside of the socio-cultural milieu in which it functions is, therefore, difficult. The legal system in Iraq is a mixed one in which both civil law and Islamic principles apply. Concurrently, Islam plays a key role in the legal system and, in fact, acts as a foundational source for Iraqi legislation. Therefore, any law that is inconsistent with the principles of Islam, is void to the extent of its inconsistency. Also, the Iraqi constitution of 2005 enshrines individual rights, such as the right of religious belief and practice. The purpose of any legal system is to provide a systematic, structured and predictable mechanism for dispute resolution. The legal system provides a clear vision of the structure

of the Iraqi state and its legal philosophy emanating from the rule of law. Further, it highlights the structure and types of courts in the country.

States base their legal systems on the principles of natural justice, which encapsulate legality. The principle of legality is linked to a particular interpretation under the common law system, which assumes that the legislative authority does not intend to interfere with fundamental rights recognised in the constitution. It is an essential principle in common law countries and is, therefore, effectively operative in those jurisdictions. However, the authorities must respect the principle of legality in exercising their administrative decision-making; competent authorities should not deprive individuals of their fundamental rights. Despite the acknowledged importance of discretion in administrative decision-making, the principle

of legality itself encodes actual values that express and preserve human rights. It espouses a democratic legal culture in which basis all actions and decisions must be justified. Therefore, all administrative decisions must be made based on valid reasons and under the legality principle, especially where they involve the exercise of discretion.

This article assesses the effect of successive legal systems on administrative decision-making in Iraq. Particularly, it examines how these legal systems influence decision-making and its implications for individual rights and freedoms. Additionally, the extent to which Iraq's new legal system is subject to the legality principle. Relying on a qualitative research methodology involving a critical analysis of administrative decision-making, these legal systems' discretionary power and other measures relevant to the successive legal systems. Throughout the succession of these legal systems, from Iraq's inception to the stage of establishing the new legal system, Iraq encountered the issue of a lack of separation of powers. The executive branch, represented by the Caliph, the King, the Prime Minister, and the President of the Republic, dominated decision-making. These legal systems bestowed upon them extensive authority in administrative decision-making. The issue is raised by how these authorities uphold the constitutional principle of legality. Additionally, to disregarding the principle of separation of powers, which protects individuals' rights and liberties. The article concluded that administrative decision-making has remained confined to the executive power despite the evolution of legal systems. It suggests that the new legal system's decision-making process should be guided by the principles of legality and the rule of law.

2. Historical background

Today, Iraq is on a geographical location known to the ancient world as Mesopotamia. The word, 'Mesopotamia' derives its roots from ancient languages and means the land between the two rivers, the Tigris and the great Euphrates. These rivers rise in northern Turkey and flow downstream to join the Persian Gulf. The Iraqi legal system has a rich and long-established cultural heritage that shaped its

development. It is necessary, therefore, to trace the country's history back to antiquity. Deeply attractive to the outside world, Iraq suffered from frequent foreign invasions throughout the course of its history.

2.1 Hammurabi era (18th century BCE)

Iraq has had many forms of governance, as well as diverse formal and informal legal systems. By the 18th century BCE, the monarchs of the city of Babylon dominated most of southern Mesopotamia. Many kings ruled the country during that period. One of them was called Hammurabi. His Code, the Hammurabi Code, was the first written law in the history of humanity. It consisted of 282 articles, which covered all legal aspects and reflected life in the society that existed during that era. The Code established the rule of 'an eye for an eye' as a standard, which provided for no extenuating circumstances. Although the Code did not include a formal legal system with courts and judges, as seen in modern times, it laid the cornerstone of the modern legal system.

2.2 Advent of Islam

In Mesopotamia, as it was first known to the West, and in later time, Iraq, there was a rapid spread of the Islamic religion. This period witnessed the rise of the Abbasid and Umayyad states. However, the legal system that existed during the eras of those two states differed in application from Islam. Doctrines of jurisprudence flourished and Iraq had its fair share of intellectual schools. The emergence of schools of jurisprudence in Iraq, in turn, enriched the Islamic system in general. Iraq came to play the leading role in the Islamic Caliphate era, especially during the reigns of the Abbasid and Ottoman states. Baghdad was the capital of the Abbasid state, which lasted for five centuries.

After the Mongol occupation of Baghdad, the Abbasid state collapsed in 1258. The Islamic Caliphate then moved to the Ottoman Empire. Iraq became a part of the Ottoman Empire during the 6th to the 17th centuries. Ottoman rulers divided the country into three provinces called vilayets namely, Mosul in the north, Baghdad in the centre and Basra in the south. To better understand the Iraqi legal system during the Islamic era, it is imperative to shed

light on these two periods; a task to which the following sections of this article now turn.

2.3 Abbasid era (8th century BCE)

In general, the Abbasids worked hard to make Iraq, including its youthful capital, Baghdad, a prosperous urban centre. They created extensive trade links with all over the world through the Silk Road that led to India and China. They ruled for five centuries during which time they made a distinct mark in science, architecture and literature. Moreover, they established state infrastructure, schools, libraries and hospitals. In particular, there was significant rise in the study of law, which was considered an essential part of the field of theology.

Thus, the Abbasids were arguably the first dynasty to really take the time to establish and develop state institutions as never before. Among them, the office of the Wizarat, meaning ministry, was particularly important. The Wizarat did not exist during the time of the pious caliphate 'al-Khilāfah ar-Rāšidah' or the Umayyad state. Rather, it was a Persian institution that the Abbasids appropriated. According to Hiti, the Wazir or minister stood alongside the Caliph and served as his alter ego. However, primarily under the Abbasids, there was the concept of Wazarat-ut-Tafwiz, which meant 'the unlimited.' The holder of this position was endowed with all sovereign powers, exercising absolute and unfettered discretion in all state matters. The Wazir was all-powerful, appointing and deposing governors, as well as judges, ostensibly with the agreement of the Caliph, and even passing on his own office to successors on a hereditary basis.

The judicial system was also one of the main concerns of the Abbasids. They established a judicial institution known as Diwan al-Mazalim, meaning Board of Grievances. This was an ancient institution adopted by the Abbasids in the 8th century BCE. The main task of the mazalim courts was to consider all disputes, whether between individuals themselves or between them and the state's administrative elite. This institution ensured fairness to those harmed by state actions with just payment of compensation to them. Therefore, this institutional court received

specific attention from the Abbasids during that period.

The Abbasids adopted the Hanafi doctrine, which was enunciated by Abu Hanifa and his close students, among whom Abu Yusuf was the most prominent. Abu Yusuf later became the first chief judge in the Abbasid state, given his contribution to the dissemination of the Hanafi doctrine there. He wrote the famous book, *al-Kharj*, which was based on the Hanafi doctrine and served as a reference for legal and financial transactions. The Hanafi School was founded in Baghdad during the early period of the Abbasid Caliphate. This School is considered as one of the most critical four schools of legal theory in the Sunni tradition.

The Hanafi School was formed on the basis of Abu Hanifa al-Numan's teachings, which were taught and learned in Iraq's Kufa schools. The efforts of Abu Hanafi and his adherents contributed to the rapid dissemination of the Hanafi doctrine in early Kufa schools. This doctrine, which was the most widespread during the era of the Abbasid Caliphate, is one of the most flexible Islamic laws spanning various aspects of life, including criminal law matters, treatment of non-Muslims, individual freedoms, marriage, guardianship and property rights. During the Abbasid Caliphate, judicial systems adopted many of the jurisprudential views of the Hanafis.

It is evident from the preceding discussion that the Abbasids were interested in developing state institutions based on an Islamic legal and judicial system, particularly the office of the Wizarat, known as the Ministry in English. In addition to the Hanafi School, Wizarat was one of the critical institutions of the Abbasid era. The Caliph had extensive powers in the state and was endowed with broad authority. He was flanked by the minister, who was the second-in-command after the Caliph. There was no limit to the minister's power, but the Caliph gave him permission to do what he wanted. Further, the Diwan al-Mazali was a form of supreme judiciary invented by the Islamic religion, with broad authority to prosecute senior officials or rulers who abused their discretionary authority in dealings with the populace. The Diwan al-Mazalim was a supreme legal and judicial body, comparable to the present-day Iraqi administrative judiciary, referred to as the State

Council. Iraq has a judicial body competent to resolve conflicts between citizens and administrative authorities. This entity, dubbed the "administrative judiciary," is governed by State Council law. This law establishes the judiciary's authority, composition, and structure. As a result, it is regarded as a judicial check on administrative authorities' arbitrary decisions.

Thus, the administrative judiciary's function is comparable to that of the Abbasid era's *Diwan al-Mazalim* in that both take into account decisions made by higher authorities and have the authority to overturn them.

2.4 Ottoman era (14th -20th centuries BCE)

After the fall of the Abbasid Caliphate, Iraq came under the control of the Ottoman Empire. The Ottoman government was divided into four parts, dubbed the "four pillars of the empire." The Grand Wazir was the first pillar. The other pillars were the accountants and treasurers; the military commander and the chancellors, who drafted the Sultan's edicts; and judges, who oversaw the administration of justice. Among these judges were two army judges who were responsible for nominating additional judges. The Sultan was the imperial supreme head and the source of legitimate government, and he alone had the authority to make appointments to high positions. Besides the Sultan, there was a figure known as the "al-Wali," or "the governor." The governor was the Sultan's representative in the state he ruled. He was the highest authority, as the Sultan appointed the governor through an administrative decision. The governor possessed broad discretionary power, particularly over appointments, taxation, and decisions concerning public security. Additionally, the governor had the authority to intervene in the judiciary's financial affairs.

The Ottoman Empire established an integrated administration that was centralised socially, economically and politically. It was a military theocracy, with the Sultan wielding absolute personal authority through a vast bureaucracy.

Moreover, the Ottomans initiated a reform program known as *tanzimat*, which translated in Turkish means 'reorganisation.' The primary objective of the reform program

was to establish new regulations governing administration, taxation, conscription, individual rights and the educational system. Under this reform program, the Sultan could not revoke legislation such that there existed, for the first time, a legal limitation on the Ottoman monarch's unlimited power.

The Ottoman legal system was a synthesis of Islamic law. State laws decreed by the Sultan were regarded as subordinate to Sharia law; major actions taken by him had, in theory, to be approved in advance in an opinion expressed by the leading Islamic legal authority of the day.

On the other hand, the *Mejelle* served as the Civil Code of the Ottoman Empire. This code included Islamic law principles based on the Hanafi legal tradition, which enjoyed an official status in the empire. The substance of the *Mejelle* was derived from French legislation and Islamic law principles. Consequently, the judicial system in Iraq derived much of its jurisprudence from this civil code, which contributed to its development. After independence in 1932, Iraq approached modernity and began to enact legislation, such as civil law, with principles derived from Egyptian and French civil laws.

It is important to note that the Sultan was at the apex of the Ottoman pyramid. He wielded absolute authority in various areas, including politics, the military, the judiciary, social affairs, and religion. However, this authority later placed limitations during the *tanzimat* reform program. The Sultan and the Wali exercised decision-making authority. The Sultan possessed extensive decision-making authority, particularly in the appointment and taxation of individuals. Additionally, the Sultan exercises military control and interferes with the judiciary's function, violating the principle of separation of powers and, thus, violating the principle of natural justice, which results in arbitrary administrative decisions due to the judiciary's weakness.

2.5 British mandate (1914 – 1932)

The Ottoman Empire collapsed in World War I. Following this development, the Great Powers divided the territories of the former empire to create new states. British forces occupied Port Faw in Basra and later took control of the whole of Iraq in 1917. The British government

received full mandate from the League of Nations over the territory of Iraq. In 1920, the state of Iraq was formally established and consisted of the three vilayets of the Ottoman Empire Baghdad, Basra and Mosul. In 1932, the British mandate was officially terminated, leading to Iraq's independence and membership of the League of Nations.

The British forces abolished some of the institutions established in Iraq during the Ottoman era. They issued the Iraqi Code, which was a plethora of laws and regulations derived from English law. That code aimed to establish a legal and judicial system in Iraq that was compatible with the interests of the occupation forces. Colonial statutes and regulations, such as the Employees Discipline Law and the Civil Service Law, contained provisions that clearly did not do the locals any good, because the British forces did not want the laws to be enforced and respected, but merely written legal texts without implementation. For example, in March 1931 and February 1939, more than 300 employees were laid off.

In 1915, the Mandate Powers established the Basra courts. The judiciary, for the first time, used the Arabic language to replace the Turkish language, and Turkish judges later left the city. Also, court documents were destroyed and all courts ceased to perform their judicial functions. In fact, after the Turkish judges and other officials left Iraq, the Iraqi courts became almost paralyzed and unable to perform their functions. At the end of 1917, the British forces issued the Declaration of Courts, which was ratified by Bonham Carter. Carter was a senior political and military official who had earlier helped in establishing the British Empire's legal system in Sudan. He presented a report with recommendations on the courts in Iraq and how to restore the court system there. The recommendations included the reinstatement of the Ottoman era's Islamic courts, which the Iraqis respected.

Accordingly, courts were formed in Iraq during the British mandate through the Declaration of Courts. They were divided into four types: court of appeal, courts of first instance, magistrate courts and criminal courts. Moreover, the British forces made some laws and regulations to address the conditions then

prevailing in the country. For instance, in 1919, the Baghdad Penal Code and the Baghdad Criminal Procedure Code were promulgated to replace the Ottoman penal laws. These laws remained in force until the Penal Code No. 111 of 1969 and the Code of Criminal Procedure No. 23 of 1971 were adopted. Moreover, the provisions of Mejlle remained in effect until the promulgation of the Civil Code of 1951. A committee of senior jurists, headed by Abdul Razzaq al-Sanhuri, contributed to drafting of that code. Like those of Egypt, the civil laws of Iraq were derived from the Mejlle. Although more than half a century has passed, this law still remains in force.

It is important to note here that the Iraqi legal system resulted from a historical process that dates back to the Ottoman reform program called 'reorganisation.' That was during the mid-19th century when the Ottoman government enacted a series of administrative laws and regulations. However, when the British forces seized control of Iraq, they could not use the Ottoman system. Therefore, they resorted to a system that benefited their colonial interests in Iraq. Along with the broad discretionary powers granted through by-laws to the administrative authorities, the self-centeredness of their rule was reflected in the imposition of severe penalties on public servants who failed to follow the imperial system, including jail, expulsion and transfer.

2.6 Monarchy and the first constitution (1925 – 1958)

Since its creation, Iraq has had various legal and judicial systems, shaped by a series of constitutions. It began with the first constitution of 1925, called the Basic Law, right through to the most recent constitution of 2005. The British administration chose Faisal, son of the Sharif of Mecca, as the first King of Iraq, which was their key area of influence. His reign lasted for 12 years, from 1921 to 1933. King Faisal, who had become a unifying symbol in Iraq, died in September 1933 while out of the country for medical treatment.

In 1925, the Constituent Assembly approved the first constitutional monarchy of Iraq by way of the Basic Law adopted in that year. That constitution established government institutions and regulated their relationship with individuals. Also, it vested individuals with

rights and freedoms. Moreover, it proclaimed Islam as the official religion of the state. In addition, the constitution established three organs of government, the executive, legislature and judiciary. The legislative power was vested in the National Assembly and the King. The National Assembly was composed of the Senate and the House of Representatives. The legislature had the right to legislate, amend and repeal laws. The executive branch consisted of the King, as the head of the executive branch, and his cabinet. The judiciary was constituted by the Supreme Judicial Council. It was independent and free from any form of interference from the executive branch.

In terms of political rights, Article 5 of the Iraqi Constitutional Law of 1925 recognised the right to citizenship. That Constitution also regulated the acquisition of Iraqi citizenship, but this right was undermined by delegating broad discretionary powers to the executive authority. The king is inviolable and is not responsible for any action. In 1958, the monarchy was brought to an end through a military coup called the July 14 Revolution. Following this coup, a republican regime was declared in Iraq and a legal system compatible with the new system of government was adopted.

2.7 Era of the republic and military coups (1958-2003)

The era of military coups was characterised by the incessant staging of coups that left the country in chaos and destabilised its legal system. The first military coup in Iraq, which took place on July 14, 1958, abolished the then existing constitution, which was the Basic Law of 1925. The coup leaders issued the interim constitution of 1958. Sketchy and hastily drafted, that constitution declared that Iraq's political and legal system was republican. The interim constitution also merged the legislative and executive powers into one, represented by the Council of Ministers. On February 8, 1963, a second military coup staged by the Baath party took place. This military junta, known as the National Council for the Revolutionary Command, replaced the former Council of Ministers. In 1963, the second interim constitution was promulgated for Iraq. In fact, following the coup led by the Baath Party, four provisional constitutions were made for the country. In addition to the constitution of 1963

mentioned above, others were adopted in 1964, 1968 and 1970.

The constitution of 1970 created the Revolutionary Command Council (RCC). The RCC became the supreme body for political decision-making in the Iraqi state until 2003. It had almost absolute legislative and executive powers. It could issue laws and take decisions that had the force of law. The 1970 constitution also conferred on the President of the Republic the right to make decisions that had the force of law. Under the Law of Reform of the Legal System No. 35 of 1977, state authorities became tools for serving the interests of the leadership of the Baath Party.

Moreover, the RCC was the only authority in the state vested with the right to appoint members of the legislative, executive and judicial organs of government and also amend the constitution as far as this article is concerned, the judiciary did not effectively exercise its practical judicial powers. There was even no specific body to hear appeals from its decisions. Rather, matters were left under the control of the heads of the various executive bodies. The legal system of that period simply represented the exclusive will of the Baath Party. Thus, in terms of the administrative decision-making, the administrative authorities possessed broad discretionary powers derived from the 1970 constitution as well as the applicable administrative laws, such as Civil Service Law No. 24 of 1960 and the State and Public Sector Employees Discipline Act No.14 1991.

2.8 The occupation of Iraq and the vacuum in the legal system (2003 – 2005)

In 2003, U.S. forces occupied Iraq and the country rapidly slides into chaos due to breakdown in security. In 2004, the occupation forces formed the basis of the political process, that is, the Governing Council under Regulation No. 6 of 2003. This Council consisted of twenty-five members all of whom signed the Transitional Administrative Law (TAL). The TAL was formulated by a group of respectable men and women who recognised that Iraq had been lawless for far too long and that institutions for the rule of law needed to be developed.

Therefore, to establish a new legal system, the Governing Council conceived a transitional

process, which was divided into two stages. The first, which began in late June of 2004, was for the establishment of an interim government. The second started after the National Assembly elections as stipulated in TAL, those elections were not to be delayed. They needed to be conducted between December 31, 2004 and January 31, 2005. This phase of the transition process was expected to end when an Iraqi government was formed in accordance with a permanent constitution.

3. THE NEW LEGAL SYSTEM UNDER THE CONSTITUTION OF 2005

In January 2005, a Constitutional Commission was appointed after the election of the Transitional National Assembly. The Commission immediately began drafting a permanent constitution, which was ratified at a national referendum on October 15, 2005. After a prolonged and strenuous process, this constitution entered into force in early 2006. It established a new legal system meant to completely rebuild the Iraqi state structure. As it were, the absence of a viable legal system was, in part, the cause of the chaos, which the country experienced in the previous years. Thus, the essential function of the 2005 constitution was to establish a legal system for the Iraqi state and delineate the responsibilities of each state organ.

Under the new constitution, Iraq became a federal state and a democratic republic. At the same time, Islam continues to play an essential role in the legal system. It remains the official state religion and the primary source of legislation. Therefore, no law may be enacted that conflicts with Islamic principles or democratic rights and freedoms. The constitution is the supreme law, and any legal text that is inconsistent with it is deemed void. Further, Article 14 of the constitution guarantees the right to equality before the law. As well, it enshrines the freedom of thought, conscience and belief.

Under the new constitution, the federal authority is composed of the legislature, executive and judiciary. Coordination and cooperation between these organs of government is ensured through the principle of separation of powers. The federal legislature

also called the parliament, consists of two chambers, the House of Representatives and the Federation Council. The constitution lays down the basis for the composition and powers of the parliament. It pacifies a mechanism for the election of members of the House of Representatives through the secret ballot system. Moreover, it provides for a parliamentary term of four years.

The House of Representatives takes decisions by a simple majority, provided that a quorum is present at the session. The presence of an absolute majority of members of the House is required to achieve a quorum for any given session. In respect of draft laws, the constitution sets out three methods for presenting bills to the House of Representatives. First is through the President of the Republic and the Council of Ministers. The second is by ten members of the House of Representatives. Third, bills could be presented by a competent legal committee within the parliament.

It is important to note that the Federation Council is the second chamber of the federal parliament. However, despite its importance, it has received no attention, simply because Iraqi political parties have yet to reach an agreement on this issue. The composition and functions of the Council were even supposed to be clarified in the 2005 Iraqi constitution, similar to those of the House of Representatives. The absence of the Federation Council, which is supposed to comprise representatives from the regions and the governorates that are not organised as a region, has weakened the legislative authority. The existence of this Council, which is authorised by Article 65 of the Iraqi constitution of 2005 is significant in two ways. First, the Council is supposed to have oversight over legislation made by the House of Representatives. Second, it has the function of ensuring the enactment of laws that serve the interests of the governorates. Third, it bears the responsibility to prevent parliament from enacting legislation that runs contrary to the public interest or to amend such legislation. Consequently, its absence has enabled the House of Representatives to take actions that do not fall within its constitutional powers.

Constitutionally, the House of Representatives has broad powers. The most prominent of its prerogatives is the enactment of federal laws

and the monitoring of the executive branch. The Federal Executive consists of the President of the Republic and the Council of Ministers. Article 73 of the Iraqi constitution of 2005 grants specific powers to the President of the Republic. The most prominent of these powers is the granting of special amnesty, barring certain types of crimes, as well as the ratification of international treaties and conventions.

It is worth mentioning that the President of the Republic only has the right to ratify laws enacted by the House of Representatives and cannot veto them. Therefore, most of the powers conferred on him cannot be considered as effective and even commensurate with the office of the President of the Republic. According to Article 76(1) of the Iraqi constitution, the President of the Republic shall charge the nominee of the largest political bloc

in the House of Representatives with the formation of the Council of Ministers within fifteen days of the election of the President. The Prime Minister presents the names of ministers for parliamentary approval by an absolute majority. As an institution headed by the Prime Minister, the Council of Ministers enjoys broad powers under the constitution.

The discussion, so far, has addressed the relevance of the division of powers under the Iraqi constitution of 2005. The constitution refers to the structure and functions of these powers of government, in addition to their distribution horizontally through the principle of separation of powers. Also, it deals with the vertical division of powers in Iraq, which is the distribution of powers between the federal government and the governments of the regions, as well as those of the governorates.

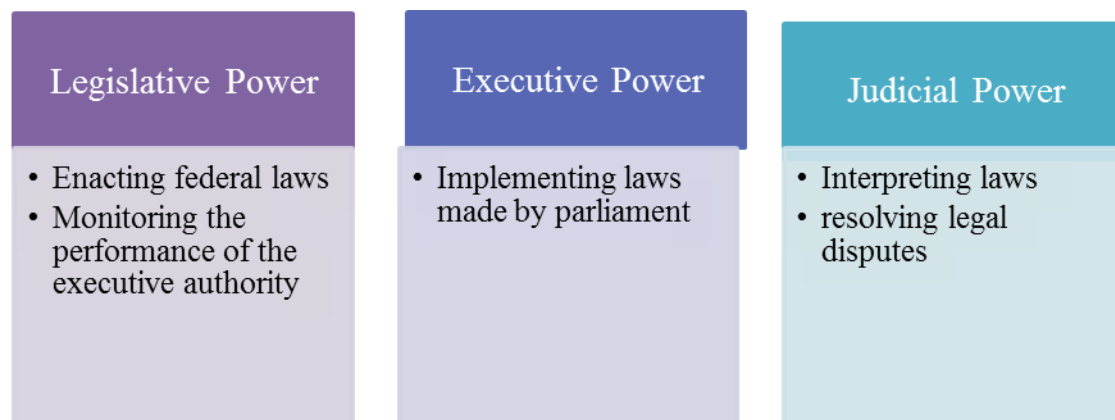


Chart: 2.1 The role of Iraqi federal powers

Source: Iraqi constitution of 2005

Chart 2.1 above shows the role of the three central powers in the Iraqi federal government. The horizontal distribution of powers is based on the principle of separation of powers. As can be observed, there are three powers, namely the legislative, executive and judiciary. The legislative power performs two essential functions, which are the enactment of laws and censorship. The main task of the executive branch is the implementation of laws made by the legislative authority. The judiciary performs two main functions, which are the interpretation of laws and resolution of disputes.

4. THE PRINCIPLE OF LEGALITY AND THE IRAQI LEGAL SYSTEM

The principle of legality is a core principle of the rule of law, as it significantly contributes to the defense of the legal system and the attainment of justice when exercising discretion. This principle was established during the French Revolution of 1789 to govern the work of the state's administrative authorities. Thus, recognising a legal principle in law has a constitutional value because it represents the moment of establishing the State based on legal principles, as defined by the

premise of establishing modern public administrative authorities dedicated to protecting individual rights. The principle of legality demands that the law must be unambiguous, and the government and individuals must abide by it. Additionally, when an administrative authority exercises its discretion, individual rights and liberties must not be violated. In this connection, the judiciary exercises its influential role as a supervisory body, enforcing the rule of law and preserving individual rights. Recognising the principle of legality also means an acknowledgment that any action or decision having constitutional value should be based on legal grounds to create a modern public administration. Hence, this principle also helps decisively in maintaining a balance between individual rights and the rule of law. The principle of legality imposes a duty on administrative authorities to justify their decisions, and requires judges to defer to the extent that the offered justifications meet applicable standards. This combination holds decision-makers accountable to fundamental values without limiting their discretionary authority.

It is also worthy of note that the principle of legality requires a constitutional foundation to legitimise its application. This explains why contemporary administrative systems have adopted this principle and positively transformed it by explicitly including it in their constitutions, as in the Iraqi constitution of 2005, to which attention now turns.

4.1 The principle of legality and the Iraqi constitution of 2005

In Iraq, the principle of legality is stipulated in the Iraqi constitution in a specific and transparent manner through provisions that traverse this instrument. The constitution provides that it is not permissible to enact any law or take any decision that conflicts with public rights and freedoms. State institutions must respect the rights of individuals and uphold the principles of democracy. The constitution explicitly affirms the notion of the rule of law. It avers that the people are the source of authority, who give consent and legitimacy to the government through the principle of legality.

The Iraqi constitution also professes its supremacy, being the supreme law in the country that binds all individuals and official institutions, without exception. Therefore, any law enacted in contravention of the constitution and the principle of legality shall be considered null and void. In Part II, the constitution also addresses civil, as well as political rights, and clearly reaffirms the equality of all Iraqis before the law. Further, it provides that it is not permissible to enter and search houses without judicial notice authorising such entry and search.

Therefore, it is clear that the Iraqi constitution affirms the principle of legality through its provisions. All of the principles articulated in the constitution have equal value in undergirding the constitutionality of the principle of legality. Thus, there is a sound basis to claim that the rule of law, especially the principle of legality, has played a vital role in developing the new Iraqi constitution, at least, from a theoretical perspective. Even on a practical level, the Iraqi Federal Supreme Court, through its jurisprudence, affirms the need for administrative authorities to comply with the principle of legality when exercising their discretionary powers. This is because it is an essential part of the rule of law. For example, in *ASI v. Minister of Agriculture*, the Court held that:

Clause 4 of Article 11 of the State and Public Sector Employees Discipline Act No. 14 of 1991 is unconstitutional. This clause excludes the penalties of drawing attention and warning from being subject to appeal. This exclusion violates the principle of legality and contradicts Article 100 of the 2005 constitution which prohibits stipulating in statute immunity from appeal for any administrative action or decision.

A more formal conception of the principle of legality was applied in the case of *GKN v. Minister of Education*. The petitioner claimed that he was retired in 2011 for political reasons and then returned to public service in 2013. He contended that during the period, 2011-2012, the administrative authority did not pay his salaries and gave no reasons, despite submitting a written grievance. The Supreme Administrative Court held that the petitioner was placed on retirement on an illegal basis because the administrative authority failed to

follow legal processes. Further, the petitioner was not responsible for wrongful actions on the part of the administrative authority. The Court added that the petitioner was still fit to work and his placement on retirement against his will was contrary to administrative law and amounted a violation of the principle of legality.

In light of the above judgments made by various competent judicial bodies, specific criteria have been set to provide a suitable dimension to the principle of legality. They focus on the necessity to strike the right balance between individual rights and the public interest. Moreover, the judiciary has proven, through its judgments, that the principle of legality is the basis of administrative actions. Also, this principle marks the Centrepiece of the rule of law, which if ignored, will weaken the state. As always, it is the function of the judiciary to protect individual rights and fundamental principles enshrined in the constitution.

5. CONCLUSION

This article examines the legal system in Iraq. It found that the country's legal system is a mixed one in which both civil law and Islamic principles are applied. The country's legal system was influenced by France, which is divided into private and public law. At the same time, Islam plays a significant role in the Iraqi legal system and, in fact, serves as the primary source of Iraqi legislation. Accordingly, any law that contradicts the principles of Islam is void under the Iraqi constitution of 2005. The Iraqi legal system can be traced from the era of Hammurabi, in ancient Mesopotamia, to the modern era and the establishment of the Iraqi state.

This article found that successive legal systems have clearly affected the administrative decision-making process in Iraq. During the Abbasid era, the Caliph had absolute powers in decision-making. Standing by his side was the minister, who acted as his alter ego and exercised the broad powers granted to him by the Caliph. The Abbasids paid great attention to the judiciary, as the Diwan al-Mazalim, otherwise called the Board of Grievance, was established to look into decisions made by governors and rulers. This article further found

that the role of the Diwan al-Mazalim is comparable to the one played today by the administrative judiciary in Iraq. The reason for this is that both courts were set up to look at administrative decisions and cancel them if they broke people's rights.

In the Ottoman era, the Sultan was at the top of the power hierarchy. He exercised absolute authority in various fields, including politics, the army, the judiciary, social affairs, and religion. However, the Tanzimat reform programme later restricted the Sultan's powers during the Tanzimat reform programme. Moreover, findings from this article show that successive legal systems in the modern era have also affected the administrative decision-making process in Iraq. For example, when the British took over Iraq in 1917, apart from enacting the country's first constitution in 1925, they resorted to establishing an administrative system that was amenable to their colonial agenda. As a result, they wielded broad discretionary powers that served their parochial interests.

The article concluded that the constitution of 1970 regarded the Revolutionary Command Council as the supreme political decision-making body in the Iraqi state until 2003. It had almost absolute legislative and executive powers, with the authority to make laws and take decisions that had the force of law. The constitution of 1970 granted the President of the Republic the right to make decisions that had the force of law. Law No. 35 of 1977 changed the way the government worked. It made the state a tool for the Ba'ath Party, which had taken over the monarchy in 1958. However, in practice, Iraq continues to face significant obstacles that affect the administrative decision-making process. Most administrative decisions are made based on personal, political, and sectarian interests. This article concludes that the reason for this is the weakness of the judiciary and the absence of judicial oversight, which have contributed significantly to the exacerbation of these obstacles. In addition, there are no laws that outline the work of administrative bodies and set limits on how they can use their discretionary powers.

Another important issue discussed in this article is the principle of legality. It has been argued that this principle corresponds to a

particular concept of democratic legal culture, the culture of justification. The legality principle requires decision-makers to justify their actions by demonstrating either how they conform to the principle of legality or how their deviation from this principle that protects individuals' rights and freedoms is justified. The article suggests that these developments necessitate the decision-makers in the Iraqi administrative authorities to justify their decisions. In addition, administrative courts should be actively involved in monitoring administrative decisions and eliminating those that violate the principle of legality. It would make administrative decision-makers responsible for adhering to the principle of legality and respecting the rule of law to protect the rights of individuals from the arbitrary exercise of their discretion.

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