

# Dual Legislative Power In The Federal State Comparative Study

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## **ABSTRACT**

The research deals with two important topics, the first of which is the issue of federalism as a system of government, as it high light the characteristics and principles of this system, which differs from confederation, autonomy and administrative decentralization, as it achieves different goals at the same time, while it leads to the satisfaction of the peculiarities of the various pluralities within the state with its enjoyment of a great deal of independence. In its territories and its participation in the various authorities at the federation level, it preserves at the same time the unity of the state and leads to strengthening its unity, increasing its prestige and economic recovery, which led to its adoption by many countries because of its great and influential role in the development and progress of these countries at the levels. The various different, especially the introduction of the democratic system, and this can be seen in terms of the increasing number of countries that adopt it today. The second is the issue of the duality of the legislative authority in the federal state, and from this standpoint the idea of this research emerged and the reasons for choosing its topic parliamentary duplication and the need to adopt it in the countries of the central union federal because there must be a higher council that represents the states equally and the lower council represents the people of the federal state in a group according to "the number of the population. And the types of states differ according to the circumstances of each one of them, in that this legislative body is single or dual-composition".

**Keywords:** Bi-legislatures, federalism, constitution and political systems, Federation Council.

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## **1. Introduction**

Democracy requires that the people govern themselves to achieve their own goals and interests, i.e., what is known as direct democracy, and since it is difficult in the current circumstances of a modern State to expand the size of the State and the density of the population, the majority of States follow the principle that the people choose their representatives to act on their behalf to achieve these goals.

Hence the idea of this research and the reasons for choosing the theme of "the duality of the legislative councils in the federal state between theory and practice" in an effort to contribute to highlighting the ways in which they are achieved, and even the determination of the scope of the research and its limitation on the duality of the houses of Parliament and its impact on the achievement of democracy makes it more difficult to research this scope because of the

lack of specialized sources in the field of legislative duality and its impact on the achievement of democracy.

If the reasons behind each research are certain reasons for the researcher to delve deeper into it, it can be said that there are many reasons that led to the knocking on this complex and overlapping subject, the foremost of which is the desire to find a constitutional solution to introduce a system of bilateral legislative councils in the federal state, where the research adopted Iraq as a model as a federal state in addition to the state of Switzerland, where it is considered double. The legislature of federal states makes sense as a result of the special composition of such states, on the one hand, they are one unit, one nationality, and on the other hand they are a mixture of different states and regional groups while maintaining a great deal of independence.

## **2. Research methodology:**

To study the subject of research - the system of bilateral legislative councils between theory and application - we followed the analytical curriculum and comparative approach, because the comparative study is very important in this subject, to carry out a careful analysis and study of the political systems of foreign countries in depth will undoubtedly give a clear vision of the system of parliamentary bilateralism taking into account the circumstances and circumstances that accompany them at all stages of their historical development.

### **1.1 The philosophical foundations of the bi-legislative system**

The idea of a system of bi-legislative councils is a reflection of the principle of separation of powers and this requires the establishment of characteristics of sovereignty that differ from each other, and since the nation is a source of sovereignty, it is the nation that assigns these independent and different characteristics to independent and different bodies. "i"

According to the concept of the sovereignty of the nation, the will of the nation cannot be expressed at certain times, but it takes a long time to verify its true will, so the system of both houses would serve as a means of limiting power by power or urgency to the system of separation of powers, in the words of Brigadier Fidel "ii"

Accordingly, the principle of separation of powers is based on the distribution of State functions between three independent bodies, each of which performs its function as stipulated in the Constitution.

The philosophical basis of the parliamentary bi-system belongs to Plato's intellectual origins. (jiii State functions have been divided into three, the function of government, the function of production, and the function of defending the State "iiii" and ivthese functions are distributed to bodies so that each body exercises a particular function "v"

In Iraq since 1876, the parliamentary system of dualism has emerged in the Iraqi constitutional order, as Iraq belonged to the Ottoman Empire, and Medhat Pasha and other liberals have been able to impose on Sultan Abdul Hamid a constitution that introduced the system of parliamentary dualism. The parliament consisted of the Council of Envoys and the Senate. "vi"

The members of the first body were appointed by the Sultan and the number of members was not more than one third of the members of the second body, while the body of envoys is elected by the members of the Council of Envoys<sup>vii</sup>

## 1.2 Definition of a system of bi-legislatures

The linguistic and conventional meaning is one of the most important methodological stages used to give an accurate concept of any subject, so it is necessary first to move to the linguistic and then the conventional meaning.

The system is therefore a language: it is intended to arrange issues in a certain manner to obtain a specific objective, order, consistency and order in a normal manner. As for the word binary, its source of action is to make it two, and the duo is twofold.

The word parliament means parliament, a French word<sup>viii</sup>, a meeting of discussion and consultation derived from the French verb parler, which means "speak", and added a word, ment in the sense of the place, to mean the place of talk, dialogue and meeting.

As for the term, there is a lot of research and opinions of jurists where jurisprudence paid great attention to the study of the system of bilateral legislative councils, and some of them addressed the subject of constitutional law despite the existence of a side of jurisprudence, but it did not find any point in defining this system and merely addressed its various elements, and considered it part of the jurisprudence a phenomenon imposed by realistic necessities or historical considerations, a system whose meaning is evident through the name it advocates, and therefore the definition is irrelevant in working life<sup>ix</sup>

## 1.3 General principles of bi-legislative councils

The general principles of the T-legislative system are those rules that apply to any state that adopts such a system regardless of the form of a unified or federal state and these principles:

**First:** the principle of different constitutional competences

In countries with a parliamentary bilateral system, it is not necessary to find a difference between them in terms of competence and composition, the two councils are similar to representing the same trends, so the required benefit is not achieved from the establishment of parliamentary bilateralism through which the representation of different currents is achieved despite their agreement in the parliamentary capacity, and they must equally have jurisdiction. It leads to differences between them that are difficult to resolve, so states with a system of legislative bilateralism are working to create a different jurisdictionx.

**Second:** the principle of not combining the membership of the two councils with the function of the public service. The legislative flaw lies behind the introduction of the principle of prohibiting the combination of membership of the two chambers and the functioning of public functions in the constitutional text in achieving the principle of separation of powers, so the presence of members of the executive within the Council weakens its entity as a watchdog of the work of the executive branchxi.

#### 1.4 Evaluation of the system of bilateral legislatures

Each system has its own pros and cons, which we can find in the form of advantages or weaknesses, and in light of this, a group of jurists goes to favor the parliamentary bi-system and another team goes against it and they have their arguments as well. It is better to take into account that there is some confusion between the arguments for the introduction of the legislative bi-system and the advantages of this system, due to the fact that the limit between the two systems is a slender limit, and it is difficult to distinguish them and that is the theoretical and practical reasons that were the reason for the adoption and introduction of this system.

##### First: The advantages of the legislative bi-system:

- **The ability to represent public opinion:** Supporters of the introduction of the two-chamber system also argued that the formation of parliament from two different houses in the way of formation and competences represents the traditional interests of citizens and give the opportunity to all forces and social and economic trends to express themselves and find an outlet to bring them into the spotlight, as well as to empower sectarian minorities and public figures who have not been able to from entering the Parliament from expressing its views in the second council, which reduces the chance of establishing non-official opposition groups or unions to put pressure on the state.
- **Accuracy in the legislative process:** According to constitutional experiments, this system leads to the accuracy of legislative work and prevents haste in legislation, so that a law is issued only after several stages and studies and examines twice from two different bodies that the issuance of laws that are more consistent and sensitive to the general principle.
- **Ensuring the state from dictatorial rule:** In other words, the parliamentary system of bilateralism prevents the arbitrariness and tyranny of the legislature and it is the safest system for preserving the entity of the authorities because a single council may strengthen its influence and impose on the country a frightening dictatorial rule, such as the dictatorship of the Constituent Assembly during the French Revolution<sup>xii</sup>.

##### Second: the flaws of the system of bilateral legislatures:

A single or unilateral council system is based on a single council with the legislative power exercising its constitutional competences, most importantly the legislative function and holding the executive accountable in some constitutional systems<sup>xiii</sup>.

Supporters of this system have denied the advantages of the parliamentary bi-parliamentary system and attributed to it a set of flaws that can be outlined as follows:

- **The system of bi-legislative councils runs counter to the idea that the sovereignty of the nation can't be fragmented:** According to the theory of the sovereignty of the nation, sovereignty in the hands of the nation' and the nation is a legal figure independent of the citizens who make up the nation, but the nation represents a group of citizens with specific characteristics by which it is right to vote a function performed by individuals in the name of the nation and not a right, and in the light of this concept the arbitrators themselves are the final decision makers and rulers at the same time, and this concept is a feast of the

desire to limit the absolute sultan because the personality of the nation differs from the personality of individuals and has a will above their will. On this basis, after the French revolution, the constitutions of Europe were drafted, influenced by the ideas of Jean-Jacques Rousseau. In other words, having two houses would fragment popular sovereignty that does not accept fragmentation, and must be based on a single council, making it easier to promote the people of their deputies facilitate the work of the government by relying on a single council subject to its will.<sup>xiv</sup>

- **The duality of legislative councils poses a threat to democracy:** Some jurists go on to raise another issue that they consider a defect of the bilateral system through the existence of the Supreme Council, which is a threat to democracy because the lower council is the most representative of the people and may find itself unable to enact a law that the country wants and does not want.
- **The system of bi-legislative elections is contrary to the principles of democracy:** There are those who believe that the way in which the Supreme Council is elected and formed is contrary to the principles of democracy through the adoption of indirect voting and stages, and this would move away from the people.

### 1.5 House of Representatives

The Iraqi Constitution of 2005 adopted a system of legislative bilateralism, which is what is in the work of most federal systems, called the First House of Representatives and the Second Council of the Council of the Union.<sup>xv</sup> But this constitution did not provide for any jurisdiction of the Council of the Union due to the postponement of its formation, while in accordance with the proposal of the Law of the Council of the Union submitted by the House of Representatives and under article 12, the Council of the Union is competent to approve by the absolute majority of the number of members of the Council, to appoint the president and members of the Federal Court of Cassation The Chief Prosecutor and the Head of the Judicial Supervision Authority, at the suggestion of the Supreme Judicial Council, this shows the lack of competence of the Supreme Council of Iraq and thus removes it from the influential role in both the legislative and even political process.<sup>"xvi"</sup>

Since the Federal State has a parliament that adopted the system of both houses, it is the requirements of popular representation in parliament justice and equal opportunities, so parliament in its first council consists of representatives of all the people with an equal proportion of individuals represented by the deputy every hundred thousand represented by one deputy, but the advanced situation does not meet the aspirations of the units collected by the Union, so the other council consists of a number of representatives on an equal footing between the federal units. Regardless of its size, population or potential to ensure its participation in governance. <sup>" xvii"</sup>.

### 1.6 Federation Council

Based on article 65 of the influential Iraqi Constitution, the Federation Council is the second speaker of the federal legislature, and the Iraqi Constitution stipulates that "a legislative council called the Federation Council will be established to include representatives of irregular provinces and provinces in a region, and regulate its composition, conditions of

membership, terms of reference and all related to a law enacted by a two-thirds majority of the members of the House of Representatives. "xviii"

So the Iraqi Constitution, through the said text, deals with only two topics concerning the second council of the federal legislature, namely, the naming of the Council so that it has identified a name for this council and called it the manifestations of the Union, like other constitutions of other constitutions that introduce the system of parliamentary duality, such as the French and American constitutions, where they were named the second council of the Senate, Bene What the Swiss Constitution named the Second House of Parliament the Council of States or States, the Basic Law of the Federal Republic of Germany has been named the Federal Council of Section Strat.

The Federal Council includes representatives of irregular provinces and provinces in a region, and it is essential in federal states that the Parliament consists of two houses, a house representing the entire people and a second council representing the provinces or states that make up the federal state, and this creates a kind of balance between the two chambers.

### **1.7 Organizing legislative specialties in Iraq's parliamentary bi-parliamentary system**

Legislative competences are the primary function of the two houses of Parliament in the parliamentary bilateral system and parliament is the original jurisdiction and the public mandate in legislation "xix"

Democratic constitutional systems are also keen to codify rights in constitutions and thus codify rights in constitutions, which means giving them high status in addition to providing for rights in ordinary laws without mentioning them in the Constitution itself, leaving those rights in a state of instability as a result of changes that may occur in ordinary laws contrary to the conditions required by constitutions to amend them. "xx"

Since the process of amending the Constitution is one of the most important and most involved constituent disciplines of the legislature in constitutional practical life, it is therefore necessary to limit ourselves in our study to the organization of specialties as follows:

The terms of reference of the legislative councils in proposing to amend the constitution in Iraq One of the advantages of the Constitution of the Republic of Iraq for 2005 is that it is a rigid constitution whose texts are characterized by formal and objective transcendence, where the ordinary legislator may not violate the provisions of the Constitution as the Constitution provided for the mechanism of protecting its provisions through the introduction of judicial control over the constitutionality of laws "xxi".

The adoption of the Constitution of the parliamentary system in the organization of government in the State requires reliance on the principle of separation of powers, with mechanisms for cooperation between them and from this point of view the Constitution found cooperation between the federal constitutional institutions and reflected its involvement in the process of amending the constitutional rules, but the Constitution gave each of them a role that differs narrowly and broadly from the role of the other, the Constitution equated the federal constitutional institutions in their role by proposing

Amendment, however, gave some of these institutions a role to play on their own without the participation of other institutions<sup>"xxii"</sup>.

The legislature was also given the same jurisdiction and confined to one of the houses of the Federal Parliament, where the House of Representatives was ordered without the Federation Council and five members of the House of Representatives were required to submit the proposal.

The Federal Constitution is also of great importance in the life of federal States, as it is the basis for regulating the distribution of powers between the State of the Union and the States, and is considered to safeguard its manifestations of independence towards the State of the Union. Accordingly, federal constitutions have been issued as a whole by major organizations in which the role of states, such as the participation of states in amending the Federal Constitution, is gradually being passed in terms of proposing and approving the amendment.

### **1.8 The terms of reference of the legislative councils in proposing to amend the Constitution in the comparative states of the Swiss Constitution of 1999**

The Swiss Constitution of 1999 distributed constitutional competences among state bodies and made the Federal Legislative Assembly the supreme sovereign.<sup>"xxiii"</sup>

#### **First: The terms of reference of the two houses in proposing a comprehensive amendment to the Constitution**

The Swiss Constitution authorized the comprehensive amendment in accordance with Article 193 of the Constitution, which reads, "A comprehensive review of the Federal Constitution can be proposed by the people or both the People's Assembly and the Provincial Assembly, and the Federal Assembly can decide." Article 138/1 of the Constitution also stipulates that "100,000 citizens with the right to vote can propose a comprehensive review of the Federal Constitution."

These two texts mean that the power to propose a comprehensive amendment is carried out in two ways:

1. The Federal Assembly is embodied in both houses of parliament as a contribution to this jurisdiction or is represented by the People's Assembly and the Provincial Assembly and exercise the right of the comprehensive proposal of the Constitution individually, thus equating the two chambers with the authority of the comprehensive proposal of the Constitution.
2. Represented by the people alone, by submitting a proposal by 1,000 people with the right to vote. The popular proposal is a constitutional method that allows the people to prepare a bill on a particular subject and submit it to Parliament for discussion, and the Constitution usually requires parliament to commit to discussing a bill submitted by voters that it must be signed by a certain number of voters and may be a legislative or constitutional proposal.

Switzerland has defined this model of amendment proposal at the central level under the Swiss Federation Constitution of 1848. <sup>121</sup>From 1977, the proposal requires 100,000 citizens, up from 50,000<sup>"xxiv"</sup>.

### **Second: the terms of reference of the two houses in proposing a partial amendment to the Constitution**

The Swiss Federal Constitution of 1999 regulated the provisions of the partial amendment to the Constitution and gave this power to the people and the Federal Assembly, as stipulated in Article 194/F1 as follows: "A partial review of the Federal Constitution can be requested from the people and the Federal Assembly can decide." Article 139/1 of the Constitution on the quorum of citizens who are entitled to submit the proposal stated that "100,000 citizens with the right to vote can propose a draft partial review of the federal constitution."

In the light of these constitutional texts and their depth, it is clear that the provisions of the constitutional amendment proposal are comprehensive or partial by the same actors as the people once and the Federal Assembly again.

However, some of the distinct differences between the two cases are that the houses of Parliament give each individually the power to propose a comprehensive amendment, in addition to giving them such power in an assembly form, while not giving the power to propose partial amendment to both houses of Parliament separately.

### **1.9 The need for bi-chamber when amending the Constitution**

Since the constitutional rules are in fact a reflection of the political, social and economic situation, it is necessary for the Constitution to keep pace with the various developments that accompany the political community by making the necessary and necessary amendments imposed by development.

In fact, the idea of amending the Constitution had emerged, with the emergence of constitutions and their stability. The exercise of democracy is accompanied by revision and the initiation of the necessary amendments, since constitutions are considered to be amended only if there are reform objectives or in the event of force majeure and exceptional power, because the interest of the nation is superior and advances the necessity of restricting texts, i.e. if the interest of the nation collides with legal and constitutional texts, the nation does not have to face dangers out of respect for the texts:<sup>"xxv"</sup>

Whenever the words about amending the Iraqi constitution in force in 2005, they respond by saying that it is a rigid constitution and we cannot amend it, and this is a delicate change from the point of view of some laws and politicians because this xxvi does not mean that it is not able to amend it by following certain measures that guarantee its sanctity and maintain its prestige and prevent the ease of manipulating its texts:<sup>"xxvii"</sup>

With regard to the amendment of the provisions of the Constitution, there is an objective and temporal prohibition contained in the constitutional article, on the part of the substantive prohibition intended for prohibition containing certain provisions of the Constitution, which prohibits the amendment of certain provisions of the Constitution

absolutely or during a certain period of its effective date with a view to preserving the foundations of the political system established by the Constitution or preserving the higher values and principles of society<sup>"xxviii"</sup>.

### **1.10 Fate of the Council of the Union**

Democracy in Iraq is lame, going on one man, going to one house, the House of Representatives, which was one of its first responsibilities when it was convened after the constitution passed the law of the Federation Council consisting of representatives of the irregular provinces and provinces in the region, and Iraq has passed four sessions of the houses of deputies and this law has not been enacted either a feeling of lack of need or fear of it because it will have an important role in legislating laws in approving or rejecting them as it exists today in countries with both houses<sup>"xxix"</sup>.

Because of the absence of this Council, Iraq has paid a heavy price, resulting in weak legislative life, the establishment of non-constitutional functions by the House of Representatives, the emergence of imbalances in the provinces and the lack of public policies that guarantee justice between provinces, ministerial representation or representation<sup>"xxx"</sup>.

We have noted through individual influences that some provinces have become full of wealth, along with provinces with a lost right, because the presence of the Federation Council, which was adopted by the Iraqi Constitution in Article 56, which includes representatives of irregular provinces and provinces in a region that will work in two directions; Some of the ill-considered laws that have exhausted the Iraqi budget, such as the recent retirement law, which set the age of the retiree at 50 years<sup>"xxxi"</sup>.

It is the task of the Federation Council to filter laws and prevent any law harmful to the interests of the nation in addition to its work in achieving justice among the provinces through legislation in favor of public justice.

The presence of this council is all the more important in the absence of provincial councils whose work has been frozen by a decision of the House of Representatives, and there is a desire to make a constitutional amendment to abolish it because it has become an obstacle to the progress of the provinces due to the conflicts between these councils and governors, as it has been granted the authority. With regard to the amendment of the provisions of the Constitution, there is an objective and temporal prohibition contained in the constitutional article, on the part of the substantive prohibition intended for prohibition containing certain provisions of the Constitution, which prohibits the amendment of certain provisions of the Constitution absolutely or during a certain period of its effective date with a view to preserving the foundations of the political system established by the Constitution or preserving the higher values and principles of society<sup>"xxxii"</sup>.

The governor chose these councils, which led to constant problems between the governor and the council, so some provinces wake up every morning to a new governor<sup>"xxxiii"</sup>.

The provinces have seen a relative improvement in service projects in the absence of these local councils in the absence of previous frictions and conflicts, and with the absence of these councils the presence of the Federal Council becomes important in order to preserve

the rights of the provinces in addition to its legislative duty and control of the laws of the House of Representatives.

The philosophy of having two houses in states made up of territories or states is the realistic representation of the states represented by the Council of the Union in addition to the proportional representation represented by the House of Representatives, each region has a fixed number of representatives in the Council of the Union defending the rights of the territory even if it is small in its area or population.

This is necessary to achieve today in order to preserve justice and balance, especially since some provinces began to complain of neglect and began to demand a measure of independence from the center, in order to preserve the unity of Iraq from calls for secession or relative independence, elections had to be held in each province to choose a number of representatives to form this house of representatives, which is tasked today in the current House of Representatives, which inherited the responsibility of the legislation of the Federation Council of Representatives from the previous House of Representatives and thus the responsibility of legislating this The law from one council to another, which eventually did not appear<sup>"xxxiv"</sup>.

The absence of the Federation Council is therefore a gap in the democratic life of Iraq, in addition to being considered a constitutional violation for which the Council of Ministers is responsible for legislating laws with financial obligations, as well as the House of Representatives, which submits proposals for bills to the Council for approval.

Some still feel that there is no need for two councils in Iraq on the grounds that it is burdening the Iraqi budget, while the presence of the Union Council will prevent Iraq's wealth from being wasted in unnecessary laws.

The Iraqi Constitution of 2005 made it important to have the Council of the Union when Article 56 was enacted and the House of Representatives committed two-thirds of its members to enact a law to do so. Today, the Council is increasingly in need of its existence in light of the failures of the laws passed by the House of Representatives in its next sessions, in addition to providing reassurance to the affected provinces that there are those who defend them. Returning to the Iraqi Constitution of 2005, it is only mentioned four times and briefly<sup>" xxxv"</sup> and gave all powers to the House of Representatives and remained silent about the powers of the Council of the Union, and the legislative process is entrusted to the entire House of Representatives and is entitled alone to propose federal laws<sup>"xxxvi"</sup>, and summarized the control of the performance of the executive branch and many other specialties without a role in the Council of the Union, in which case there will be two main possibilities, the first of which is the futility of the Union needs to be abolished and the second is to maintain the Council of the Union and to look into its terms of reference.

### **1.11 Abolition of the Federation Council**

According to the prevailing trend, there is a great correlation between federalism and the system of bi-legislatures, and it is considered logical that one of the two legislative councils in the federal states is the result of a tripartite relationship within the Union, but the

importance of this system has begun to weaken in some states simple or complex, which led some to say

There is no need for another council beside the House of Representatives except in federal states and loses its *raison d'être* day by day, and some still feel that there is no need for two councils in Iraq on the grounds that it is burdening the Iraqi budget<sup>"xxxvii"</sup>.

### **1.12 The dumbest on the Council of the Union**

The constitutional legislator in referring to the Council of the Union refers to one of the two possibilities, either the Federal Council is an advisory or the Council gives some real legislative competences, in the first possibility if the Constitution wants the Council of the Union to be an advisory council, it leads to the establishment of a council without real terms of reference, and the legislator who wants to have such a consultation. The character of the obligation must be expressly stated and this will inevitably require amending the Iraqi constitution.

If the extent of these competences is indicated by the House of Representatives through legislation that it sets out, a new obstacle arises: the diminution of the House of Representatives from its terms of reference referred to in the Constitution, and this will lead to a constitutional violation requiring the amendment of the Constitution for the purpose of granting the Council of the Union real specialties as stipulated in article 48 of the Constitution and not becoming an advisory council, and therefore it is clear that the starting point is to amend the Constitution, i.e. there is no room to indicate the competences of the Federal Council. Broad, narrow or even repealed unless the 2005 Iraqi constitution is amended.

The absence of the Federation Council is therefore a flaw in the democratic life of Iraq and is considered a constitutional violation and is the responsibility of the Council of Ministers responsible for legislating laws with financial obligations, as well as the House of Representatives, which submits proposals for bills to the Council for approval<sup>"xxxviii"</sup>.

### **1.13 Conclusion**

After writing the research on the subject of the duality of legislative councils between theory and application, we reached the following conclusions and proposals:

#### **First: Conclusions**

1. The countries that adopt a bi-parliamentary system differ from one and two houses, and the Iraqi constitutional draft adopted the second method and ordered the formation of a council of the Union as well as the House of Representatives, but the formation of this council and its terms of reference are controversial and controversial.
2. Through research, it is clear that the introduction of a system of parliamentary dualism in the construction of the legislature is necessary to establish a successful parliamentary democracy capable of representing a diverse demographic.

3. It is not enough to provide for the duality of the legislative councils at the heart of the constitutional document as stated in the Constitution of the Republic of Iraq for 2005 in order to say that this system exists, but there must be detailed rules in which constitutional competences are regulated, taking into account the general principles on which the system of bilateral legislatures is based.
4. Separation of powers, which are one of the basic features of systems of government with long democratic traditions, whether they take the parliamentary or presidential systems.
1. The emergence of the parliamentary system was accompanied by the emergence of the parliamentary system in England, with its historical roots due to the division that parliament witnessed there. Through the Swiss Constitution of 1848 to its Constitution of 1999, and to the Constitution of the Republic of Iraq in 2005.
2. The parliamentary T-system has two concepts, a narrow concept and a broad concept, according to the narrow concept, the composition of the legislature stands only at formal boundaries, while according to the broad concept it includes in addition to the formal aspects its substantive aspects.
3. The rules of the bi-legislative system have evolved, and those rules are no longer in the classical bilateral system with a bi-chamber legislature, and the features of that development are that constitutional competences must be different, provided that both houses are primarily concerned with the task of legislating.
4. Practical reality has shown that the Federation Council enjoys a great deal of stability, giving its members important political weight.

### **Second: Proposals**

1. The haste to implement a system of bi-council so that legislation is very precise, issued by conscious will and without haste, and free of shortcomings and ambiguity, in order to be free from challenging its unconstitutionality on the one hand, and to prevent its provisions from extending the hand of the legislator to it by amendment, switching and throwing, and reducing the legislative inflation that we live in Iraq on the other.
2. Given the importance of the Supreme Council of Federal States and Iraq from one of these countries, we recommend amending Article 65 of the Iraqi Constitution, which refers the formation of the Supreme Council in Iraq to the lower council by law so that it is replaced by constitutional articles governing how the Supreme Council is formed and separating the council's terms of reference, taking into account the choice of direct general election as a means of forming the Council.
3. We recommend that the Iraqi legislature amend the provisions of the constitution concerning the organization of the legislative authority based on the regularity of parliamentary bilateralism and the regulation of the provisions and terms of reference for the composition of the two houses of parliament.

4. Dealing with requests for the formation of territories in accordance with the Constitution, and directing them to form on the right grounds, to get federalism in Iraq out of its anomalous situation.
5. We recommend that the Iraqi constitutional legislator ensure that the amendment guarantees provisions specifying the way the Council of the Union is formed, taking into account the general principles governing the system of bi-legislative councils embodied in the equal representation of the provinces.
6. We call on the constitutional legislator to avoid the shortage of constitutional texts, including the text of Article 126, 1 and 2, under the supervision of the Council of the Union in the constituent jurisdictions.
7. The regional participation rule in the process of amending the Iraqi Constitution should be established directly through parliament, the population of the provinces or directly through the Federal Parliament, the House of Representatives and the territories.
8. The issue of the Council of the Union must not be kept exclusively in the corridors of the House of Representatives or exclusively among a number of bloc leaders in Parliament, which is a major national and popular issue.

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<sup>i</sup> Dr. Mr. Sabri, Government of the Ministry Lecture Group, Abdullah Wahba Library, 1945, p. 7.

<sup>ii</sup> Brigadier Fidel, Senior Mediator in Constitutional Law, Paris, 1949, p. 176, quoting Dr. Munther Al-Shawi, Constitutional Law and Political Institutions, without place and date of printing, p. 141-142.

<sup>iii</sup>Dr. Abdelghani Bassiouni Abdullah, Political Systems and Constitutional Law, former source, p. 187.

<sup>iv</sup>Dr. Tharwat Abdel Aal, General Theory of Constitutional Law and Political Regulations, Cairo, Without Publishing Place, 2000, p. 181-182

<sup>v</sup> Dr. Dred Mohamed Hassan Al-Jaaidi, Balance between the executive and legislative branches of the parliamentary system, Arab Renaissance House, 2011, p. 33.

<sup>vi</sup>Ali Yusuf Abdul Nabi Al-Shukri, System of The Councils of the United States, Master's Thesis, Faculty of Law, University of Baghdad, 1994, p. 19.

<sup>vii</sup>- The 55th of the Ottoman Constitution of 1876, however, "every law regulation is not acceptable unless you read it in the form of envoys and then in the body of the dignitaries as an item, and each decides by a majority of opinions and then decides by a majority also in the body of the General Council."

<sup>viii</sup> Louis Maalouf, Upholstered in Language, 4th Edition, Aziz Press, 1433, p. 35.

<sup>ix</sup>Maurice Dufresne, political institutions and constitutional law, former source, p. 119.

<sup>x</sup> Dr. Saad Asfour, Egyptian Constitutional Order Constitution of 1971, Al-Id Facility, Alexandria, 1980, p. 167.

<sup>xi</sup>Dr. Mohammed Salim Ghazouri, Brief in the Political and Constitutional Organization of the Hashemite Kingdom of Jordan, Dar al-Culture, Amman, 1996, p. 128.

<sup>xii</sup>Dr. Mustafa AbuZidfifi, Principles of Political Systems, Former Source, p. 110.

<sup>xiii</sup> Dr. Suleiman Mohammed Al-Tamawi, the three authorities in contemporary constitutions and in Islamic political thought, former source, p. 113.

<sup>xiv</sup> Dr. Ismail al-Ghazal, Constitutions and Political Institutions, Ezzedine Printing and Publishing Foundation, Beirut, 1996, p. 209.

<sup>xv</sup>Article 126/II of the Constitution of the Republic of Iraq of 2005.

<sup>xvi</sup> - Rizkar Abdel, System of The Two Councils, Master's Thesis, First Edition, Zain Library of Human Rights and Literature, 2018, Beirut, p. 166.

<sup>xvii</sup> The same source, p. 166.

<sup>xviii</sup> Article 65 of the Iraqi Constitution of 2005.

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<sup>xxv</sup> Dr. Ihsan Hamid Al-Meferji and Dr. Katran Zagher Nema, Dr. Raad Naji Al-Jeddah, General Theory of Constitutional Law and Constitutional Order in Iraq, Fourth Edition, Legal Library, Baghdad, 2011, p. 254.

<sup>xxvi</sup>Dr. Raa'ad Mohammed Ali al-Tayyar, article entitled: The Iraqi Constitution is a difficult and not impossible task, The Center for Strategic Studies, at the following link: <http://kerbalacss.uokerbala.edu.iq/wp/> Visit Date 23 March 2021.

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<sup>xxviii</sup>Dr. Sajid Mahmoud al-Zamili, Principles of Constitutional Law and Constitutional Order, First Edition, Neipur Printing and Publishing House, Diwaniyah, Iraq, 2014, p. 269.

<sup>xxix</sup>Dr. Mohammed Baqir al-Qazwini, political article entitled: The Council of the Union is a constitutional necessity and an urgent need, at the following link: <https://www.raialyoum.com> the date of the visit 30 March 2021.

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<sup>xxxv</sup>The first reference was in article 48, the second in article 65, the third in article 135 and finally article 137.

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