

# Legal Aspects of the Distribution of Natural Resources in the Federal State

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The principle of justice is the first fundamental criterion and virtue in society that everyone is certain of, before the idea of law and the state exists. Some countries with a federal form may face financial problems, and they often arise as a result of two types of financial imbalance or asymmetry between the federal and state authorities. The nature of the complex federal system makes the issue of wealth sharing a difficult issue. This is especially so, if there is no clear or large variation in the size of the wealth found in the member states of the federal system, i.e. their abundance and concentration in states and their scarcity or scarcity in other states. Redrafting constitutional texts related to the distribution of financial powers through an explicit and clear reference to economic, financial, customs, tax, commercial and federal public budgets is of an executive nature. The Iraqi legislator must reformulate some of the constitutional texts related to the distribution and exploitation of wealth, especially Article 112 of the current constitution, and clarify what is meant by the terms contained therein. Especially those related to the current fields and future fields, so that they are not misinterpreted and thus lead to an interpretation that causes many problems.

**Keywords:** *Legalisation, Natural Resources, Federal State.*

## Introduction

Most federal constitutions tend to adopt texts and provisions to regulate the issue of the distribution of natural resources between the federal government and the governments of the regions or the states that make up it. Therefore it is the basis or rule on which the federal state relies on, sharing natural resources between the central government and other components of the federal state. The federal government may agree with the governments (Raed, 2018), regions or states, or they may disagree about sharing these resources after the effective date of the federal constitution. This difference can be settled according to constitutional texts through the federal judiciary or through the political mechanisms of the actors involved (Ivo, 2012).



The federal state's resources and their distribution are mainly subject to considerations, the most important of which are legal considerations in the distribution of those natural resources. These considerations are usually represented by legal principles on which the idea of sharing these resources is based such as; the principle of fair distribution between the constituent states of the union, taking into account the poor states, a share of the producing states and the population in the constituent states of the federal state and others (Manea, 1990). These considerations and principles are found in the texts of the federal constitution, which defines the general frameworks of the state in the political, economic and social fields, as well as in the federal laws and even at the regional level through administration, executive tasks and horizontal coordination in the region. The sharing of natural resource revenues between levels of federal government is a critical issue for federal systems in countries rich in natural resources, such as Iraq, the United Arab Emirates, Nigeria, Venezuela and many countries that take the federal form of a system for them. Despite the presence of clear differences in terms of concentration of those natural resources (Alixandra, 2010), in a region excluding other regions that make up the federal union, which poses a real challenge to the central government. If this matter is not handled properly it will increase the intensity of rivalries between the regions that make up the federal state, and pose a serious threat to national unity in that country. Therefore there is a need to find ways and certain mechanisms, which are the basis of the distribution of those resources, in keeping the state's existence and unity. This research aims to clarify the most prominent constitutional and legal aspects of the distribution of natural resources in the federal state, and specifically within the texts governing the federal system in light of the 2005 constitution of the Republic of Iraq (Waheed, 2013).

## **Literature Review**

### ***Justice as a Criterion for Sharing Natural Resources in the Federal State***

What mainly distinguishes the federal system from others is the sharing of powers between the centre and the regions. The constitutional basis for the distribution of wealth in the federal union is based on the criterion of justice, in order to preserve the federal balance and prevent the occurrence of tangles and conflicts between interests in view of the dual nature of the federal system (Eliane, 2013). The first basic virtue in society is that everyone asserts their existence before the idea of law and the state. This is then considered the first origin of social life, and the most important principle of that governs the relationship of the individual with the state. The task of finding an agreed definition of justice has remained difficult to achieve and this is due to the fact that justice remains one of the relative matters that change with time, space and the people. However, instability is not due to the concept of justice itself (Manea, 1990). This was confirmed by the Supreme Constitutional Court in Egypt by a ruling in the year 1997 AD, which indicated: "... justice is not an absolute concept that is steadily fixed, but rather flexible and variable according to the criteria and levels of social conscience ...". Many

federal constitutions do not explicitly provide a specific definition of justice, but this does not negate its protection by the competent authority in those countries in accordance with the constitutional texts. Since the constitution has established justice in many of the texts it contains, to be a restriction on the legislative authority in matters that these texts dealt with (Royce, 2015). It is believed that the constitutional legislator in the comparative federal countries was not intending to give a specific concept to justice, because the definition of this concept was left for the future. This was done in order to absorb developments and to keep the door open for defining the concept in terms of time, place and the prevailing social idea. That is, the idea of justice for the legislator is a dynamic idea that is constantly evolving in terms of time and space (Alixandra, 2010).

In its preamble of the year 1787 AD, the Constitution of the United States of America emphasised the idea of justice: “We, the people of the United States, desire us to create a more perfect union, to establish justice, to ensure internal stability, to provide common defence, to promote common good, and to secure the blessings of freedom for us and our future generations. We draw and lay down this constitution.” Subsequently there is no explicit text in the constitution of the United States of America (Raed, 2018) stipulating ownership of oil wealth, because it was not explored when this constitution was issued because oil wasn't discovered until 1859 AD. However the tenth amendment to the American constitution has stipulated "the authorities that he does not assign the Constitution of the United States as a whole, nor prohibited for US unilateral reservation for each of these states or to the people" (Manea, 1990). Therefore, according to this amendment, the natural resources that are not stipulated in the federal constitution are among the powers of the local authorities and they are a guarantee against the violations of the federal authorities. Even with regard to the ownership of this wealth in the States, they differ from one state to another. In California, Alabama and New York wealth is the property of those whose wealth appears on their lands, or of those on their land. In the states of Arkansas, Colorado, Maryland, Mississippi, Montana, North Dakota, Pennsylvania, Tennessee, Washington and Virginia, they belong to the state (Eliane, 2013). Some federal constitutions have forged towards state inequality in parliamentary representation in the Federal Parliament. For example, what was stipulated by the Argentine Constitution of 1853, reinstated in 1983 and amended in 1994 in Article 46 thereof (The deputies are appointed for the first legislative session in the following proportions: Buenos Aires province - twelve, the province of Cordoba - six, the province of Kathmandu - three, Corrientes - four provinces, Inter-Rios province - two, Jujuy province - two, Mendoza province - three, La Rioja province - two, Salta province - three, Santiago-four province, San Juan province - two, Santa Fe province - two , Saint-Louis-two, Tucuman - three) (Kawan, 2011).

Article 24 of the Constitution of the United Arab Emirates of 1971 states that social justice is the basis of the national economy and stipulates that the national economy is the basis of social justice and the basis of sincere cooperation between public activity and private activity. Its goal

is to achieve economic development, increase production, raise the standard of living, and achieve prosperity for citizens within the limits of the law, thus the union encourages cooperation and savings (Mahmoud, 2007). The preamble to the Constitution of the Republic of Iraq, 2005 states “We are the sons of the Rafidain Valley ... and adopt the method of equitable distribution of wealth ...”. Article 121 / third, states regions and governorates are allocated a fair share of revenue collected federally taking into account their resources, needs and proportion population therein. According to an opinion on jurisprudence, the question of wealth sharing and distribution in the federal state is subject to a specific formula that guarantees justice in its use on the basis of actual partnership in one country, and this is the meaning of the distribution of justice (Raed, 2018).

Some countries with a federal system may face financial problems. These often arise as a result of two types of financial imbalance or asymmetry between the federal and state authorities. These are the vertical imbalance in the distribution of wealth and a horizontal imbalance as well, and thus this imbalance will lead to imbalance within the principle of equitable distribution. Financial imbalance is the mismatch of revenues that the central government receives and its responsibilities in government spending at the federal level (asymmetric federalism) (Manea, 1990). There is no federal system in the world in which all constituent units are nearly equal in size, population, political power, administrative skills, wealth, economic development, climatic conditions, dominance of urban or rural interests, social structure, traditions, or geographical location. There are two types of this distinction or financial difference between the constituent states of the federal state (asymmetric federalism):

The first type is called de-facto asymmetry, which is the representation of the constituent states in the federation, namely, the participation of units in the decision-making process of the state in general.

In the federal system, there are usually two levels of federal legislative authority. The first is the lower house, in which seats are distributed according to population. This creates asymmetry in terms of representation of each constituent unit and its ability to influence legislation and policy making for the federal state, where larger units have a stronger voice than the smaller level (Eliane, 2013). The second level of the legislature represents all the constituent states of the union equally, and this means that each state’s territory has the same number of representatives (the United States senate), which offsets the disproportionate composition at the first legislative level. In his definition of this type of financial imbalance in the distribution of wealth in the federal union, Royce the Mandal holds that a level of the ruling authority has greater powers than other levels of government to obtain resources that exceed what it actually needs to exercise the authority it was entrusted to (Raed, 2018). In fact, this definition applies to the case of some countries of the federal union, as in the United Arab Emirates, as there is a big difference between some of the member Emirates from the others as a result of the returns

allocated to them from wealth. The same applies to the Kurdistan Region of Iraq compared to the reality of the rest of the cities, especially the capital and the provinces. This is because they are not organised in a region in which there is a big difference from the level of recovery and welfare, which exists in the Kurdistan Region. Despite that, what the region gets is much greater than the size of its requirements, which leads to a huge gap in the fairness of the distribution of wealth returns in Iraq (Royce, 2015).

The second type of distinction is called legal asymmetry. Legal asymmetry is less common than de facto asymmetry but it is still present in many unions, especially in those where there are deep historical factors or significant de facto inconsistencies. This means that not every state in the federal union has the same powers or one level of independence and influence, but that these privileges and differences between the constituent states of the federal union are established under the constitution or federal law. Some constitutions or federal laws provide for giving priority to a state at the expense of another state consisting of the federal union. By way of illustration, Canada operates under common law at the federal level as well as in most Canadian provinces (Mahmoud, 2007), but the province of Quebec has its own set of laws, which has advantages for the rest of the Canadian territories. According to the constitutional texts contained in the Canadian Constitution of 1867, as amended in the year 2011 AD, as stipulated in Article 80.92 / A, it is also represented by three judges out of eight of the Supreme Court. The same applies to the Indian state of Kashmir, where Article 370 of the Indian Constitution provides for a special economic and political situation (Akrami, 2012), which is different from the other constituent states of the Indian Union. In the states of California, Alabama and New York in America, this wealth is the property of the state that shows these fortunes in the lands belonging to it. Or for those in its territories and in the states of Arkansas, Colorado, Maryland, Mississippi, Montana, North Dakota, Pennsylvania, Tennessee, Washington and Virginia, it is property of the state (Kawan, 2011).

Through the study, we see that the majority of the federal states have stipulated in their constitutions the principle of equitable distribution. For example Article 214 of the South African Constitution of 1996 stipulates the equitable distribution of revenues collected at the national level between national, regional and local governments. The preamble of the 1999 Swiss Federal Constitution includes that “the Swiss people and the Swiss provinces ... decide with awareness of their common achievements and their responsibility towards future generations, and a belief that freedom is for the one who uses their freedom, and that the strength of the group is measured by the well-being of its weakest members”. (Ivo, 2012)

### ***Concession of the Regions Producing Natural Resources in the Federal State***

It is perceived that the issue of wealth sharing is not an easy matter in light of a complex political and legal system such as the federal system, especially if there is a clear and large

variation in the size of wealth in the member states of the federal system (Akrami, 2012). That is, abundance and concentration of wealth in states and their scarcity or scarcity in others, which is considered a real problem in every federation. Therefore wealth needs to be accounted for and taken into account when developing constitutional texts related to financial arrangements and wealth sharing in any federal system, and to put in place appropriate solutions to remove it or at least reduce it in light of new developments (Waheed, 2013).

The UAE's constitution of 1971 stipulated that every emirate must transfer a certain percentage of its financial wealth imports to the federal government. According to Article 126 of the UAE constitution, the UAE's members in the union allocate a certain percentage of their annual resources to cover public budget expenditures (Royce, 2015), in the manner and to the extent determined by the budget law in accordance with the annual revenue generated. In practice, each of the seven member Emirates transfers 50% of its imports to the Federation budget. The emirate of Abu Dhabi and Dubai, amongst the rest of the seven Emirates contribute about 85% of the union's national product and on this basis, these two Emirates are granted powers that were not granted by the constitution of a state (Mahmoud, 2007). In 1971 the United Arab Emirates and the rest of the Emirates that are members of the federation, had the exclusive right to object to the decisions of the Supreme Council of the Federation in matters of substance. Rather, these two Emirates enjoyed a greater representation in the Federal National Council, where each of them was granted 8 seats. Whereas, the em Paper 6 seats, Ras Al Khaimah 6 seats, Ajman 4 seats, Umm Al Quwain 4 seats and Fujairah 4 seats (Akrami, 2012). This is stipulated in Article 68 of the UAE Constitution. Article 49 of the UAE constitution of 1971 stipulates that the decisions of the Supreme Council on substantive matters shall be issued by a majority of five of its members, provided that this majority includes the votes of the Emirates of Abu Dhabi and Dubai (Kawan, 2011). The minority shall adhere to the opinion of the aforementioned majority. Majority vote and the council's bylaws shall determine these matters. Similarly, the position of the 1999 Venezuelan Constitution in Article 165/16, stipulates that "... the law defines an economic system for pure financial allocations in favour of states whose lands contain the wealth referred to under this clause without prejudice to the possibility of determining allocations in favour of the other states" (Alixandra, 2010).

In Nigeria, for example, there is an abundance of oil wealth in states inhabited by minorities that do not possess political or even social influence. Some see that the areas where oil is abundant in Nigeria are poor and underdeveloped, creating the belief that those states are sacrificed because they lack political power (Mahmoud, 2007). The balance of power is still in the interest of the union government because of its control over the economic resources, while the owners of these regions see that they are the first and most worthy to benefit from the wealth in a way that enables them to obtain a fair share of the revenues sufficient to achieve permanent development. However they see that they are not more worthy of independence, as their wealth or a large part of it, and the sharing of economic returns in Nigeria is a thorny issue, resulting

from poor mechanisms of allocating revenues between two levels of federal governance (Royce, 2015). This is what prompted the Delta states that border the Gulf of Guinea to demand they be granted broad and direct authority in managing offshore oil wealth based on the principle of hiring. Some assert that the problem with the mechanism of wealth sharing and distribution in Nigeria is still being exacerbated. This was a reason for the deviation of development priorities of state governments, due to their prevailing sense of the inequitable distribution of wealth.

In Iraq, the constitution in force in 2005 did not show an advantage for regions that abound in natural resources (Manea, 1990). Rather, the constitutional text was vague in explaining this important issue. Article 112 / first stipulated: “The federal government manages oil and gas extracted from existing fields with the governments of the producing provinces provided that their imports be distributed equitably in proportion to the population distribution throughout the country” (Akrami, 2012). A quota is set for a specific period of affected regions that were unjustly deprived of them by the previous regime and then damaged in a way that ensures balanced development of different regions of the country. This is regulated, but that law did not happen due to political differences between the parliamentary blocs. However the federal budgets have been adopting a proportion called (petrodollars) in those budgets not exceeding 5% for the oil-producing provinces, but those percentages were granted qualitatively to bitter successive Iraqi governments after the year 2003 AD (Eliane, 2013). This is why the demands of the Iraqi provinces, particularly the southern ones, for independence and the formation of the southern region at times, and at other times Basra region, have escalated, where oil production constitutes not less than (59%) of the total production in addition to the abundance of gas production (Ahmed, 2007). However there is still languishing under an umbrella of poverty and deprived of not obtaining enough financial revenue to meet basic needs and carrying out responsibilities in terms of amounts allocated by the federal government. The (Dhi Qar) Governorate is also where the oil wealth is concentrated and produces large quantities of oil, but it does not get revenue from central government. The finance that is commensurate with its production capacity and its actual need to carry its responsibilities (Raed, 2018). This comes in light of the provisions of the Federal General Budget Law, where the Kurdistan Region of Iraq gets a percentage (17%) of the total amounts of the public budget every year. While the region does not pay the federal government any amount for its massive investment of northern Iraq’s oil (Kawan, 2011). Among the producing provinces, especially the southern provinces, and between the rest of the Iraqi provinces on the one hand, and between them and the Kurdistan Region of Iraq on the other hand, despite what was confirmed by the text of Article 111 of the Constitution, which indicated that oil and gas belong to all Iraqi people in all regions and governorates (Ahmed, 2007). The Supreme Federal Court has drafted verified rulings on the pillars of the federal system based on the ownership of all people for natural resources, the most important of which is oil and gas, as evidenced in the ruling issued in case No. 8 / Federal / 2012, (Ivo, 2012). The oil is against the decision of the Wasit Provincial

Council No. 666 on 9/11/2011, which includes the non-approval of the aforementioned council to transfer oil and gas outside the governorate's borders to other governorates by means of pipelines, where the court cancelled this decision and indicated its unconstitutionality based on the text of Article (111) from the constitution (Waheed, 2013). Subsequently the constitutional legislator in Iraq is far from the explicit technical drafting of the constitutional texts related to the distribution of natural resources, especially oil and gas wealth. This is because they resorted to formulating with political dimensions more than legal designs. It is believed that in this manner, policy can only satisfy certain political parties, at the time of writing the Iraqi constitution for the year 2005. This is evidenced especially in the terminologies included in Article (112), in particular the phrase current fields and affected regions (Raed, 2018). Therefore various and contradictory interpretations were made by these political parties, which led to a state of instability after all those years from the entry into force of the constitution Jum Rayya Iraq for the year 2005. (Mahmoud, 2007).

## Results

1. The principle of justice is the first fundamental criterion and virtue in society that everyone is certain of before the idea of law and the state exists.
2. Some countries with a federal form may face financial problems, and they often arise as a result of two types of financial imbalance or asymmetry between the federal and state authorities.
3. The nature of the complex federal system makes the issue of wealth sharing a difficult issue, especially if there is no clear or large variation in the size of the wealth found in the member states of the federal system, i.e. their abundance and concentration in states and their scarcity or scarcity in other states.

## Recommendations

1. Redrafting the constitutional texts related to the distribution of financial powers through an explicit and clear reference to economic, financial, customs, tax, commercial and federal public budgets of an executive nature.
2. The Iraqi legislator must reformulate some of the constitutional texts related to the distribution and exploitation of wealth, especially Article 112 of the current constitution. Therefore clarifying what is meant by the terms contained therein, especially those related to the current fields and future fields, so that they are not misinterpreted and thus leading to an interpretation that causes many problems.
3. Benefiting from Article 106 and Article 121 / First of the 2005 Constitution that applies to legislating a law that regulates the distribution of revenues achieved by an independent body, according to clear and specific constitutional and legal standards represented by the population distribution of regions and governorates that are not organised in the region.



## REFERENCES

- Ahmed Ibrahim Mansour, 2007, *Distribution Justice and Economic Development*, Center for Arab Unity Studies, Beirut.
- Akrami Bassiouni, 2012, *general principles in the jurisdiction of the Constitutional Court*, House of Books and National Documents, Alexandria.
- Alixandra Funk, 2010, *Asymmetrical Federalism in the Multinational Federation: A Comparative Study of Asymmetrical Federalism in Canada and Spain*, Master Thesis.
- Eliane Bouziane, 2013, *the constitutional value of the principle of social justice and its judicial protection. A comparative applied study on modern Arab-academic constitutions for social and legal studies*, Algeria, No. 10.
- Ivo D. Duchacek, 2012, *Comparative Federalism: The Territorial Dimension of Politics in Burgess and Gress: "Symmetry and Asymmetry Revisited,"*
- Kawan Ismail Ibrahim, 2011, *contracts for oil exploration and production*, 1st floor, Shatat Publishing and Software House, Cairo, Egypt.
- Mahmoud Al-Fiqi, 2007, *Global Dialogue on Federalism, Part 2*, Forum of Federations, Ottawa.
- Manea Saeed Al-Otaiba, 1990, *Petroleum and the Economics of the United Arab Emirates*, Abu Dhabi.
- Raed Hamdan Al-Maliki, 2018, *Autonomy of the Federal State*, Dar Al-Senuri, Beirut.
- Royce Almendral, 2015, *Federalism asymmetric federalism*, Carlos III University, Madrid.
- Waheed Ali Abdi Al-Sulaifani, 2013, *Wealth Sharing in Federal Countries*, Master Thesis, University of Duhok.