



## The sharing Powers in the Constitution of Federal States: The Applicability of Decentralization

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**Abstract.** This paper focuses on the applicability of federal system as a legal-political means in providing Minorities Rights and managing the relationship among various constituent groups as a real foundation of decentralization principle in sharing powers between constituent units. The federal system can be realized through the establishment of federal constitutions. We exemplify Iraq as a federal model of multi-culturalism state that accommodating with new development of democratic principles, which associate with diversity and decentralization in sharing power. The Iraqi constitution is approved through referendum, the Kurdistan population is also participated in this referendum, where the Kurdistan entity and equality among its national and religious components has been de jure recognized. Article 117(1) identify the Kurdistan as a sovereign federal unit enjoying legal-political competences. The study suggests a legal solution to minimize the conflicts between Iraqi entities, legal approach to resolve the ambiguity in several articles: 112(1), 116, 117(2), and 140(2).

**Keywords.** Federal system, sharing powers, decentralization, constitution, Kurdistan Region, Iraq

### 1. Introduction

The federal principles are closely associated with democracy and diversity, the injection of democratic principles into constitutions of federal states is the main objective in establishing federal system. The modern federal idea for most a democratic system implies respect for people, cultural identities and their political and economic choices. The Democratic Constitutions is set out the federal principle in which encompass the level of local government authority and activity can do what, and then also guarantee Rights and freedoms. These points are basic to the defining element of federal concept, namely that a federal country is one where power is at once divided among federal entities and autonomous regions, and coordinated with the central government.

In a dynamic and modern federal system there are no senior or junior governments such as cases in German and federal Belgium, just different entity performing different things

within a common legal and political framework. Therefore, the federal idea implies an ongoing indeed never-ending dialogue and competition among entities. There are significant matters in each federation about foreign affairs, fiscal issues, and defense and security issues. The federal authority has exclusive jurisdiction over the latter. There is a growing consensus of regional and state governments including autonomous units, this step increases both transparency and accountability. In this context the federal concept re-emerging in many multinational religious and ethnic states, for example in the constitution of Ethiopian's federation<sup>1</sup>. Furthermore, this constitution provides solution for inequality among entities.

The objective of this study is to show how the federal system is workable and suitable in a country which represents multi-ethnic, religious, cultural diversity, and aspiration of local communities for obtaining self-rule which can be achieved within the framework of federal constitution. Therefore, decentralization in sharing power will avoid separatism movement, economic disadvantage of people, and terrorism. This paper also targets how is in a democratic environment federalism is workable as a reliable solution in many countries by solving conflicts between ruling majority and suppressed Minorities and settlement of disputed issues between local authorities and central government interests. The final target of this paper deals with Iraqi situation, we will investigate and analyze the internal conflicts that have currently taken place in Iraqi Society internal war, conflicts, terrorism as well. In order to identify the historical origin of existing conflicts and to seek the best legal framework in which to manage these differences and to avoid more war, devastation. All these important issues shall be addressed in the coming study.

## **2. Historical background of federal concept**

The new general notion of the issue of federalism in this century has begun after the collapse of Soviet Block and the falling of Berlin Wall and increasingly traced from the beginning of the 1990. As a result of these series of events, many internal conflicts of Socialist and Soviet system have turned to International conflicts<sup>2</sup>. The new situation has reached the level of threatening international peace and security. The recent development in the area of international relations was brought about the fact that the international community and the United nations cannot sit idly by as an onlooker without getting involved, on the other hand the reason behind the escalation of humanitarian disasters was due to internal conflicts and civil wars in many parts of the world specially in ex-socialist countries. These countries were faced consequently in several cases the applicability of international law has become the only option, because Chapter seven of UN states: when there are serious violations of international humanitarian law and international conventions, the SC of UN has an obligation to act according with the Charter to intervene for applying international law and to prevent further escalation of conflicts and preventing more atrocities from happening.

The above-mentioned development at the international level has raised a new tendency of the federal system as a relevant instrument and proper recipe for providing best solution for minorities conflicts and internal wars. Federalism's contribution to the preservation and development of minority culture and languages, could also contribute to the pacification of inter-ethnic relationship<sup>3</sup>. This form of democratic government based on decentralization of power as a mean of managing the cultural diversity and multi-ethnic society problems as a valid

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<sup>1</sup> Decentralization in Ethiopia – Who benefits? Chaurey and Mukim, 2015.

<sup>2</sup> S. Ali T. Hassan, For Kurdistan Statehood. International Law, Minorities's Rights, The Right of Self Determination, 2015.

<sup>3</sup> S. Ali T. Hassan, Minorities, Ethnic Conflicts and Federalism, Journal of Law and Political Science. ISSN: 2079-3901. 2015.

option could satisfy the demands of local authorities and solving the problem of many federal territories. This new form of government has been suggested by many scholars in the field of political science and law that federalism employed as a legal and political framework, which can be significant instrument in recognizing the diversity and political independence for many cultural identities living within multi-national states<sup>4</sup>. In the past decade, world politics has known new developments, distinguished by a growing interdependence, the development of the European Union, as well as the increase of federalist solutions in conflict management studies, taking into account non homogeneous states and international guarantees<sup>5</sup>. The development of contemporary integrative and differentiative political processes: a growing decentralization in industrialized states; the development of new international organizations coordinating or integrating nation-states—the most prominent case being the European Union—; the use of federal instruments to manage domestic conflicts or, more broadly, to accommodate multinational states; and last but not least, the attempts to solve the current financial crisis with supranational tools<sup>6</sup>.

### **3. Constitutional and governmental models in a federal system**

Constitution is the basic fundamental law of a state which sets out how that state will be organized the powers and authorities of government between different political, legal units, and citizens that have been contributed among federal components. In this context the constitution is a statement of the basic principles and laws of nation, in addition the main law is regulating the rights and the freedom of states citizens. In federal states, the federal constitution sometimes come into force if it is approved by a majority of subjects of the federation (parliament of states, provinces, autonomous region. In terms of sharing power, the federal constitution allocates power between the national and state regional governments.

In a federation, the division of power between federal and regional governments is usually outlined in the constitution. Almost every country allows some degree of regional self-government, in a federation the right to self-government of the component states is constitutionally entrenched. Components of federal states often possess their own constitutions which they may amend as they see fit, although in the event of conflict the federal constitution usually takes precedence<sup>7</sup>. In terms of structure of federal constitution where the division of power has been enshrined and the component states have been provided according to federal constitution the right to establish its own constitution, example Canadian constitution provides Quebec with self-constitution of the Quebec entity, Scotland as well. The structure of Iraqi constitution adopted 2005 has incorporated mechanism to protect the right of Kurdistan entity to enjoy independent institutions right as referred in Article 120-Constitution of Iraq “Each region shall adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, provided that it does not

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<sup>4</sup> Adam Augustyn, Patricia Bauer, Brian Duignan, Alison Eldridge, Erik Gregersen, Amy McKenna, Melissa Petruzzello, John P. Rafferty, Michael Ray, Kara Rogers, Amy Tikkanen, Jeff Wallenfeldt, Adam Zeidan, and Alicja Zelazko, *Federalism*, Encyclopædia Britannica, inc., April 30, 2020.

<sup>5</sup> Lépine Frédéric, « A Journey through the History of Federalism. Is Multilevel Governance a Form of Federalism? », *L'Europe en Formation*, 2012/1 (n° 363), p. 21-62.

<sup>6</sup> Watts, *Comparing Federal Systems*, Third Edition. Thomas Hueglin and Alan Fenna, *Comparative Federalism: A Systematic Enquiry* (Peterborough, Ontario: Broadview Press, 2006). *A Global Dialogue on Federalism*, a collection of seven edited books on the federal comparative studies of states, published by the Forum of federations, IACFS, and McGill-Queen's University Press.

<sup>7</sup> Federalism, Wikipedia contributors, Wikipedia, The Free Encyclopedia, 1 June 2020, <https://en.wikipedia.org/w/index.php?title=Federalism&oldid=960219438>

contradict this Constitution”, provides the right of Kurdistan region to has its own constitution<sup>8</sup>.

#### **4. Exclusive powers**

There are several characteristics shared by all federal systems in general in terms of sharing powers. These powers can be defined in three aspects: (1) in the field of defense (2) in the field of foreign affairs (3) in the field of economy and revenue. These aspects exclusively are belonging to the central authority. However, in some federal countries the demand for more decentralization of power among entities and autonomous regions in the realization for allocating the power in some areas have been provided according to special agreement or special position of perspective entity in question. In Canada for example French speaking entity of Quebec has been granted special powers in the field of culture affairs. The constituent states of the Canadian province of Quebec claim for themselves a measure of international personality and enter into agreements directly with foreign states<sup>9</sup>. Moreover, when Australia enters into a treaty with other states, the treaty presumably applies both to the constituent’s states of the federation and to the Australian’s many external territories<sup>10</sup>. In these formulations the recognition that states or provinces in federal systems have separate legal systems and, in accordance with domestic constitutional principles, may have exclusive competence to implement the treaty in question<sup>11</sup>. These kinds of competence excursive by constituent states cooperatively with the central government is a good example of sharing power under umbrella of cooperative federal model. Cooperative federalism is a model of intergovernmental relations that recognizes the overlapping functions of the national and state governments. This model can be contrasted with the model of dual federalism, which maintains that the national and state governments have distinct and separate government functions<sup>12</sup>. In contrast, Asymmetrical federalism refers to a federal system of government in which power is unevenly divided between states<sup>13</sup>. In asymmetrical federalism some states have greater responsibilities or more autonomy than others. An asymmetric federation must have a federal constitution and all states in federation have the same formal status as state<sup>14</sup>. It is worth-mentioning in this context to give a modern example of a form of federal government based on literature and expert, German and Brussels are a good example of diversity in forming federal government and contributing the competence among entities and self-governance units. The combination of these units produces a complex configuration, both the Flemish and the Francophone communities have jurisdiction over educational and linguistic matters within the Brussels region, making the non-territorial aspect of their operation indispensable<sup>15</sup>. The structure is highly asymmetrical, as the Germans have only a community and Brussels has only a region. In addition, the Flemings have

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<sup>8</sup> Iraqi constitution, Article 117-second provision ‘This Constitution shall affirm new regions established in accordance with its provisions’. <https://www.wipo.int/edocs/lexdocs/laws/en/iq/iq004en.pdf>.

<sup>9</sup> Balkin, R. (1998). *International Law and Australian Federalism*. Edited by Brian R. Opeskin and Donald R. Rothwell. Victoria: Melbourne University Press, 1997. Pp. xviii, 374. Index. *American Journal of International Law*, 92(4), 793-796. doi:10.2307/2998151.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Agranoff, Robert. “Federal Evolution in Spain.” *International Political Science Review / Revue Internationale De Science Politique*, vol. 17, no. 4, 1996.

<sup>14</sup> Tarlton, C. D. (1965). Symmetry and asymmetry as elements of federalism, a theoretical speculation. *The Journal of Politics*, 27(4): 861-74.

<sup>15</sup> Sherrill Stroschein, What Belgium Can Teach Bosnia: The Uses of Autonomy in ‘Divided House’ States, *Journal on Ethnopolitics and Minority Issues in Europe*. Issue 3/2003.

fused their community and region administrations to produce a more unified Flemish structure<sup>16</sup>. The Francophone community, however, remains separate both from the Wallonia region and from the Brussels capital region<sup>17</sup>.

## **5. Constitutional division of competences in federal system**

This part includes the effectiveness of federal system as a legal and political framework for the solution of existing conflicts among federation components, exemplifying many multinational and religious societies which have successfully provide the best framework solution for ending these conflicts. On the other hand, providing opportunities for these components to obtain adequate competence and to participate in running the country's affairs and sharing economic benefits (gas and oil revenue) with ruling majority. These important matters shall be enshrined in the federal constitutions and several examples will be provided in this regard.

### **5.1. From principle of centralization to decentralization**

There is a huge difference between the federations in terms of degree of centralization and decentralization of powers between entities among federations. In this section we try to select several models of contemporary federal system, that is relevant to our study in applying the principle of decentralization and division of competences between constituent units:

1. Belgian government was highly centralized; virtually all-important functional responsibilities and fiscal resources and powers rested with the national government<sup>18</sup>. As a result of the reforms, new sub-national governmental institutions have been created, and many of the central government's functions and fiscal resources have been devolved to these new institutions<sup>19</sup>. The author added that the Belgian government used a process of decentralization, as a solution for the existing cultural and linguistic conflicts in Belgium.

Belgium approaches in applying the principle of decentralization have been developed and enshrined for satisfying the demand and interests of communities and regions as stated in article 2 of Belgium constitution. As a member of Re-Bel initiative form, I am witnessing the continuous growing tendencies of the concept decentralization development with participation of all communities and regions representatives. I am trying in this paper to bring this model into insight to be workable and incorporate to Iraqi system, in particular to be apply to Kurdistan Region of Iraq.

2. The decentralization of power among components and how the federal system have worked out in providing Canadian Sovereign entities with authority to run their own affairs in many aspects: sharing, administrative and financial powers. We can exemplify the Quebec entity as a model for contributing the power in within the framework of Canadian federal system. One of the most significant elements is binational nature of Quebec entity with French-Canadians entering the new state as a political community, concentrated in the province of Québec, sharing the French language and Catholic religion<sup>20</sup>. As Jan has suggested, ethno-linguistic heterogeneity favors decentralization in federations and, with the establishment of a

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Todman, L.C., "The Decentralization of the Belgian Government", Andersson, A.E., Harsman, B. and Quigley, J.M. (Ed.) *Government for the Future (Contributions to Economic Analysis, Vol. 238)*, Emerald Group Publishing Limited, Bingley, pp. 153-187. 1997.

<sup>19</sup> Ibid.

<sup>20</sup> André Lecours, *Dynamic De/Centralization in Canada, 1867–2010*, *Publius: The Journal of Federalism*, 49(1), Winter 2019, 57–83.

majority French-speaking and Catholic province of Québec, the Canadian federation continued making claims for further decentralization, for example, in the policy field of gave a majority of French-Canadians “their” government<sup>21</sup>. Nevertheless, Québec governments, especially but not solely when formed by the PQ (1994–2002 and 2012–2014), culture and in the fiscal sphere more generally<sup>22</sup>. As well As in the field of international relation Canadian province of Quebec claim for themselves a measure of international personality and enter into agreement directly with foreign states<sup>23</sup>. The asymmetric Quebec model of decentralization is quite similar to the federal entity in Kurdistan Region of Iraq.

3. United Kingdom is the only country in Europe which does not have a written Constitution, but the basic foundation written law was the Magna Carta. Currently the state structure is established based on the concept of devolution of power, and government power delegated from central government to components levels (constituent units). One of the subjects of this devolution system is the legal status of Scotland entity within the framework of UK system. We have found the legal status of Scottish entity relevant to our case study in this paper, especially in the field of decentralizing system. Recently, during the pandemic outbreak crisis (Covid-19) the tendency for more independence has been growing intensively in Scotland. Besides, Scotland has been holding twice referendum for obtaining its own independence, still pro –independence group promulgating for exercising the right of self-determination.

## **6. Distribution of powers and Iraqi Constitution-2005**

In this section we will concentrate on the Iraqi situation and the applicability of constitution provisions. Two important points will be dealt with: (1) the applicability of Articles of existing constitution that provide the Rights of Minorities and the legal statues of entities, municipalities as well, and their participation in running its own affairs, (2) in the field of sharing powers between the central government and Kurdistan entity according to article 112, particularly oil and gas revenue . Since the establishment of federal Constitution 2005, the relations between Central Government and Kurdistan institutions increasingly getting worst over many issues. Especially in the field of defense and security and in the field of oil and gas revenue as well as the question of article 140 about disputed areas.

Analyzing the provisions of constitution that defining the mechanism of sharing powers between the central government and entities, which led to many conflicts between these two sides, therefore we try to propose the suitable solution for existing conflicts. In relation to that we will view the present negotiations which are going on between two parties (Central Government and Kurdistan Entity) aimed at finding the legal framework which is workable in applying the decentralization system which is the core of modern federal system.

## **7. The applicability of decentralization system in Iraq**

According to federal constitutions, every entity has its own competencies and sharing power with central government, which is either lead by prime minister or local government. Scotland as an example that leads by prime minster, in Russian federation Chechnya republican leads by president of this local government. The mixed model between these two latter examples is applied in Kurdistan Region of Iraq (KRG) that is similar to the Chechnya Republic

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<sup>21</sup> Erk Jan. Explaining federalism. state, society, and congruence in Austria, Belgium, Canada, Germany, and Switzerland. London: Routledge. 2010.

<sup>22</sup> Lecours, André, “Dynamic De/centralization in Canada, 1867-2010,” Publius: The Journal of Federalism, 2017.

<sup>23</sup> Balkin, R.. International Law and Australian Federalism, 92(4), 793-796. 1998.

system in one way, where the KRG has a president and prime minister. The distribution of competencies between the central federal government in Baghdad and the regional levels (KRG) according to article 116 in Iraqi constitution is defined in constitution-2005. The article 116 states “The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations”<sup>24</sup>.

Recently the ongoing dispute between entities in federal Belgium over local revenue issues is still facing federal authority. The same conflicts are existing between central government and Kurdistan Region concerning decentralization and sharing power on disputed areas, like Shengal and Ninawa valley. However, the constitution of Iraq has come force and explaining in article 117(2) that this Constitution shall affirm new regions established in accordance with its provisions<sup>25</sup>. Several law experts found ambiguity in this article and they suggest to put into practice and activate this provision of constitution that allow the promotion through establishing more autonomous region for constituents’ unit like Yezidi in Shengal and Christian in Ninawa Valley. Indeed issues of federal system at center of active political legal discussion is in every part of the globe, particularly in areas where conflict resolution is critical necessity, but unfortunately after the establishment of new Iraqi federal constitution in 2005, many issues between central government and Kurdistan region has been continuing over the allocation of budget and oil and gas sectors, which remain unsolved, as well as the issue over disputed areas and Article 140(2) remains unsolved so far<sup>26</sup>.

Our perspectives regarding these conflicts are to overcome the disagreements between the central government and Kurdistan entity over natural resources and disputed area. Analyzing the sensitivity of the situation, we presume the international involvement and mediation will be helpful in finding the compromising solution for all conflicting matters based on Iraqi Federal Constitution. The dynamic development of these relations, currently lead to promote another scenario suggests that Iraqi constitution shall be subjected to amendment to accommodate with new development in the whole country and demands, and preferences of local regions and municipalities (constituent units) to be taken into consideration by central authority due to the emergent of new tendencies toward further decentralization. To support this new tendency, the article 116 of Iraq constitution concerning the sharing power between central and local components states that “The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations”. However, this article is still not being activated and did not apply accordingly.

## **8. Decentralization and responsibilities to drive economic growth (Fiscal decentralization)**

The exploration and production of oil in Iraq started as early as the 1920s. After several decades of war and sanctions, Iraq against the backdrop of its post-conflict setting, besieged by competing political, ethnic and sectarian struggles. After this process a new opportunity emerged to invest oil and gas in this country, which is building up this sector as a priority for the central level. While at the local level, this sector starting exploration and production of oil

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<sup>24</sup> Iraqi Constitution, 2005.

<sup>25</sup> ‘This Constitution shall affirm new regions established in accordance with its provisions’. <https://www.wipo.int/edocs/lexdocs/laws/en/iq/iq004en.pdf>.

<sup>26</sup> Article 140(2): The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.



and gas only in 2006, the Kurdistan regional government (KRG) concluded more than 50 production-sharing contracts (PSCs) with international oil companies (IOCs).

The development of major oil and gas reserves in the autonomous Kurdistan Region of Iraq (KRI) is dating back no earlier than 2005. Despite promising geological signs, political conditions largely prevented exploration and production until the US-led coalition for removal of the Saddam Hussein regime. The story since then has attracted major media interest, perhaps even more than has been devoted to the larger fields in the south of Iraq like Basra city. The Kurdish oil is important for various reasons. It represents the rare case, in recent history, of the discovery of a large new onshore conventional petroleum province. It illustrates the development of such a province under conditions of moderate technical challenge but major and volatile political uncertainty. Considered as a unit, the KRI could soon emerge as a significant oil producer on a par with, or even exceeding, Oman, Colombia, or Azerbaijan and, like them, effectively outside OPEC<sup>27</sup>. Initially the contracting partners were minor oil companies such as Gulf Keystone, Genel and Western Zagros. Gulf Keystone discovered the giant Shaikhan field with 14 billion barrels of oil in place. It was one of the world's largest onshore discoveries in more than 20 years. In 2012, ExxonMobil pioneered as the first major IOC (International Oil Company), followed by Chevron, Total and Gazprom. The changes and the progress made by Kurdistan autonomous region within the Iraqi country have obtained many powers after the recognition of Iraqi constitution since 2005, including legislature, executive, and judicious powers, in addition to the significant development of petrochemical reserve. Furthermore, the KRG has proven the development of many oil-fields, beside gas-fields, primary and secondary schools, higher education within the Kurdistan entity, for example in August, 2019 the KRG exported 272,000 barrels per day, and the KRG sold crude oil and condensate worth more than 8.3\$ billion in 2019, up from 2018 7.75\$ billion, however the crude oil were sold to local refineries or to local sales for domestic use because KRG government is not allow to sale the crude oil internationally and there is many ongoing negotiation and legal discussion between the central government and Kurdistan Regional Government in this regard.

Pursuant to Iraqi constitution, 2005, Article 112(1) states “The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law”<sup>28</sup>. The article 112(1) is focused on the present oil and gas fields (refers to August 2005), therefore the non-producing fields are not falling within the shared oil and gas fields jurisdiction between central authority and the Kurdistan Regional Government. If we interpretate the text of Article 112(1) we can come to a conclusion that all the exploration and production oil and gas fields within the Kurdistan territory blocks after 2005 could be belong to Kurdish people. unfortunately, this article not put into practice accordingly, and the oi-gas revenue still remain unsolved problem between these central and local governments. Many politicians and legal experts in field of economy and law have controversial ideas about this article that have two aspects:

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<sup>27</sup> Robin Mills, *Under the Mountains: Kurdish Oil and Regional Politics*. WPM 63, Oxford Institute for Energy Studies (Registered Charity, No. 286084). January 2016.

<sup>28</sup> Iraqi Constitution, 2005.

**The first aspect:** The central authority in Baghdad believes illegal that KRG to export oil and gas or sign contracts with foreign oil companies, and the central government disagree with this interpretation of the Iraqi Constitution and believes that the KRG lacks the essential constitutional authority to regulate the management of oil and gas sector. This disagreement between central government and KRG, lead the central government in Baghdad to proceed and raise these revenue problems in the Federal Supreme Court in 2018, but the decision still in pending trail.

**Second aspect:** The Kurdistan authority believes that the hydrocarbon and mineral on or under the surface of the Kurdistan territory after August 2005 all belong to the Kurdistan Region of Iraq within the meaning of the Iraqi Constitution Article 112(1). Therefore, the Kurdistan authority or local government step the position that the non-explored or non-produced crude oil or gas fields after August 2005 do not fall within the shared jurisdiction of the Baghdad central government and the Kurdistan Government, and, therefore, the Kurdistan Government as a local federal unit has exclusive jurisdiction over such fields.

Consequently, we have two important legal suggestions for solving these pending cases between central government in Baghdad and local government of KRG:

1. Amendment of a few articles in Iraqi Constitution concerning sharing jurisdiction in oil and gas sector and other minerals within the territory of KRG. Based on Article 112(1) As long as negotiations not reaching any positive agreement between central government and local government, and because KRG economically has potential advanced progress in oil and gas sector that advantaged in this area which attract many international oil companies and also the new economic model for gas discoveries and production in several parts of Kurdistan Region, as a legal scholar and economic experts we recommend the amendment and interpretation of article 112(1) by law to extend this article for more public service and to give a clarification, and a new tendency for more applying decentralization principle and satisfy the demands and interests of local population. Aimed at ending the dispute between central government and local authorities, for example KRG, Basra, also we propose Kirkuk City to give more competences to run their economic and administrative affairs since Kirkuk population disadvantaged from benefit of national resources (oil and gas) and petrodollar program.

2. Fiscal decentralization is the best solution to solve these conflicts between central government and KRG. The fiscal decentralization is associated with developing national income. In particular, the decentralization of revenue-raising powers has a stronger effect on performance than the decentralization of spending. Therefore, the ongoing new tendencies in some local regions, example Scotland, Northern Ireland, Wales and other local government within the UK framework, another example in Belgium country is Antwerp Province which considered as a capital of the Flemish Region, these two examples support the KRG arguments for providing further fiscal decentralization rather than stagnation which put obstacles in the economic growth and prospers life of KRG' population. Therefore, these new international experiences in such countries are growing and rapidly increasing the demands of a radical decentralization of powers within the central government.

3. Holding referendum is another proposal for attending more radical decentralization based on local citizens votes to determine their preferences to avoid and minimize the political conflicts between central government and local government (KRG).

The impact of fiscal referendums on policy decisions of subnational governments is of interest of local citizen. For example, in Swiss cantonal level, all cantons know a derivative of the fiscal referendum. The fiscal referendum can be differentiated according to five categories

in case of Swiss federation: the fiscal referendum for public expenditures, for public-sector bonds, for taxes, for holdings on enterprises and for purchases of real estate<sup>29</sup>. Furthermore, the number of signatures required to qualify for ballots and the time span within which the signatures have to be collected for the optional fiscal referendum is also very diverse among cantons in Swiss federation<sup>30</sup>. It differs from 0.49 percent of signatures from all voters in the canton of Obwalden (OW) compared to 4.28 percent of signatures in the canton of Jura. The time span for collecting the signatures varies from 30 days to 90 days among cantons with an optional fiscal referendum. Thus, the institutional variation on the Swiss sub-federal level provides a laboratory to investigate the impact of fiscal referendums on government centralization. This is a study case of Swiss federation according to above mentioned-published paper.

With regard to the application of decentralization in the fiscal area of KRG we can exemplify the model of Swiss cantons, more supportably by Oates, 1972 theory which proposes his Decentralization Theorem as a guideline for the distribution of fiscal competencies among different tiers of government: “In the absence of inter-jurisdictional externalities and economies of scale in the provision of public services, decentralization of government activities is preferable”<sup>31</sup>. Following the Swiss empirical model and Oates theory for fiscal decentralization, the Kurdistan Region (KRG) could negotiate further with central government for holding referendum to polarize of fiscal decentralization between these two sides. In many federal countries like Swiss ...the fiscal decentralization is obtained by fiscal referendum in canton levels based on percentage of the voters. The economic curve of KRG is developing and rising upward after attracting many international and giant private companies to discover, explore, and produce oil within many geological blocks of Kurdistan Region (see the below map for more details). In addition to oil revenue the KRG holds three percent of proven global gas reserves, which is estimated at 200 trillion cubic meters. These reserves put the region at the eighth largest proven reserves in the world after the United Arab Emirates and more than that which Iraq has (112 trillion cubic meters)<sup>32</sup>. Therefore, the public services of KRG population needs to gain more political stability with central government in Baghdad for holding a fiscal referendum and to resolve other suspending economic problems with central government of Iraq.

## 9. Conclusion

The paper attempts to explore the dynamic development and growing tendencies of the applicability of federal models where the decentralization systems have become relevant means for sharing power in the multi-states and diversity societies and providing equal opportunity for constituent units to participate in decision making. In terms of promoting new mechanism and strategy in implementing decentralization system is suitable to Iraqi case, such a mechanism is workable in many federal countries regarding the decentralization system. On the other hand, the practical implementation of decentralization mechanisms was applied in Belgium model and Canadian United Kingdom (Scotland), Swiss, and Russian federations are successfully

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<sup>29</sup> Schaltegger, Christoph A. and Feld, Lars P., On Government Centralization and Budget Referendums: Evidence from Switzerland (December 2001). CESifo Working Paper Series No. 615.

<sup>30</sup> Ibid.

<sup>31</sup> argues that decentralization is appropriate if residents in different sub-federal jurisdictions have different tastes for public services. OATES, W.E. (1972), *Fiscal Federalism*, New York.

<sup>32</sup> Mohammed Hussein, Challenges of the Iraq Kurdistan's oil sector, KCCRC.

deemed to reduce and pacificate the existing conflicts and disagreements between central governments and federal entities, autonomous regions over sharing competencies with central federal governments.

The existing disputes between central government and federal entities is one of the key factors which lead to growing ideas and theories for applying the democratic means and to address the interests and demands of local citizens or communities to satisfy their participation in running their local affairs with the central federal government. The imperative points in this paper are to improve the connection between the Iraqi central government in Baghdad and Iraqi federal components particularly KRG. We will give the priority solution to reduce these disputes and conflicts as the following:

1. We conclude that the fiscal decentralization in Iraqi federal model should be given a priority regarding public services and communities demands to satisfy their preferences.
2. To control and avoid more polarization of Iraqi society over the issue of distribution of wealth and revenue.
3. The paper also raises the issues of many models of fiscal decentralization in Belgium, Canada, Swiss, UK, and Russia in other federal countries to be applied in Iraqi federal system which is apparently proposed in this paper as a solution of current disagreement between central and local governments and constituent units.

Additionally, the paper addresses several options and solutions for minimizing the risks of escalation of more conflicts and disagreement between central government and federal components of Iraq. One of the options is the amendment of articles 112(1) of Iraqi constitution concerning the fairly distribution of national revenue and fiscal decentralization. The most significant option is the ultimate referendum on fiscal decentralization based on citizen votes and preferences which is highly recommended. Another option is the reactivation of articles 116 and put it into practice, the similar approach is recommendable in dealing with second provision of article 117(2). As far as article 140(2) concerning the disputed area, we propose to be reframed and rectified accordingly. Finally, the obvious shortcomings of the federal constitution texts in disregarding of the principle of self-government which is the most important principle of federal system are to be rectified.

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