

Constitutionalism Versus Traditional Authority: The Role of the Constitution in the Institutionalization of Authority in the Kurdistan Region of Iraq

A Critical and Analytical Study

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Abstract

One of the fundamental questions in the political philosophy of the constitution is why states require a written constitution or legal-rational authority. A common answer is that a written constitution serves to restrain the emergence of a Leviathan, to establish rational and institutional authority, and to safeguard fundamental rights and freedoms. From this perspective, Constitutionalism is conceived as a framework for limiting political power and institutionalizing Authority, rather than allowing the persistence of traditional or despotic forms of rule. One of the primary mechanisms for achieving the institutionalization of authority is the existence of a modern constitution, functioning as the highest and most legitimate source of legal and political order. However, the Kurdistan Region of Iraq has failed to develop such a model of rational constitutional governance over the past three decades. Despite the provisions of the 2005 Iraqi Constitution, which granted the Region the right to adopt its own constitution, political authority in the Region has remained dominated by traditional structures and Partocratic rule. This failure to institutionalize authority has contributed to the erosion of democratic practices, human rights, and the rule of law in the Region. This study adopts a critical and analytical approach to examine the nature of authority in the Kurdistan Region. It assumes that the adoption of a written constitution is essential for the institutionalization of constitutional authority, shaping the functioning of the legislative, executive, and judicial branches.

Keyword: *Constitutionalism, Traditional Authority, Family Rule, Partocracy, Kurdistan Region Constitution, Institutionalization of Authority.*

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1. Introduction

Three decades have passed since the emergence of the Kurdish model of governance in South Kurdistan. Between 1992 and 2005, the Kurdish government in South Kurdistan operated under an autonomous framework and a parliamentary political system, in which two dominant parties—the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK)—exercised power. However, this model of parochial rule, lacking both a social contract and constitutional governance, ultimately led to the tragic civil war. The conflict, which lasted from May 1994 to November 1997 and became known as the fratricidal war (Şerî Birakujî), only came to an end with the Washington Agreement of 1998, a U.S.-brokered peace settlement between the KDP and the PUK. This civil war not only divided state institutions into two separate administrations but also deepened the structural absence of civilian constitutional governance in South Kurdistan.

Following the fall of the Ba'ath regime on May 1, 2003, and the adoption of the Iraqi Constitution in 2005, the Kurds of the south were presented with a golden opportunity. They could have moved beyond traditional authority, partocracy, and the destructive legacy of the civil war, and instead established a system of constitutional governance that would foster a shared collective memory while erasing the negative effects of past divisions.

The 2005 Iraqi Constitution, in Article 117, Clause 1, recognizes the Kurdistan Region as a federal constitutional region and affirms its constitutional powers in Article 120. It explicitly grants regions the right to organize their governance in accordance with the Constitution.

Nevertheless, political parties in the Kurdistan Region have failed to take full advantage of these constitutional provisions. They have not successfully transitioned from party rule and personalized authority to constitutional and institutionalized governance.

As a result, the foundation of political legitimacy in the Kurdistan Region continues to rest on the Kurdistan Parliamentary Election Law No. 1 of 1999.

Consequently, the Region suffers from a lack of governance reform, the erosion of democratic standards, persistent violations of human rights, and the weakening of the rule of law.

1.1 Importance of research: This paper examines an important and fundamental issue, namely, political and constitutional reform in the Kurdistan Region. It highlights the negative effects of traditional and party-based governance models, particularly the personalization of power, on both the present and future of the Kurdistan Region. Furthermore, the study identifies the factors that contributed to the development of this model and underscores its dangers. In addition, it proposes the incorporation of principles and mechanisms of intervention aimed at establishing constitutional governance and fostering a culture of institutional authority within the Kurdistan Region.

1.2 Research Problem and Questions: The problem addressed in this study arises from several cognitive gaps, particularly the challenge of determining the political identity of governance in the Kurdistan Region in the absence of a fully functioning constitution. This gap presents a major obstacle to understanding the nature of authority and legitimacy in the Region. Accordingly, the study seeks to clarify a number of vague but fundamental questions that underpin the constitutional dilemma of the Kurdistan Region:

- A. What is the political identity of authority in the Kurdistan Region?
- B. What are the negative consequences of traditional authority and Partocracy for the present and future of the Kurdistan Region?
- C. What role does the constitution play in establishing constitutional rule and in promoting democracy, human rights, and the rule of law in the Kurdistan Region?

1.3 Research Methodology: This research, employing qualitative methods, will critically examine how the absence of a written constitution has affected the Kurdistan Region's capacity to institutionalize authority, ensure the rule of law, and achieve political coherence. It will also analyze how the adoption of a written constitution could enhance the institutionalization of authority and contribute to shaping a more coherent

and effective governance framework for the Kurdistan Region in the future.

1.4 Research Structure: This research is divided into three chapters. Chapter One presents the introduction and its essential elements. Chapter Two examines the political identity of authority in the Kurdistan Region. The final chapter analyzes constitutionalism as a framework for institutionalizing political authority in the Kurdistan Region of Iraq. Finally, the study concludes by presenting the main findings and offering recommendations.

2. The Political Identity of Authority in the Kurdistan Region

The examination of the identity of political power in the region is an important but complex and challenging task. It is challenging because theorizing and identifying political power within an abstract context is not straightforward. Among the challenges in defining the nature of power in the Kurdistan Region are the lack of constitutionalism, the absence of a written constitution, and the dominance of political parties rooted in familial structures, all of which compound the difficulty of this task.

2.1 Kurdistan Region from de facto autonomy to constitutional de jure

The history of governance in the Kurdistan Region within an institutional framework—comprising the parliament, executive, and judiciary—is relatively recent. It began following the 1991 Kurdish uprising, the withdrawal of the Ba'athist government from the region's provinces, and the adoption of United Nations Security Council Resolution 688. Therefore, as Michael Gunter observes, the form of governance in the Kurdistan Region during this period can be characterized as a de facto rule (M.Gunter, A Michael, 1993). After the adoption of the permanent Iraqi Constitution in 2005, a radical transformation occurred in the Iraqi political system. According to the Constitution, the status of the Kurdistan Region shifted from a de facto government to a constitutionally recognized government (Articles 117(1) and 120 of the Iraqi Constitution, 2005). The 2005 Iraqi Constitution formally recognized the Kurdish identity as a community and—a principal component rather than a minority—within the Iraqi Republic, marking a significant step toward safeguarding the Kurdish national identity within the constitutional framework. Furthermore, the Kurdistan Region is legally vested with legislative, executive, and judicial authority, as well as a role in managing revenues and assets, particularly those derived from oil and gas. Although the Constitution grants these powers to the region, it also provides,

under Article 114, for the Kurdistan Region's participation in certain aspects of the federal executive authority. These include joint responsibility for: managing customs; regulating the primary sources and distribution of electric power; formulating environmental policy; developing and implementing general planning and development policies; establishing public health policy; setting educational policy; and regulating the management of internal water resources. (Iraqi Constitution 2005, Art 114).

All the powers and characteristics granted to the Kurdistan Region reflect the core features of a federal system. Although the Iraqi Constitution—often regarded as a novel model of the “Americanization” of constitutions in the Middle East and globally—represents an important constitutional framework, it offers the Kurds a unique opportunity to serve as a model of effective governance. Nevertheless, the Constitution itself contains ambiguities, particularly regarding the management of oil and gas resources (Articles 111–112). Moreover, several provisions favorable to Kurdish interests have not been implemented, including Article 140, which addresses the status of the disputed territories. (Hassan Hussein, Con Review 2023).

Federalism plays a crucial role in developing democracy and civic literacy; it is thus possible to consider federalism as a particular type of democracy, aiming to serve the sovereign will of the federal demos (Dmitris N. Chrysoschoou, 1988). The constitutional provisions afforded to the Kurdistan Region under the Constitution represent a significant step toward internal political reform, particularly for the Kurdistan Democratic Party (PDK) and the Patriotic Union of Kurdistan (PUK), both of which have historically been allied in shaping constitutional developments in Iraq. Constitutional change should advance a civilian and democratic model of governance, as the federal system is predicated on the division of powers between the federal government and the regions. This framework places considerable emphasis on fostering democratic values, promoting an institutional political culture, and cultivating a society grounded in the principles of citizenship—objectives to which the political leadership has, thus far, failed to respond adequately. However, after more than two decades since the adoption of the 2005 Iraqi Constitution, the Kurdistan Region has held five parliamentary elections. Nevertheless, the highest offices in the parliament, government, and presidency remain concentrated in the hands of a small circle of senior figures from the two ruling parties, who alternate in occupying these positions. This stands in contrast to the federal Iraqi government, where no individual has served two consecutive terms as prime minister, and where the leadership has changed with each electoral cycle.

2.2 Political Identity in KRI Parties: Between Traditional Authority and Charismatic Populist Leader

In modern democracies, political parties are often regarded as the guardians of democracy. One of their defining characteristics is the presence of a discernible position on the political spectrum and a clear ideological orientation, enabling citizens to align themselves with a party based on its ideology and policy platform. The political spectrum is a system for qualitatively comparing different political philosophies. It allows individuals to identify the core characteristics of political ideologies and to rank them according to their perceived importance, relevance, and usefulness for both the individual and society as a whole (Gindler, 2020).

Identifying the political identity of parties in the Kurdistan Region of Iraq is a complex task, as it is difficult to classify them as left-wing, right-wing, or centrist, or to determine whether they are Islamist, secularist, liberal, or socialist in orientation. Most political parties in the region display populist tendencies and remain deeply rooted in family and tribal structures. Following the adoption of the 2005 Iraqi Constitution, there was optimism that undemocratic, personalization-based political parties would gradually be replaced by civic-oriented parties. However, family dominance has persisted, and in many cases, the “family party rule” model has supplanted genuine civic party structures. Scholars have identified the rise and entrenchment of family-based party rule as a significant challenge to democratic development. This model has become pervasive across Iraq and the Kurdistan Region, with even opposition parties increasingly adopting similar family-centered organizational structures (Aziz & Wahab, 2023).

An examination of the nature of power and authority in the Kurdistan Region reveals that the principal source of state institutional power derives from the two dominant political parties: the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). Power is effectively concentrated within these two parties, each of which maintains distinct geographical strongholds, armed forces, and substantial popular support. (McDowall, 2004). There is no doubt that political parties are the driving forces of governance in modern societies, representing the interests of their voters and supporters. However, in the Kurdistan Region, the risk lies in political parties exercising complete control over the government, with their authority surpassing that of state institutions. In such a context, political leadership is often determined on the basis of family affiliation rather than merit or democratic competition. This dynamic transforms the nature of political party identity into a structural challenge, as traditional power networks have facilitated the emergence of a *partocracy* model of governance.

To understand the nature of such powers, it is instructive to refer to the German sociologist Max Weber, who classified authority into three ideal types: traditional,

charismatic, and legal-rational. Traditional authority, grounded in custom, family lineage, and hereditary rule (Max Weber, 1978), is clearly reflected in the political power structures of the two ruling parties in the Kurdistan Region, as well as in the public image of their leaders. In this regard, Van Bruinessen observes that, even with modernization, state formation, and the emergence of political parties, these traditional authority patterns have persisted. Moreover, many contemporary Kurdish political leaders derive their influence from family ties to historic aghas or shaikhs, and party structures frequently reproduce patron–client dynamics rooted in tribal and religious traditions (van Bruinessen, 1992). In addition, the so-called charismatic leaders in this context are not “charismatic” in the classical Weberian sense; rather, in contemporary politics, charisma often assumes the form of populist leadership. Consequently, such populist manifestations of charisma can, in practice, become a significant impediment to the development of constitutional and democratic governance. ([Tom Ginsburg](#) and [Aziz Z. Huq](#), 2018).

Building on this, the governance structures of political parties in the Kurdistan Region have largely evolved into highly personalized entities, in which leadership positions are often held by individuals whose authority derives from family lineage or economic influence within the party. – Islamist factions, by contrast, ground their authority in religious legitimacy. Moreover, there is no genuine power-sharing between party leaders and their members. Party leadership is typically held for life, with succession passing to a son or close associate rather than being determined through meritocratic or democratic processes. Such transitions do not necessarily depend on charisma or political competence; indeed, successors may lack leadership qualities or experience in political philosophy and statecraft. This pattern reflects the persistence of a leadership model often personified by the Marjah—a charismatic populist figure whose authority rests on personal loyalty rather than institutional legitimacy.

2.3 The Negative Consequences of Traditional Leadership and Partocracy for Regional Institutions

The continuation of traditional forms of authority, rather than a transition toward genuinely constitutional and institutional governance, has ultimately resulted in the emergence of a governance model commonly referred to as *partyocracy*. This form of partocracy (also known as *partitocracy*) within a traditional framework of power has produced a system of party government that some political scientists label *partocracy*. In comparative politics, this model denotes the concentration of political power in the hands of a single party or a coalition, enabling it to dominate all key nodes of authority. Consequently, such a system is often characterized as anti-democratic and susceptible to corruption, as it prioritizes the interests of the ruling party, its political elite, and loyal supporters over the pursuit of the

common good. ([Mauro Calise](#), 1994). Within such a system, state institutions—such as parliament, the judiciary, and the executive—are transformed into extensions of party apparatus, falling under direct party control. In the Kurdistan Region, following the establishment of its political system in 1992, the absence of a genuine social contract for governance, coupled with the outbreak of civil war (*fratricide- brakuji*), entrenched this dynamic. This conflict deepened the entrenched divisions created by party rule to the extent that Kurdish society became entirely polarized into two distinct zones and political orientations. The following are the principal negative consequences:

2.3.1 The Crisis of Representation: Weak Parliamentary Oversight in the Context of Party and Executive Dominance

Any discussion of democratization begins with representation, since representation is essential for democracy, although on its own it is not enough. If representation is understood as the capacity of citizens to choose delegates who genuinely reflect their views in decision-making processes—processes that determine laws, oversee government action, and the allocation of public resources—then the experience of the Kurdistan Region of Iraq (KRI) reveals significant shortcomings. Although elections have been held since 1992 and the region has benefited from U.S. and European democratization initiatives since 2003, the connection between popular preferences, political representation, and public policy outcomes remains tenuous. The persistent patterns of low voter turnout, recurring protests, suppression of dissent, and increased emigration in recent years suggest that, for many citizens, these links have become increasingly ineffective and unresponsive. ([Erwin van Veen](#), Sardar Aziz, 2023).

In principle, parliament is the institutional embodiment of the public will. In countries with a parliamentary political system, parliament should function as the supreme authority. For example, in the British parliamentary model, parliament holds sovereign power and, in addition to its legislative duties, exercises rigorous oversight and ensures governmental accountability.

Throughout the history of political philosophy, however, the concept of indirect democratic representation has faced sustained criticism. Philosophers such as Jean-Jacques Rousseau have argued that representative systems fail to reflect the true will of the people. Instead of defending the public interest, representatives often become subservient to power. As Rousseau stated in *The Social Contract*: *The deputies of the people, therefore, are not and cannot be its representatives: they are merely its stewards, and can carry through no definitive acts. Every law the people have not ratified in person is null and void—it is, in fact, not a law. The people of England regard themselves as free, but it is grossly mistaken; it is free only during the election of members of parliament. As soon as they are elected, slavery overtakes it, and it is nothing.* (Jean-Jacques Rousseau, 1923).

This Rousseauian critique remains relevant in the contemporary era, particularly in the Kurdistan Region of Iraq. In practice, members of parliament in the region neither fully represent the people nor effectively oversee the executive. For instance, in 2016, the government unlawfully withheld civil servants' salaries and suspended promotions, yet parliamentarians—many of whom had held their seats for a decade—failed to hold the government to account. In terms of oversight, MPs often act as representatives of their political parties rather than of the citizens, frequently defending government policies instead of scrutinizing them. As a result, the Kurdistan Parliament has never held a minister politically responsible, never withdrawn confidence from a prime minister or cabinet member, and has remained passive despite widespread injustice and corruption. Such practices are fundamentally incompatible with the principles of a parliamentary system, reducing the institution to one that is largely symbolic and ineffective. Consequently, as a democratic institution representing the will of the people, parliament should play a central role in legislative oversight. However, it is frequently overshadowed by dominant political parties and the executive branch, thereby undermining both its independence and its capacity for effective oversight.

2.3.2 Inadequate Civilian Control of Armed Forces:

Throughout the history of the Kurdish political movement, the armed forces—particularly the Peshmerga and related institutions—have played a central role in resisting oppression and advancing the cause of Kurdish independence, making considerable sacrifices in pursuit of this goal. As such, the Peshmerga has come to be regarded as a powerful symbol of the Kurdish struggle. However, following the civil war between the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP), the armed forces, including the Peshmerga and security agencies, became divided along partisan lines. Each major party retained control over its own military structures, with the PUK and KDP exercising authority over their respective forces. This politicization of the military, coupled with the absence of a unified national force, has eroded public confidence in these institutions and reinforced patterns of traditional authority, ultimately entrenching party rule.

In principle, civilian or constitutional control over the military is a cornerstone of any constitutional democracy. Yet, in the Kurdistan Region, the security forces remain under the influence of the two dominant ruling parties. While there have been attempts to unify these forces, genuine civilian and constitutional oversight has yet to be achieved. In this regard, a clearly articulated and enforceable constitutional framework could play a pivotal role in depersonalizing governance and ensuring that the security forces are subject to institutional, civilian control rather than partisan authority. ([Hassan Hussein, 2025](#)).

2.3.3 Patronage System and the Erosion of Social Justice: The Politics of 'Jobs for the Boys':

Justice constitutes the foundational principle of good governance. According to the insights of ancient Greek philosophy, the gravest affliction a state can endure is injustice. When a state is permeated by injustice, its stability is jeopardized, ultimately leading to the collapse of the republic. In Plato's analysis, injustice generates conflict among the social classes, creating tensions between the poor majority characteristic of democracy and the wealthy minority typical of oligarchy. Such internal strife, in his view, is a principal factor contributing to the disintegration of the republic. (Plato, Republic, Books IV, VIII).

One of the most essential manifestations of social justice is the provision of equal opportunities, particularly in employment and in the participation of citizens in public affairs, without any form of racial, political, ethnic, or other discrimination. In recent years, however, the growing privatization of the labor sector—combined with the dominance by both ruling parties and influential figures over both public institutions and the private sector—has significantly undermined this principle. This dominance extends to the recruitment of employees, the management of public universities, the establishment of private universities and educational institutions, the operation of private banks, and the functioning of employment agencies. As a result, political parties have created a deeply unjust phenomenon commonly referred to as the “Jobs for the Boys” patronage system. According to scholars such as *Merilee Grindle*, patronage systems in the public service are widely condemned as undemocratic and corrupt. Nevertheless, patronage historically served as the prevailing method of staffing governments for centuries, and in some countries it persists today. (Merilee Grindle, 2012).

At present, this form of patronage is practiced by both ruling parties in the Kurdistan Region. Employment decisions are frequently based on personal connections to a political party, tribe, or family, rather than on merit. Equality of opportunity is, therefore, not experienced uniformly across society. Some families have several members employed in both the public and private sectors, while others have no access to such opportunities. Appointments to positions such as Members of Parliament, ministers, directors general, advisers, university presidents, assistants, deans of colleges, and even school principals are often determined by loyalty to the party, its leadership, or influential families, rather than by qualifications or Meritocracy. If such policies continue, they will not only deepen class divisions within society but also give rise to forms of modern slavery. This will, in turn, undermine justice and foster conditions for social conflict, ultimately creating a divided and antagonistic society.

2.3.4 Absence of Judicial Oversight and Constitutional Adjudication:

The power of the courts to review the constitutionality of legal norms such as statutes or decrees enacted by the democratic branches is one of the central features of constitutional or liberal democracies. Judicial review is the main mechanism protecting individual rights against the political powers that may ignore or undermine those rights. It protects individual rights even when the political powers respond directly or indirectly to popular will. Judicial review of the constitutionality of legislation thus creates a balance between the collective will and interests of the people and the fundamental rights of each individual. (Carlos Santiago Nino, 1993) Constitutional government relies on the separation of powers and a system of checks and balances, a principle advanced by Montesquieu and enshrined by many democratic systems. However, the Kurdistan Region lacks a constitutional court to review legislation or executive actions for conformity with a foundational legal document, thereby weakening the rule of law and legal certainty. (Hassan Hussein, 2025).

From the perspective of the separation of powers and the system of checks and balances, the executive branch in the Kurdistan Region holds a position of clear dominance over both the legislature and the judiciary. Notably, there is no constitutional court vested with the authority to review and annul parliamentary legislation or governmental directives that infringe upon fundamental rights and freedoms.

For instance, when the Parliament—acting under the influence of political parties and the executive—decides to suspend the salaries of public servants, or to promote certain ministries while withholding such benefits from others, the affected individuals should, in principle, be able to seek judicial review to secure justice and vindicate their rights. However, although the Kurdistan Region has administrative courts and civil service tribunals, these bodies refrain from adjudicating on governmental regulations currently in force. This is because, under existing legislation, such courts possess jurisdiction solely over administrative acts and lack the competence to review parliamentary enactments or binding governmental decisions (KRI Shura Council Law, Arts. 13–20). Consequently, there is no effective oversight of either Parliament or the executive, allowing the government to exercise near-absolute power without meaningful legal constraints.

In the absence of any effective legal remedy against unlawful orders—such as those concerning the suspension of salaries or the freezing of promotions—many citizens have petitioned the Iraqi Federal Supreme Court to annul the Kurdistan Regional Government's laws and regulations. Yet, the Federal Supreme Court has rejected most of these claims on the grounds of lack of jurisdiction (Iraqi FSC, Cases No. 107 and No. 104 of 2025). As a result, one of the most fundamental rights of individuals—the right to judicial protection and access to an effective

remedy—is effectively denied. In practice, there is no judicial control or constitutional oversight within the Kurdistan Region capable of reviewing and invalidating parliamentary laws or governmental regulations in force, except for the limited oversight exercised by the Iraqi Federal Supreme Court over political and exclusive competences in accordance with Article 93 of the Iraqi Constitution. This institutional gap undermines both the rule of law and the principle of constitutional supremacy.

3. Constitutionalism as a Framework for Institutionalizing Political Authority in the Kurdistan Region of Iraq

Constitutionalism is the idea—often associated with the political theories of John Locke and the founders of the American Republic—that government can and should be legally limited in its powers, and that its authority or legitimacy depends on its adherence to these limitations (Waluchow, Wil, and Kyritsis, Dimitrios, 2013). As Carl Friedrich observed, constitutionalism is “probably the greatest achievement of modern civilization, without which little or none of the rest is conceivable; under it, for the first time in the history of man, has a measure of freedom and well-being been achieved for the common man” (C. Perry Patterson, 1984).

Although constitutionalism is often embodied in a written constitution, the concept itself is distinct from the constitution as a legal text. Indeed, a state or region may possess a written constitution yet fail to establish genuine constitutional governance; in such circumstances, the constitution functions merely as a nominal instrument rather than as an effective source of political authority. Therefore, the mere existence of a constitutional document does not necessarily guarantee the realization of constitutionalism in practice.

According to Ackerman (based on Max Weber’s types of authority), constitutionalism can transcend traditional authority, but the process depends on how a society initiates and legitimizes its constitutional transformations—whether through profound revolutionary change, elite-led adaptation, or bureaucratic reform. In all cases, the shift must culminate in institutionalized norms that embody constitutional governance. (Bruce Ackerman, 2019).

Accordingly, this chapter focuses on the role of constitutional governance in transcending both traditional forms of authority and Partocracy in KRI, thereby moving towards a framework grounded in the principles of constitutional supremacy, the rule of law, and effective institutional checks and balances.

3.1 The Role of the Principles of Constitutionalism in Building Constitutional Governance in the Kurdistan Region of Iraq

Constitutionalism, or constitutional governance, is defined by a set of principles that must not only be enshrined in the constitution but also effectively implemented in practice. In this section, we will address each of these fundamental principles—such as popular sovereignty, limited government, separation of powers, protection of individual rights, and civilian control over the military- and explain their implications for the future of governance in the Kurdistan Region.

3.1.1 Popular Sovereignty: Popular sovereignty is a principle postulating that government derives its power from those it governs. Most definitions concur in conceptualizing ‘the people’ as a collective entity vested with the final decision in a certain political setting. (Anthony Matthew, 2002). The principle of popular sovereignty has its roots in the theories of social contract philosophers, particularly John Locke and Jean-Jacques Rousseau. According to their view, political power originates from the people through the social contract and derives its legitimacy from them. Moreover, whenever authorities become oppressive or violate the will of the people, the people retain the right to resist such authority. (Sauveur P. Étienne, 2000).

When the people become the source of political legitimacy, periodic elections are conducted on time, and political parties function as servants of the electorate, seeking re-election. The parliament, in turn, is compelled to defend the rights of the people, creating a deterrent against abuse of power, as authorities recognize that oppression grants the people the right to resist. When the people exercise sovereignty, they perceive themselves as the true constituents of political power, rather than power being derived from family, tradition, or tribal affiliations. This demonstrates the role of constitutionalism in blurring the influence of traditional forms of authority in the Kurdistan Region.

3.1.2 Limited Government

Limited government is a political philosophy and a core element of constitutionalism, which emphasizes that the powers of political actors and institutions are restricted by the norms of law, typically through a constitution. The main aim of this principle is to protect individual rights and liberties by ensuring that the government possesses only the powers explicitly granted to it. One of the fundamental elements of constitutionalism in modern society is the protection of government from becoming a *Leviathan*, which Thomas Hobbes described as an absolute power. In this sense, constitutionalism functions as a shield, safeguarding individual rights and liberties from such unchecked authority. Moreover, it establishes a framework for the division of power among the

branches of government—namely, the legislature, the judiciary, and the executive. In other words, no single institution is permitted to exercise absolute power or dominate the government as a whole. The framers of the United States Constitution, including James Madison, were well acquainted with Hobbes's writings. Madison famously emphasized this concern when he argued: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself." (Alexander Hamilton or James Madison, Federalist Nos. 51-60). To address the question of why government should be limited and safeguarded against absolute power, Lord Acton provides a profound answer in his famous dictum: "Power tends to corrupt, and absolute power corrupts absolutely."

At this point, it is necessary to return to the principle of limited government and the political philosophy of the U.S. framers, the founders of the American constitutional system, in order to evaluate the model of governance in the Kurdistan Region. The key question is whether governance in the Kurdistan Region reflects the principles of limited government or whether it instead represents a form of absolute power concentrated in the hands of political party leaders.

In practice, it is evident that governmental power in the Kurdistan Region—embodied in the presidency, the cabinet, and the regional presidency—operates as an absolute authority. Political leaders employ the parliament primarily as an institutional tool to legitimize their decisions and to extend their terms in office. Moreover, no court within the Kurdistan Region has ever succeeded in holding the ruling party leaders accountable, whether regarding the manner in which they exercise power or their control over oil revenues. Natural resources have repeatedly been diverted to benefit private interests and partisan institutions rather than the public good. Throughout the history of governance in the Kurdistan Region, no institution has effectively investigated the conduct of party leaders or their deputies, many of whom now occupy the highest positions of authority.

For instance, Article 100 of the 2005 Iraqi Constitution explicitly stipulates that "it is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision." Nevertheless, the Kurdistan Parliament, through the law on the powers of the President of the Kurdistan Region and the law on the Kurdistan Regional Council, declared presidential acts to be acts of sovereignty that are not subject to appeal. Although this legal provision was later deemed unconstitutional and annulled by the Iraqi Federal Supreme Court, the episode reveals the structural weakness of the Kurdistan Parliament. In effect,

parliamentary authority has been subordinated to the personalization of power, with legislators unwilling or unable to impose limits on dominant political figures. Furthermore, there is a complete absence of institutional oversight over the Kurdistan Regional Security Council and its associated security agencies. No effective legal or political restrictions constrain these bodies, which further entrenches a system of unchecked authority and undermines the constitutional principle of limited government.

As a result, over the past three decades, political authority in the Kurdistan Region has remained concentrated in the hands of dominant family-based parties. Consequently, the same figures have consistently reappeared on the political stage, occupying the highest offices without any genuine prospect for radical change or rotation of power. In practice, key positions such as the prime ministership and the presidency of the region have been treated as extensions of familial authority, functioning less as public offices accountable to the citizenry and more as hereditary entitlements.

Moreover, the decisions of these leaders are effectively insulated from any meaningful oversight or accountability. The parliament, rather than acting as an independent legislative body, has been reduced to a nominal institution whose primary function is to legitimize the will of the ruling elites. Consequently, it lacks the capacity to impose checks on executive authority or to ensure that leaders can be questioned, scrutinized, or replaced. In this sense, the concentration of power in the Kurdistan Region exemplifies a departure from the principle of constitutionalism and the ideal of limited government. Therefore, limiting power in the Kurdistan Region would promote a culture of democracy, ensure the rule of law, and prevent the extension of authority beyond a fixed term except through elections. All of this can only be achieved through a written constitution and the principles of constitutionalism.

3.1.3 Separation of Powers (Checks and Balances):

In establishing a constitutional government, the Founding Fathers deliberately rejected Hobbes's concept of the Leviathan and instead returned to Montesquieu, who introduced the doctrine of the separation of powers in *The Spirit of the Laws*. Since Hobbes's model implied absolute and unchecked authority, the Founding Fathers, inspired by Montesquieu, sought to prevent such concentration of power by incorporating both the separation of powers and the system of checks and balances into the very foundation of the U.S. Constitution. (James Madison, *Federalist*, no. 47, 323—31).

Consequently, it becomes evident that a merely superficial division of powers does not suffice for sustaining a constitutional government. Rather, the separated powers must be accompanied by effective mechanisms of mutual checks and balances to prevent the rise of excessive or abusive authority. For instance, the

legislature is not only tasked with passing laws but also with overseeing the executive to ensure that governance operates according to legal norms rather than the arbitrary will of political leaders or parties. If the executive deviates from the law, the parliament possesses the authority to investigate and, when necessary, withdraw its confidence from the cabinet.

Furthermore, to guard against the potential dictatorship of the legislature and the tyranny of the majority, parliamentary acts must be subject to judicial review. If a law is deemed unconstitutional, the constitutional court is empowered to annul it. At the same time, in order to avoid judicial domination or juristocracy, judges themselves must be appointed on the basis of virtue, impartiality, and merit. In this way, each branch of government functions as a restraint upon the others, thereby upholding the constitutional principle that power must be limited and controlled.

This logic finds its most eloquent expression in Montesquieu's famous assertion in *The Spirit of the Laws*: "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty if the judiciary power is not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression." (Montesquieu, 1748).

In the Kurdistan Region, there is no genuine separation of legislative, executive, and judicial powers. Although these powers are formally assigned to different institutions and officeholders, in practice, there are no effective mechanisms of checks and balances. The dominance of the executive branch over both the parliament and the judiciary is particularly evident, thereby undermining the principle of constitutionalism. In consequence, it is crucial for the Kurdistan Region to institutionalize the separation of powers through a written constitution and to reinforce the principle of checks and balances. In this regard, the establishment of a strong and independent constitutional court is especially significant. Such a court would enhance the effectiveness of the judiciary by ensuring the review of legislation, repealing unjust laws and regulations enacted by parliament or imposed by the government, and ultimately safeguarding the rule of law and human rights.

3.1.4 Protection of Individual Rights

Throughout history, the central aim of political and legal philosophy has been to question authority and to safeguard rights and freedoms, for without freedom neither political philosophy nor systems of governance can truly develop, nor can

innovative thinking flourish. Indeed, as the philosophical tradition reminds us, human beings are born free.

The very purpose of each article of a constitution is to ensure the protection of rights and freedoms across different generations. First-generation rights are primarily civil and political in nature, focusing on individual liberties such as freedom of speech, assembly, and political participation. Second-generation rights are economic, social, and cultural, promoting equality and well-being through guarantees such as the right to education, health, and work. Finally, third-generation rights—often referred to as solidarity rights—emphasize collective entitlements, including the right to development, peace, and a healthy environment. (Karel Vasak, 1979).

In contemporary constitutionalism, rights and freedoms are taken with the utmost seriousness. Modern constitutions frequently enshrine not only classic liberties but also emerging rights that respond to the challenges of the twenty-first century. For example, rights to life and human dignity, to rest and leisure, and to live in a clean and healthy environment are increasingly recognized as constitutional essentials. Moreover, combating climate change and eradicating modern slavery are now understood as indispensable constitutional commitments.

Although certain laws in the Kurdistan Region formally acknowledge these rights, they remain vulnerable to frequent violations by the authorities due to the absence of a robust constitutional framework. In particular, the suppression of protest and the restriction of free expression demonstrate the urgent need for a comprehensive constitution and an independent constitutional court capable of guaranteeing and protecting rights and freedoms.

3.1.5 Civilian Control of Military Forces:

Civilian control—often referred to as the constitutional control of the armed forces—constitutes one of the most fundamental principles of constitutional governance. It entails the organization, regulation, and oversight of the duties and functions of the armed forces under the authority of institutions elected by the people, most commonly legislative or executive bodies, or a combination of both. Such forces generally encompass the military and defense services, the police, and other security agencies. (Brenner M. Fissell, 2025).

Moreover, civilian control of the armed forces is not only the foundation of constitutional governance but also a prerequisite for membership in major international organizations such as NATO. For this reason, powerful democratic states place particular importance on this principle. Indeed, the constitutions of the United States, France, and even Iraq explicitly enshrine the doctrine of civilian supremacy over the military.

Nevertheless, civilian or constitutional control of the armed forces remains a cornerstone that is largely absent in the Kurdistan Region. Security forces there

continue to be divided between the two dominant ruling parties, and although certain efforts have been made toward unification, effective civilian and constitutional oversight remains unattained. In this context, the adoption of a written constitution would be instrumental in depersonalizing governance and institutionalizing genuine civilian authority over the security sector. (Hassan Hussein, 2025).

In conclusion, the existence of a constitution plays a crucial role in consolidating civilian control over the armed forces, as it institutionalizes authority and counters the personalization of power. By ensuring the peaceful transfer of power and the rotation of political leadership, a constitution fosters a system in which the armed forces pledge loyalty to the constitutional order rather than to individual political figures. Therefore, it is essential that the constitution explicitly prohibit the establishment of armed groups—such as Peshmerga units or security forces affiliated with political parties or individual leaders—that operate outside constitutional authority. In this regard, the role of the constitution in institutionalizing the armed forces and eliminating illegitimate structures becomes both evident and indispensable.

Conclusion

The constitution, as one of the most significant inventions of political thought, serves as both a safeguard against despotism and absolute power and as a guarantee for the protection of rights and freedoms. Furthermore, it institutionalizes constitutional powers while simultaneously defining and protecting national identity.

From this perspective, the adoption of a constitution is an indispensable necessity for the Kurdistan Region, particularly in terms of fostering a democratic political culture, upholding the rule of law, and ensuring the realization of justice. Moreover, a constitution in the Kurdistan Region would constitute a decisive instrument for overcoming traditional authority and the entrenched system of Partocracy. In doing so, it would provide the foundation for the realization of core constitutional principles such as popular sovereignty, limited government, the separation of powers and checks and balances, social justice, and civilian control

of the armed forces, alongside the protection of all three generations of human rights.

In addition, the constitutionalizing of foreign relations would further enhance the institutional framework of governance. Taken together, these elements would not only consolidate internal stability and accountability but also strengthen the Kurdistan Region's political position both domestically and internationally. In the end, this research explores that the adoption of a constitution is not merely a legal requirement but an existential necessity for the Kurdistan Region, as it represents the only viable path toward genuine constitutionalism and democratic governance.

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دهستوورگه رایى به رانبه ر به دهسه لاتی نه ریتی: پۆلی دهستوور له به دامه زراوه یکردنی دهسه لات له هه ریمی کوردستان عێراق

پوخته

له پوانگهی تیۆری دهستووری و فهلسه فهی سیاسی دهستووردا، یه کێک له پرسیاره بنه پته ییه کان ئه وه، که بۆچی ده وله ت و کیانه سیاسیه کان پتیۆستیان به دهستووری نووسراوه یاخود دهسه لاتیکی یاسایی - ئه قلانی هه یه؟ وه لامي هاوبه ش ئه وه یه، که دهستووری نووسراو یاخود به دهستووریکردنی دهسه لاتی سیاسی پگی له سه ره له دانی دهسه لاتی په های به یی پشکنین و هاسهنگی دهگریت. به پیچه وانه وه شه وه، به دامه زراوه یکردنی دهسه لات له ریگهی دهستووریکری دیموکراسی هاوچه رخ ده بیته هوکاریک بۆ پاراستنی ماف و ئازادییه کان و په ره پیدانی که لتووری دیموکراسی له ولاتا .

هه ریمی کوردستان وهک کیانیکی سیاسی خاوه ن سهروه ری سنووردار له چوارچیوه ی سیسته می فیدرالیزمی عێراقدا، خاوه نی دهسه لاتی یاسادانان و جیه جیکردن و دادوه رییه، به لام دوا ی زیاتر له سی دهیه له هوکمپانی؛ نه ییتوانیوه په ره به مۆدیلی دهسه لاتی دامه زاروه یی و دهستووری بدات و قوناغی دهسه لاتی نه ریتی و پارتو کراسی تیپه پینیت، وێپای ئه وه ی له دهستووری عێراقی سا لی 2005 به فه رمی ددانپیدانانی دهستووری و دهسه لاتی بونیادانی هوکمپانی دهستووری دیموکراسی بۆ دهسته به رکراوه.

ئه م توێژینه وه یه، به پشت به ستن به میتودی شیکاری و به بیرى په خنیانه وه، خویندنه وه بۆ سهروشت و ناسنامه ی دهسه لات له هه ریمی کوردستان دهکات، گریمانه ی ئه وه دهکات که دهستووریکری دیموکراسی هاوچه رخ پۆلی کاریگه ری له به دامه زراوه یکردنی دهسه لات له هه ریمی کوردستان ده بیته.

وشه سه ره کییه کان: دهستوورگه رایى، دهسه لاتی نه ریتی، به دامه زراوه یکردنی دهسه لات، دهستووری هه ریمی کوردستان.

الدستورية في مواجهة السلطة التقليدية: دور الدستور في مؤسسة السلطة في إقليم كردستان العراق

ملخص

من أهم الأسئلة في فلسفة القانون الدستوري: لماذا تحتاج الدول إلى دستور مكتوب أو نظام حكم قانوني وعقلاني؟ أحد الأجوبة الشائعة هو أن الدستور المكتوب يحد من استبداد السلطة، ويؤسس سلطة عقلانية ومؤسسية، ويحمي الحقوق والحريات الأساسية. من هذا المنظور، يُنظر إلى الدستورية كإطار لتقييد السلطة السياسية وتأسيسها، وليس كوسيلة لتعزيز الأساليب التقليدية أو أشكال الحكم الاستبدادي. إحدى الآليات الأساسية لتحقيق هذا الهدف هي وجود دستور حديث، باعتباره المصدر الأعلى والأكثر شرعية للنظام القانوني والسياسي. ومع ذلك، لم يتمكن إقليم كردستان العراق خلال العقود الثلاثة الماضية من تطوير نموذج حكم دستوري عقلاني. على الرغم من المادة في دستور العراق لعام 2005 التي تمنح الإقليم حق إقرار دستوره الخاص، إلا أن السلطة السياسية في الإقليم ظلت مهيمنة عليها من قبل هياكل تقليدية وحكم الأحزاب. ساهم هذا الفشل في ترسيخ المؤسسات الدستورية في إضعاف ممارسات الديمقراطية وحقوق الإنسان وسيادة القانون في الإقليم. يعتمد هذا البحث على منهج نقدي تحليلي لدراسة طبيعة السلطة في إقليم كردستان، ويشير إلى ضرورة إقرار دستور مكتوب لترسيخ السلطة الدستورية، الذي يحدد صلاحيات السلطات التشريعية والتنفيذية والقضائية.

الكلمات المفتاحية: الدستورية، السلطة التقليدية، الحكم العشائري، سيطرة الأحزاب، دستور إقليم كردستان، ترسيخ المؤسسات.