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The Position of Quasi-Legal Institutions in the Iraqi Legal System

1. Ahmed. Abdulhasan Obaid Khazraji¹ : Department of Law, Na.C., Islamic Azad University, Najafabad, Iran
2. Esmaeil. Kashkoulia^{2*}: Department of Law, Shah.C., Islamic Azad University, Shahreza, Iran
3. Ali. Komeilipour³: Department of Law, Na.C., Islamic Azad University, Najafabad, Iran

*corresponding author's email: Kashkoulia@iau.ac.ir

ABSTRACT

The collapse of the centralized authoritarian structure in 2003 and the subsequent process of modern state-building in Iraq created a conducive environment for the emergence and reproduction of structures that are analyzed in the literature of public law and political sociology under the concept of "quasi-legal institutions" or hybrid mechanisms. These institutions encompass a broad spectrum of mechanisms, including customary and tribal dispute-resolution mechanisms, military organizations with hybrid identities, extraordinary security committees, and political arrangements based on sectarian power-sharing. They operate at the intersection of the formal authority of the state and informal norms. Employing an analytical-critical approach and drawing on the theory of legal pluralism, this article examines the textual and functional position of these institutions within Iraq's constitutional framework and statutory legal system. The findings indicate that, although these arrangements have at certain times contributed to containing immediate security crises or resolving local disputes, their overlapping jurisdiction with judicial authorities, erosion of the state's legitimate monopoly on the use of force, and disruption of the principle of separation of powers constitute fundamental obstacles to the establishment of the rule of law and the consolidation of a coherent legal system.

Keywords: *quasi-legal institutions, Iraqi constitutional law, legal pluralism, tribal justice, sectarian power-sharing, rule of law.*

Introduction

The process of reconstructing Iraq's political and legal structure following the developments of 2003, contrary to the classical Weberian model of the modern state, did not result in the establishment of a centralized and integrated judicial and security structure. The power vacuum created by the collapse of previous institutions—the dissolution of the army, the disbandment of the Ba'ath Party, and the extensive purge of the bureaucracy during the Coalition Provisional Authority period—together with the deepening of ethno-sectarian identity cleavages, paved the way for the emergence of authorities deriving their legitimacy not solely from statutory law, but also from sources such as religious legitimacy, tribal solidarity, and unwritten agreements among political elites (1). Accordingly, post-2003 Iraq may be regarded as a prominent example of a "hybrid state," in which formal and informal norms exist not merely in opposition to one another, but in a condition of tense coexistence and functional competition (2).



In legal scholarship and political sociology, “quasi-legal institutions” refer to structures that either exercise governmental powers without a clearly defined legislative basis or, even after undergoing processes of formal legalization, fail to establish a complete organic relationship with the formal bureaucratic structure because of their identity-based character and multiple chains of command. Karl Loewenstein’s concept of “nominal constitutionalism” is also useful for this analysis, because it demonstrates that in societies where actual social structures are incongruent with formal legal arrangements, legal texts may be reduced to ceremonial instruments, while the actual functioning of the political system is governed by unwritten rules. Iraq constitutes a prominent example of this gap between law in the books and law in action (3).

The fundamental question of the present study is what normative status quasi-legal institutions possess under the 2005 Constitution and Iraq’s statutory law, and what consequences their parallel activities have for the principle of the state’s monopoly over judicial authority, the protection of citizens’ fundamental rights, and the integrity of the chain of public authority. In response to this question, three subsidiary hypotheses are examined: first, that legal pluralism in Iraq is not the product of a deliberate legislative choice, but rather an unintended consequence of state collapse and the reproduction of parallel forms of social authority; second, that the legalization of quasi-legal formations, such as the Popular Mobilization Forces Law, does not eliminate the quasi-state nature and structural duality of these institutions; and third, that the jurisprudence of the Federal Supreme Court, despite efforts to restore legal monopoly, has remained ineffective in the face of political power and extra-legal authorities (4).

Methodologically, the article adopts a descriptive-analytical approach based on library research and examines the legal structure of four prominent examples—customary-tribal adjudication, the Popular Mobilization Forces, sectarian power-sharing, and exceptional security institutions—within the theoretical framework of legal pluralism and hybrid governance. The evaluative criterion in all four sections is the compatibility of these institutions’ activities with the fundamental principles of the 2005 Constitution, particularly equality (Article 14), the right of access to justice (Article 19), human dignity (Article 37), separation of powers (Article 47), and judicial independence (Articles 87 and 88). The discussion proceeds from micro-level domains, such as tribal adjudication, to macro-level domains, such as the overall structure of political decision-making, in order to provide a gradual and coherent picture of the depth of quasi-legal authority’s penetration into the Iraqi state apparatus (5).

Theoretical Framework

For an in-depth analysis of the relations of power and the normative orders governing Iraqi society and the state following the developments of 2003, reliance solely on classical theories of public law—which regard the state as possessing a monopoly over lawmaking, the legitimate use of force, and adjudication—is insufficient to explain empirical realities. Instead, combining the paradigm of “legal pluralism” with the approach of “hybrid political orders” and the theory of “semi-autonomous social fields” provides a broader and more precise framework for analyzing quasi-legal institutions (6).

Legal pluralism, in John Griffiths’s critical formulation, is founded on the proposition that a legal system is never confined solely to legislation enacted by the state’s legislative apparatus. In contrast to legal monism, which considers the state to be the sole locus of lawmaking, legal pluralism describes societies in which multiple normative systems simultaneously claim authority and behavioral binding force within a single geographical space. In such contexts, tribal customary rules, religious fatwas, paramilitary covenants, and political agreements among elites operate alongside the formal laws of the judiciary. As Sally Falk Moore has observed, societies are composed of

“semi-autonomous social fields,” namely domains that generate their own internal rules and compel members to comply with them without necessarily being subject to effective supervision by the state judiciary (7).

In the security and political dimensions, Toby Dodge and Volker Boege introduced the concept of “hybrid orders” into analyses of governance in conflict-affected states. A hybrid order is a condition in which no clear boundary exists between formal state institutions and informal forces; rather, the two domains continuously merge into one another, recruit from one another, and reproduce their legitimacy in composite forms (8). In Iraq’s hybrid model, the state exercises authority not against society or armed groups, but with them and through them. Armed and quasi-state actors benefit from the financial, administrative, and military resources of the state while simultaneously remaining responsive to their own religious and ethnic networks of loyalty.

This relationship may also be analyzed in light of Pierre Bourdieu’s theory of the “political field” (9). Bourdieu conceptualizes the political field as a space of struggle over the monopoly of symbolic violence and normative domination. In Iraq, multiple forms of capital circulate, including coercive capital (paramilitary forces), economic capital (oil revenues and state rents), symbolic capital (the legitimacy of fatwas and association with jihad), and social capital (tribal and partisan solidarity). Governing elites utilize symbolic and coercive capital to capture the state’s economic capital and, through the distribution of public offices and the issuance of recommendations or party endorsements, transform the bureaucratic machinery into an instrument for reproducing tribal-sectarian power (10).

Moreover, Karl Loewenstein’s concept of “nominal constitutionalism” provides a key to understanding the profound gap between the text of Iraq’s 2005 Constitution and the everyday practices of governance. In nominal systems, a constitution exists, is elegantly drafted, and refers to principles such as separation of powers, human rights, civic equality, and judicial independence; yet rather than functioning as a binding framework for governmental conduct, it serves largely as a legitimizing façade for international recognition. Informal mechanisms, such as councils of party leaders, behind-the-scenes agreements in Erbil and Baghdad, and tribal courts, effectively replace constitutionally prescribed processes (11). Accordingly, the term “quasi-legal institution” in this article refers to structures that have emerged in this gray zone between customary legitimacy, coercive capital, and the inefficiency of modern bureaucracy, thereby hollowing out the formal standards of the rule of law (8).

Customary-Tribal Adjudication and Its Conflict with the Judicial Monopoly

The conflict between customary and tribal adjudication, on the one hand, and the principle of judicial monopoly, on the other, is rooted in the fundamental tension between the modern state based on the rule of law and spontaneous, premodern social orders. In modern legal systems, including constitutional and criminal law systems based on the principles of separation of powers and national sovereignty, the authority to adjudicate disputes, determine punishment, and administer justice is vested exclusively in the sovereign authority and the formal judiciary. The rationale underlying this monopoly is to guarantee legal certainty, equality before the law, and protection against private enforcement of rights or tribal retaliation. By contrast, tribal and indigenous societies possess long-standing normative structures whose legitimacy derives not from the will of the legislature, but from tradition, kinship solidarity, and the authority of tribal elders (12).

In tribal adjudication, the dominant paradigm is “restorative justice and the restoration of social equilibrium,” whereas formal adjudication operates on the basis of “retributive justice, attribution of criminal responsibility, and the imposition of legal punishment.” This philosophical divergence means that state courts seek to identify offenders

and impose punishment—which, in traditional settings, may preserve or intensify hostility—whereas tribal adjudication prioritizes reconciliation, compensation, and the prevention of cycles of blood revenge and subsequent protracted conflict. The critical point of divergence emerges in both substantive and procedural dimensions. Substantively, customary mechanisms sometimes employ methods of dispute resolution that clearly conflict with mandatory principles of criminal law, the principle of the personal nature of punishment, human dignity, and human rights standards. Examples include imposing compensation or settlement payments on all members of a tribe, thereby substituting collective responsibility for individual responsibility, or harmful customs such as “blood settlement,” which violate the fundamental rights of innocent persons (8).

Procedurally, the intervention of customary institutions in serious crimes and offenses involving a public dimension may weaken the authority of law and render the state’s criminal policy ineffective, because the tribal system, by prioritizing reconciliation, may in practice disregard the public dimension of crime or prevent its reporting to law-enforcement authorities. Nevertheless, inefficiency and excessive delay in bureaucratic judicial systems, together with the inability of formal courts to establish “durable reconciliation” in closed tribal communities, have led legal sociologists and criminologists to regard customary adjudication as an unavoidable social reality. Therefore, criminal policy should not seek to eliminate or completely deny such structures, because their forcible removal would deepen the gap between formal law and social reality. A more effective solution is to move from an “absolute and exclusionary monopoly” toward “judicial supervision and guidance”; that is, the formal legal system should make use of the strong mediation and reconciliation capacity of tribal elders within institutions such as restorative justice and arbitration, while establishing strict limits concerning mandatory rules, third-party rights, and fundamental principles of criminal law, so that customary justice serves public order rather than undermines it (3).

The social structure of extensive parts of Iraq—particularly the southern and central provinces and parts of the northwest—is deeply rooted in long-standing tribal relationships and traditions. The successive weakening of central state institutions since the international sanctions of the 1990s and the complete collapse of the security order in 2003 led to the revival and considerable expansion of traditional dispute-resolution mechanisms known as “tribal adjudication” (*al-qaḍā’ al-‘ashā’irī*) (13). In the absence of effective courts and capable judicial law-enforcement authorities, these mechanisms became the first recourse for citizens seeking to resolve property disputes, blood-money claims, family conflicts, and criminal matters.

From a normative and constitutional perspective, the relationship between the state and tribal traditions is characterized by fundamental ambiguity. Article 45(2) of the Iraqi Constitution of 2005, in conciliatory and cooperative language, provides that “the State shall seek the advancement of the Iraqi clans and tribes, shall attend to their affairs in a manner consistent with religion and the law, shall strengthen their noble human values, and shall prohibit tribal traditions that are contrary to human rights.” This provision represented an attempt to recognize the peace-building function of tribal structures in Iraqi society; however, the concluding qualification of the article—“in a manner not inconsistent with religion and the law”—has often been disregarded in practice, and tribes have exercised powers that inherently fall within the exclusive jurisdiction of the judiciary (14).

Article 19 of the 2005 Constitution expressly affirms principles including the right of all persons to seek justice before formal courts, the exclusive jurisdiction of judicial authorities, the presumption of innocence, and the right of defense. Yet tribal adjudication is founded on markedly different principles: first, traditional adjudicators known as the *ahl al-farīḍa* issue decisions not on the basis of the Penal Code or procedural law, but according to unwritten customary rules and historically transmitted practices. Second, tribal custom applies collective rather than individual

responsibility. Whereas modern criminal law and the principle of legality require that criminal liability be strictly personal, tribal practice may impose substantial compensation obligations, known as *al-faṣl al-‘ashā’irī*, on the accused person’s tribe and may even expose innocent persons to threats or property seizure. Third, tribal customs may restrict women’s rights and conflict with human dignity. Although the harmful practice of *al-faṣliyya*, or giving girls as compensation for bloodshed, was prohibited under Article 9 of the Personal Status Law of 1959 and Article 45 of the Constitution, remnants of the practice survived within traditional structures for many years and generated extensive legal restrictions on women (15).

A radical and violent manifestation of this quasi-legal authority emerged in the practice known as *al-dakka al-‘ashā’iriyya*. Under this practice, relatives of one party to a dispute would fire weapons into the air or at the walls of the opposing party’s home in order to terrorize and psychologically pressure them into attending a tribal hearing or accepting the amount set as tribal compensation. This practice not only violated Article 37 of the Constitution, which guarantees personal security and dignity, but also constituted armed intimidation and the usurpation of the authority of the police and law-enforcement agencies (14).

The worsening security crisis generated by *al-dakka al-‘ashā’iriyya* ultimately prompted Iraq’s highest judicial authorities to adopt a strict response. In late 2018, the Supreme Judicial Council issued an official directive classifying this practice under the Anti-Terrorism Law of 2005 (Law No. 13 of 2005). Courts were instructed to prosecute individuals who used armed threats against homes for extortion or the settlement of tribal disputes as perpetrators of terrorist acts within the meaning of Article 2 of the Anti-Terrorism Law, an offense that may carry penalties extending to capital punishment or life imprisonment.

Nevertheless, the coercive response of the judiciary did not eliminate tribal adjudication. Many judges in courts of first instance and appellate courts encourage parties to reach “tribal reconciliation” before issuing judgments or enforcing precautionary measures, because enforcement of a formal judgment without the consent of the complainant’s tribe may trigger continuing tribal retaliation (15). The formal legal system has therefore been compelled to accommodate this “semi-autonomous social field” and, in the interest of social peace, to tolerate violations of fair-trial principles and the state’s monopoly over punishment. This coexistence constitutes a clear example of a quasi-legal judicial order in Iraq, in which the authority of state-court judgments is subordinated to tribal considerations (16).

The Popular Mobilization Forces: From Fatwa to Legislation and Structural Duality

The emergence of Shi’i paramilitary organizations following the widely known fatwa issued by the religious authority on June 13, 2014, against ISIS became one of the most consequential developments in Iraq’s security structure. The “Popular Mobilization Forces” (*al-Ḥashd al-Sha‘bī*), which emerged informally through Diwani Order No. 55 in the same year, initially served as a mechanism for organizing religious and communal volunteers against the immediate threat posed by ISIS. In practice, however, it developed into a structure with a distinct chain of command and a concentrated religious-party identity, gradually acquiring a central position within the political and military power structure of part of Iraqi society. Sociologically, this organization is a prominent example of a “hybrid order” in the security domain: an institution drawing simultaneously on the legitimacy of a fatwa, as a form of religious symbolic capital, and on official state funding and weaponry, as forms of economic and coercive state capital (17).

On November 26, 2016, with the adoption by the Council of Representatives of the 2016 Popular Mobilization Commission Law—amid opposition and a boycott by Sunni representatives who described the law as undermining national partnership—the organization acquired a formal legislative basis. The law designated the Popular Mobilization Forces as “part of the Iraqi Armed Forces” and placed them under the authority of the Commander-in-Chief of the Armed Forces, namely the Prime Minister (13). At the same time, the law expressly recognized organizational independence and a distinct legal status, providing in Article 1 that “the Popular Mobilization Forces are an independent formation and part of the Iraqi Armed Forces, attached to the Commander-in-Chief of the Armed Forces.” This formulation of “independence within the structure,” which simultaneously characterizes the organization as both part of and independent from the armed forces, represents a clear instance of legislative ambiguity and structural duality.

Under the provisions of the law, the personnel of this organization are subject to national military laws and are prohibited from participating in partisan and political activities; however, empirical realities have substantially undermined these statutory requirements. In practice, only a limited proportion of the organization’s personnel were incorporated into the formal structure of the Ministry of Defense, while the remainder continued to operate as an “independent formation” under party-affiliated and religious commanders. From a constitutional-law perspective, several major criticisms arise. First, there is a conflict with Article 9 of the Constitution, which defines the armed forces as institutions of the state representing the national interest and expressly prohibits partisan activity by military forces. When formations affiliated with specific religious-political organizations—from the Sadrist movement to Harakat Hezbollah al-Nujaba—operate in official uniforms and receive state salaries while remaining under parallel partisan chains of command, Article 9 becomes nominal and deprived of substantive effect. Second, the principle of a unified chain of command is weakened. Pursuant to Articles 80 and 109 of the Constitution, the government and parliament exercise lawful oversight over all armed forces. Yet some field commanders of the Popular Mobilization Forces have not consistently adhered to the authority of the Commander-in-Chief and have adopted independent regional positions, thereby undermining the foundations of the state’s monopoly over the legitimate use of force. Third, there is a deficiency in judicial and parliamentary oversight. Despite the adoption of the 2016 law, there remains no sufficiently effective judicial or parliamentary mechanism for prosecuting persons accused of human rights violations during military operations, because the organization occupies a legally recognized yet quasi-state position, and the state has faced significant obstacles in prosecuting its commanders because of their religious legitimacy and parliamentary influence (17).

The phenomenon of the Popular Mobilization Forces, viewed through the tension between religious authority grounded in fatwa and legislative authority grounded in statute, requires analysis at the deeper level of the transition from religious legitimacy to legal legitimacy within a state undergoing political transformation. It constitutes a clear instance of “structural duality” in security and military institutions, in which the primary source of legitimacy and the principal source of the exercise of power derive from two entirely different yet intersecting channels. Understanding this complexity requires tracing the evolution of the institution from an emergency response to crisis into a structural pillar of Iraq’s political and military order. The point of departure is the nature of the fatwa as the initial mobilizing factor. In 2014, when the Iraqi state suffered a major security collapse in the face of the expansion of extremist groups, a religious call issued by the highest religious authority in Najaf entered the arena from outside the state’s formal institutional structure. This fatwa conferred a form of “charismatic legitimacy” upon groups of armed personnel that, at that moment, lacked a fully developed legal structure and formal chain of command. At this stage,

the Popular Mobilization Forces operated not as an institution directly subordinated to the executive branch, but as a force emerging from religious authority whose source of legitimacy was religious will rather than the Constitution. From the perspective of political science, this created a paradigm of religious pragmatism in which the necessity of preserving the national entity prevailed over the traditional hierarchy of sovereign authority. What transformed the phenomenon into a fundamental challenge for public law, however, was the subsequent process of legalization (13).

The transformation of a force originating in a fatwa into a statutory institution through Law No. 40 of 2016 represented an effort by the state to achieve structural integration. The objective of this legislative process was to shift the organization from the domain of religious legitimacy into the domain of legal legitimacy so that it could be utilized within the country's formal military structure. This transition, however, did not amount to complete substitution; instead, it created a form of "tense coexistence." Although the law defined the Popular Mobilization Forces as part of the "armed forces," in practice it preserved a degree of "structural autonomy" in which the chain of command remained heavily influenced by supra-state loyalties and religious structures. It is at this point that "structural duality" becomes evident (14).

In an integrated legal system, security institutions must operate under a single chain of command accountable to civilian authority. In the case of the Popular Mobilization Forces, however, there is a "duality in the source of command." On the one hand, the Constitution and military legislation emphasize the formal hierarchy and accountability to the Prime Minister in the latter's capacity as Commander-in-Chief of the Armed Forces. On the other hand, ideological loyalties and religious ties generate a form of "parallel command" that may conflict with the state's broader policies or the balance of power among political groups. This duality exists not only at the operational level but also at the legal and institutional level, such that the precise boundary between a "formal force under state control" and a "religious force under the control of political groups" remains persistently ambiguous (6).

From the perspective of international law and the foundational principles of the rule of law, this duality may generate an accountability crisis. When an institution possesses military characteristics but its source of legitimacy and command is partly embedded in informal and extra-legal structures, tracing legal responsibility for violations or military actions becomes difficult. In effect, legislation sought to render the force "law-governed" but did not fully integrate it. This gap between written law and structural reality has transformed the Popular Mobilization Forces into an institution that is simultaneously part of the machinery of sovereign authority and an independent actor in the political and security spheres. Ultimately, analysis of the Popular Mobilization Forces reveals a complex phenomenon associated with political transition: an effort to incorporate the sacred, namely the fatwa, into the secular and legal order of statutory governance. Although this process may have appeared politically necessary for the survival of the state, theoretically it produced a hybrid institution suspended between a state-centered pole and a group-centered pole. The result of this duality is a weakening of the unified concept of the state's monopoly over the use of force, because despite possessing a legal framework, the Popular Mobilization Forces continue to draw upon religious legitimacy in order to preserve a measure of structural autonomy in the face of political and legal pressures. This condition creates a persistent challenge to the development of a rule-of-law system in which military power should be fully and directly subject to law and civilian institutional control (14).

Sectarian Power-Sharing and Extra-Legal Decision-Making Councils

The phenomenon of “sectarian power-sharing” and its interaction with structures resembling “extra-legal councils” in Iraq requires an in-depth examination of the transition from a “nation-state” model toward a “state of religious coalitions.” In Iraq’s political system, *muḥāṣaṣa* is not merely a simple method for distributing political power; rather, it has become a “structural rule” that redefines the very concepts of sovereignty, law, and legitimacy. This system, rooted in post-2003 political settlements, is based not on “citizenship” and “merit,” but on “sectarian and ethnic allocation.” Within this paradigm, legitimacy is produced not primarily through electoral support for a political program, but through the capacity of group leaders to secure their constituencies’ share of state resources (5).

This power-sharing structure has, in turn, created favorable conditions for the emergence of what may be termed extra-legal councils or “shadow decision-making institutions.” Because agreement among sectarian groups is difficult to achieve, key national decisions are often shaped not through open and transparent deliberation in the Council of Representatives or through ordinary administrative procedures within the cabinet, but behind closed doors through agreements among leaders of political blocs, often operating through coordinating coalitions or leadership councils. Although these “shadow councils” do not formally exist in the constitutional text, they may exercise substantial *de facto* power, and their decisions are often effectively determined before entering the formal legislative or executive process.

This condition gives rise to what political scholarship describes as the “extra-legal character of decision-making.” When decisions are reached through intergroup bargains among political leaders, the constitutional allocation of competences prescribed in modern constitutional systems is effectively displaced. In such circumstances, parliament and the government cease to function as the primary agents of political power and instead become implementers or formal ratifiers of decisions previously reached within the informal hierarchy of sectarian power-sharing. As a result, the principle of separation of powers becomes largely formal, because real power resides not in autonomous institutions, but in supra-institutional and extra-legal coalitions primarily concerned with managing the balance of power among sectarian constituencies rather than enforcing the rule of law (4).

From an academic perspective, this phenomenon may be interpreted as a form of return to political premodernity, in which relations of power shift away from rational-legal rules toward traditional relationships, religious loyalties, and elite guarantees. In such a system, law functions not as a superior normative authority that constrains power, but as an instrument for consolidating existing allocations of influence. In other words, extra-legal decision-making councils in Iraq operate as mechanisms for managing conflicts generated by sectarian power-sharing. Because the state cannot act on the basis of a single unified public purpose, it is compelled to bargain among the conflicting interests of different groups through informal councils and arrangements outside prescribed constitutional procedures. This “transactional politics” comes at the cost of weakening democratic institutions and transforming the state into an institution for the “management of interests,” to the point that the boundary between constitutional law and political agreement becomes blurred (12).

One of the most pervasive manifestations of quasi-legal authority in Iraq is the establishment of binding but unwritten conventions at the apex of political decision-making and the distribution of executive power, known in political discourse as *al-muḥāṣaṣa al-ṭāʾifiyya*, or ethno-sectarian quota allocation (5). Under this binding political convention, the presidency is customarily allocated to the Kurds, the premiership, as the highest executive office,

to the Shi'a, and the speakership of the Council of Representatives to the Sunnis. Ministries, embassies, intelligence agencies, and senior director-general positions are likewise distributed among governing parties according to quota-based allocation formulas.

This mechanism for distributing political power has no explicit basis in the text of the 2005 Constitution; rather, it stands in fundamental tension with several principles expressly recognized therein. First, it conflicts with the principle of civic equality. Article 14 of the Constitution provides that "Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, color, religion, sect, belief, economic status, or social status." By transforming citizens into members of sectarian blocs, the muḥāṣaṣa system conditions access to public office on ethno-sectarian affiliation. Second, it conflicts with meritocracy and equality of opportunity. Article 16 provides that "equal opportunities shall be guaranteed to all Iraqis." In practice, however, recruitment and promotion within the Iraqi bureaucracy have frequently depended not on merit and open competitive examinations, but on mechanisms of "party endorsement," whereby political leaders provide recommendations enabling their supporters to enter state institutions and gain access to oil-derived rents. Third, it weakens parliamentary democracy and distorts the legislature's constitutional role under Articles 5 and 6. Article 5 identifies the people and the rule of law as the sources of governmental legitimacy. Yet under the muḥāṣaṣa structure, major political decisions, the selection of ministers, and the enactment of sensitive legislation are often determined not in open sessions of the Council of Representatives, but in informal and private meetings among leaders of sectarian coalitions, commonly described as political leadership councils or coordinating bodies. Parliament is thereby reduced to a largely formal institution for endorsing political bargains reached behind closed doors (18).

From the perspective of political sociology and public law, Iraq's sectarian power-sharing system may be understood as a form of "captured consociational democracy" (19). Unlike Arend Lijphart's classical model of consociational democracy, which was designed to facilitate the peaceful management of conflict in deeply divided societies, in Iraq the system has evolved into an instrument through which governing elites can shield themselves from legal accountability. Through manipulation of legal interpretations and exploitation of recurring political crises, elites have effectively constructed a "parallel unwritten constitution" that competes with and, in practice, often prevails over the written constitutional text.

The legal consequence of this structure is the paralysis of supervisory institutions. The Commission of Integrity and the Federal Board of Supreme Audit, when confronted with major corruption cases involving powerful leaders or political parties, may be unable to pursue effective investigations because of the political balance of deterrence created by sectarian quota arrangements. Efforts to prosecute a corrupt official may immediately be characterized as an "attack on the religious or ethnic share of that group" and be neutralized through the informal veto of communal leaders. As a result, sectarian power-sharing places a legal façade over a rent-seeking oligarchic structure and undermines the integrity of the Rechtsstaat and the rule-of-law state (20).

Exceptional Institutions and Judicial Practice: From Committee 29 to the Federal Court's Annulment Decision

In addition to deeply rooted tribal institutions and sectarian political arrangements, Iraq's executive branch in the post-2003 period has repeatedly resorted to the creation of extraordinary executive committees endowed with quasi-judicial powers in order to circumvent constitutional limitations and perceived judicial inertia. The most prominent and controversial example was the establishment of a permanent body known as "Diwani Committee

29,” headed by Major General Ahmed Abu Ragheef during the government of Mustafa al-Kadhimi. Formed with the stated mission of combating major financial corruption and organized crime, the committee received unusually extensive security and intelligence powers from the Prime Minister. In practice, it evolved into a parallel interrogation and detention structure that conducted nighttime arrests, detained suspects in secret facilities, and denied some accused persons effective access to legal counsel. International human rights organizations and investigative reports documented allegations that interrogators associated with the committee used severe physical and psychological abuse, sleep deprivation, and threats against family members to obtain coerced confessions (21). Such conduct constituted a clear violation of Article 37 of the Constitution, which absolutely prohibits torture and coerced confessions, and Article 19, which guarantees the right to counsel and the legality of detention orders.

The decisive legal turning point in confronting this exceptional body came with the intervention of the Federal Supreme Court of Iraq. On March 2, 2022, in Judgment No. 38/Federal/2022, the Court declared the establishment of Diwani Committee 29 unconstitutional and unlawful and ordered its dissolution. In its fundamental legal reasoning, the Court relied on the following principles: first, the violation of the separation of powers under Article 47, because the Prime Minister, as head of the executive branch, may not create through administrative orders an institution that usurps inherently judicial and investigative powers. Second, the violation of judicial independence under Articles 87 and 88, because the judiciary is the competent authority for criminal investigation, the issuance of arrest warrants, and the implementation of detention orders through investigating judges and duly authorized investigators. Establishing a committee attached to the Prime Minister’s Office therefore constitutes direct interference with the judicial branch and an infringement of the institutional independence and competences of judges. Third, the violation of the defense rights of accused persons under Article 19, because delegating investigative authority to security officers operating beyond effective prosecutorial supervision places the procedural guarantees of criminal justice at risk.

The annulment of Committee 29, although theoretically a victory for fair-trial standards and the rule of law, generated a difficult practical dilemma, as anti-corruption organizations warned that dissolving the body without undertaking fundamental reform of the judiciary could contribute to impunity for high-ranking political actors accused of major corruption (22). This tension demonstrates that the jurisprudence of the Federal Supreme Court, when caught between the political interests of elites and a lack of effective enforcement mechanisms, encounters structural obstacles in controlling quasi-legalism. Exceptional institutions arise directly from the weaknesses of formal bureaucracy: whenever the formal system becomes corrupt or ineffective, political authorities create parallel bodies, and when courts annul such structures, society may once again confront institutional paralysis and impunity.

From a legal perspective, the fundamental defect of Committee 29 was the absence of both legal and structural legitimacy. When the executive branch creates by decree or administrative order a body exercising quasi-judicial authority, it violates the principle of separation of powers. By circumventing the ordinary judicial hierarchy, such a committee becomes a form of parallel judiciary that is not only partially insulated from ordinary judicial supervision, but may also subject adjudicatory processes to political or executive interests. It is precisely at this point that exceptional adjudication becomes unlawful adjudication. The role of the Federal Supreme Court in this context is that of a guardian of legality. When the Court annuls such a committee, it is effectively restoring the constitutional boundaries of governmental power. The annulment decision is therefore not merely an administrative ruling, but an affirmation of the rule of law. Through such a decision, the Court declares that no authority, including the Prime Minister or the executive branch, may use administrative instruments to bypass the judiciary or transfer judicial

powers to bodies that are legally indeterminate and beyond effective supervision. Analysis of this jurisprudence demonstrates that the Court's reasoning rests on two principles. The first is the principle of judicial monopoly: only courts established by law may adjudicate criminal matters and legal disputes. The second is the principle of legitimacy of source: any institution empowered to issue legally binding decisions must derive its authority from the Constitution or legislation enacted by parliament, not merely from an executive order. Ultimately, this confrontation illustrates a broader lesson in criminal policy and public law: any attempt to create "judicial shortcuts" in the name of combating corruption or managing crises risks undermining the legal order itself. The Federal Supreme Court's annulment decision therefore reaffirms the principle that justice must not be sacrificed to speed or executive authority. Such jurisprudence seeks to ensure that even in the most difficult circumstances, criminal adjudication proceeds through transparent, predictable procedures subject to oversight by formal courts, thereby preserving the legitimacy of the judicial system throughout society.

Conclusion

Quasi-legal institutions in post-2003 Iraq are not merely a security phenomenon; rather, they are products of a fragile process of state-building undertaken amid crises of legitimacy and security. The findings of this study demonstrate that such institutions—including the Popular Mobilization Forces, the tribal justice system, and sectarian power-sharing—have functioned as "functional substitutes" in the vacuum created by the weakness of formal state institutions. By creating "islands of informal authority," these structures weaken the state's "legitimate monopoly over the use of force" and contribute to a hybrid form of governance in which formal law remains in continuous tension with customary norms and sectarian interests. Overcoming this legal impasse and restoring authority to the state requires legislative reform and a renewed emphasis on the "rule of law." It is essential to eliminate the condition of "legal ambiguity" surrounding institutions such as the Popular Mobilization Forces. The enactment of supplementary legislation that precisely defines their powers, chain of command, and civilian oversight would constitute a first step toward integrating such forces into the formal state structure. The relationship with customary law must likewise be reconceptualized. Iraq's Supreme Judicial Council should shift from an approach of "accommodation of custom" toward one of "regulation of custom." This would entail the explicit criminalization of violent tribal practices, such as al-dakka al-'ashā'iriyya, together with the establishment of judicial mediation mechanisms operating under the supervision of formal courts. Furthermore, a transition from sectarian power-sharing to merit-based governance is required. Reform of constitutional and electoral arrangements is necessary to reduce the effects of sectarian quota systems on judicial and administrative appointments so that justice ceases to function as an instrument for allocating communal shares and instead becomes an institution for safeguarding citizenship rights. Ultimately, overcoming the present condition requires a "new social contract" in which informal institutions are no longer treated as substitutes for the state, but are defined as supervised components of the broader structure of authority operating under a modern, law-governed state.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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