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A Comparative Constitutional Study of the Role of Experts in Islamic Jurisprudence and Legal Scholars in the Federal Supreme Court in Iraq

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Al-Baydar Center Publications for Studies and Planning

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Important notes:

1. Dear reader, before you start reading, I would like to point out that the study may have some specialization in some of its aspects. It adheres to the scientific method in stating an opinion supported by evidence. For the first time in this section, the study reviewed twenty-four constitutional experiences of constitutional courts in different countries of the world, and three international experiences of constitutional councils, from Europe, the Americas, and Asia. Which means that discussing the study and responding to it should be in the same manner. Accordingly, the transmitted speech that is not supported by the constitutional evidence will not be accepted in the response.

2. The main purpose of the study is to clarify the truth stated in the constitution, and to place it in the service of public opinion and stakeholders, in order to help them adopt an optimal solution that is consistent with international experiences that preceded us. It is not our purpose to lean towards this or that party, or to adopt this or that opinion.

Introduction:

I did not want to talk about the subject throughout the past period, but the confusion that occurred and the request of some brothers prompted me to clarify some matters in this regard, especially after the end of the outburst that accompanied the issue, and the parliament's failure to enact the Federal Supreme Court's law, as desired by the constitution, for the fourth time in a row, as it had previously failed in its previous parliamentary sessions.

And as usual before, no one - other than specialists - remained but talked about the issue, without guidance or an enlightening book. This caused a blurring of the

image on public opinion.

First of all, it must be said that every individual has the right to express his opinion on whether the experts of Islamic jurisprudence can enter the court or not, and so on with regard to legal scholars, as long as the conversation is focused on personal opinion. However, it is absolutely wrong for some to falsely ascribe to the Constitution what is not in it, even though they are not aware of the issue. Which leads to the lack of clarity of the picture to the public opinion. The difference between stating a personal opinion and uploading this opinion to the constitution is clear. This is the current problem in Iraq, as some of them upload their personal opinions and project them to the constitution, as if their personal opinions are what the constitution should be.

In general: The Constitution Drafting Committee was exhausted at its time - 2005 - for the establishment of texts on the Federal Supreme Court in the constitution (Articles 92-94), and the current debate was ongoing at that time, until it was finally agreed that the Federal Court consisted of a number Of judges, experts in Islamic jurisprudence, and legal scholars.

Faced with this agreement, the Shiite negotiator was forced to make some concessions to the other party, as the principle in writing the constitution was consensus, and not writing anything by force or against the will of other parties. In view of this, some parties were forced to concede here and there in order to pass some texts; Perhaps this is the reason that led to the existence of some texts that should not be present from the point of view of the specialists.

At the time of the constitution drafting, for the committee, the matter was not only to agree on how to form the court, but rather some subtle details were entered, such as: the number of members and some other substantive procedures, but due to the limited time allocated to the completion of writing the constitution - which was limited to a short period not exceeding six months -; and due to severe disagreements regarding some other texts; It was agreed on the amount present in the constitution now, and to postpone other matters related to the number of members of the court and the mechanism of work in it to the law.

The role of the experts of Islamic jurisprudence and legal scholars, is authentic and not otherwise:

First of all, I find it necessary to include the constitutional text in question, to let the reader know what we're talking about. This text is Article (92) of the Constitution, which states the following:

2- «The Federal Supreme Court consists of a number of judges, experts in Islamic jurisprudence, and legal scholars whose number is determined, the method of their selection, and the work of the court shall be determined by a law enacted by a two-thirds majority of the members of the House of Parliment.

The role of experts of Islamic jurisprudence and legal scholars according to this text is a fundamental role, and that the three categories mentioned in it :- Judges, experts of Islamic jurisprudence, and legal scholars - All are authentic classes, and they all stand on par. In order to conduct the scientific method in presenting the evidence supporting this statement, we will talk about this evidence through two axes: The first: in which we present the evidence of the other opinion which says that only the judges are the ones who should be in court, and that the experts of Islamic jurisprudence and legal scholars are only technical experts and advisors no more. And the other axis: in which we show our other supporting evidence, drawn from the constitution, law, and international constitutional experiences in the formation of constitutional courts in the world. So that the reader knows - through the results of the presentation and comparison - the face of the truth that some of them have missed, either by ignorance or deliberately, and let us arrive at a sound opinion consistent with the constitution and consistent with international constitutional experiences in this regard. God grants success.

The first axis: **opinion evidence of the opposing team**:

If we commit ourselves to the scientific method in the debate, we have to present the opinion of the opposing team, in order to have an evidence-based scholarly discussion, to reach a good opinion.

The other opinion says that it is impermissible to include experts of Islamic jurisprudence and legal scholars in the composition of the court, and that it is necessary for the court to be limited to judges only. Although this team did not present any constitutional jurisprudential or scientific evidence, it did not seem to rely on anything but relying on two arguments:

The first: The constitution called the body (the court).

And the other: The constitution calls the representatives of Islamic jurisprudence "experts".

We will discuss these two arguments, which I have not found anyone in the world to rely on except for some Iraqis, and this is what you will discover for yourself - dear reader - after completing this study and presenting international constitutional experiences.

The first argument: **Launching the name** (**the court**):

Those who hold this opinion say: As long as the constitution calls the commission (the court), and expresses it as an independent judicial body; Therefore, it is a court that should only include judges, and no one other than judges may enter it.

Discuss this argument:

This argument is refuted, and has no basis, neither in the constitution nor from the law. It reveals that its readers are not informed of the experiences of constitutional courts in the countries of the world, as well as their lack of knowledge of constitutional jurisprudence. Here's the evidence for what we say:

First: **The First Evidence**:

If we accept the validity of this argument, then it will be invalidated if the constitution adopts others. Hence, the ruling authority is the constitution alone in this regard; From this starting point, the constitutional authority has the right to describe the body as a "court" and to include legal or administrative, lawyers, former ministers, or parliamentarians in its membership, and so on. It is the constitution that establishes and governs all that, and there is no authority over it. Rather, it has the right to include texts that are consistent with the aspirations of the public, even if they contradict the parliamentary or presidential system. The evidence for this is what happened in the parliamentary system under the current Iraqi constitution, as it is not a purely parliamentary system, but rather a modified system - so to speak. And speaking about this matter is self-evident that does not need to be elaborated. It will become apparent later in this study that constitutions may differ among themselves using some terms. The constitutions of the Arab Maghreb countries are known to use some terms other than those used by the rest

of the Arab countries in their constitutions, and the Saudi constitution – the basic system – has some different uses, and so is the Iranian constitution, and others. For example: the executive authority is a well-known term in the constitutions, but the Lebanese constitution did not use this customary term, but rather the term (the procedural authority) was used. The House of Representatives has several designations according to the constitutions: (the House of Commons, the People's Assembly, the National Assembly, the National Assembly ...), and here are the other names: (The Senate, the House of Lords, the Senate, the Fedration Council, and the Provincial Council ...) . And more than all of that, a minister in America is a (secretary), and the prime minister is the common term between constitutions and states, but the German constitution describes him as (chancellor) – Article 62 of the German Constitution of 1949 – so what is the councelor relationship with the prime minister?

It is simply the language of terms, gentlemen, that differ from one experience to another, and so on, which we will explain in detail later.

Second: **The Second Evidence**:

The truth is that giving this body the name (the court) does not conflict with the privacy of its constitution from the constitutional point of view. That is because the purpose of launching the name – according to the constitutional jurisprudence – is that it exercises a judicial function in the end. Because it has general jurisdiction on the one hand, and because its decisions possess the power of the matter decided upon and are an argument for everyone on the other hand. Therefore, international constitutions call this body (the court), and describe it as an (independent judiciary) even though it may not include a single judge in prestigious constitutional experiences. Indeed, according to international experience, constitutions give all members of the constitutional court the title (judge), although the majority of them are not judges.

– All this will become evident when we talk later in Section Four about international experiences in establishing constitutional courts.

Moreover, the experience of the Constitutional Council – a council in which the political aspect is more noticeable – also gives the name (the court) or (the judicial body) to the council's work.

In France and Lebanon, it is almost unanimous in constitutional jurisprudence

that the Constitutional Council exercises a "judicial function."

They have no problem exercising the judicial job or work – from a constitutional point of view – with members who are not judges. Therefore, we will find that the international constitutional courts describe the members of the court as (judge) even if most of their members are not judges; Because the court of a special constitutional nature exercises constitutional judiciary, and it is not an ordinary court affiliated with the regular judiciary, and the difference between the two is clear to the specialists. We will elaborate on that in the third part of this section when talking about the difference between a constitutional judiciary and a regular judiciary.

Third: **The Third Evidence**:

The constitution does not object to the exercise of the judicial position or work of members who are not judges, but rather called them (judges) and the body (court), thus, the law does not object to the name (court) being given to the body, and the exercise of the judicial function by members who are not judges.

In fact, I am amazed at our immersion in listing these matters, which should be obvious to those who possess the lowest legal level. In general, I will mention a brief overview of some courts that are held in the presence of members who are not judges and exercise the judicial function even though they are not judges, which are: the Supreme Administrative Court, the Administrative Court, the Personnel Court, the Customs Court, the Customs Cassation Commission, the Juvenile Court, and the Central Juvenile Court , and the administrative court concerned with governmental contracts.

We will deal with the formation of these courts successively:

1– The Supreme Administrative Court, **the Administrative Court**, **and the Personnel Court**:

All these bodies are called (the court) even though there is no single judge in it, and most of those in it are university professors in Law or some Law employees. So giving the name (the court) and the work (the judicial position) is according to the nature of the work. As it issues decisions according to the law as issued by the judiciary, and accepts the appeal, and then it possesses the authority of the adjudicated thing.

2– Customs Court:

It consists of two judges and a customs officer who holds an initial university degree in law, of no less than a third degree, to be named by the Minister of Finance (Article 245 of the Customs Law of 1984 in force). According to the original text before the amendment, the court consisted of one judge and two customs officers. It is a court even though one of its three members is an employee of customs.

3– The Customs Cassation Commission:

It consists of two judges and one of the general managers in the Ministry of Finance. (Article 250 of the Customs Law of 1984 in force).

4– Juvenile Court:

It consists of three members: one of them is judge, the second of the jurists, and the third are specialists in the sciences related to juvenile affairs, such as psychology and sociology. (Article 545 of the Juvenile Welfare Law No. 76 of 1983 in force). It is a tripartite court, one of whom is a judge, the second is a jurist, and the third is either a specialist in psychology or sociology, and the second and third have nothing to do with judiciary according to the specialization as is evident.

5– Central Juvenile Court:

They are formed in the same way that juvenile courts are established in governorate centers. That is, from a judge, a jurist, and a specialist in psychology or sociology.

6– Administrative Court concerned with government contracts:

Article (8) of the Instructions for Implementing Government Contracts No. (1) for the year 2007 - repealed by Instructions No. (1) for the year 2008 - provides for the formation of an administrative court specializing in government contracts, to be headed by a judge attributed to the Supreme Judicial Council, and the membership of a representative of the Ministry of Planning and Development cooperation whose job rank is not less than a general manager and a representative of the Iraqi Contractors Union.

7– Granting the authority of a misdemeanor judge to the traffic officer and the traffic commissioner:

article (8) of the Traffic Law No. (8) of 2019 in force gives the traffic officer the authority of a misdemeanor judge to impose fines, but more than that: Paragraph (b) of this article gives this authority – a misdemeanor judge – to the traffic commissioner.

If the traffic commissioner is granted the authority of a misdemeanor judge – which is an inherent power that only the judge possesses – let alone the interpretation of the constitution by specialists from jurists or some public figures, and they are more capable of this task than the judge, which some of them prevent, arguing that the Constitutional Court is a court and that it should consist only of judges!

All the aforementioned courts, and others like them, are courts in every sense of the word, and some of them may issue freedom-depriving decisions, imposing penalties with imprisonment, yet some of their members are not judges. The Administrative Court, and above it the Supreme Administrative Court, is of the utmost importance and consideration, and it may come after the Supreme Federal Court – the constitutional – in importance, in this respect – we do not mean the comparison with the work of the regular courts that are subject to the supervision of the Supreme Judicial Council. For example, it has ruled in some of its decisions nullifying the dismissal of a governor who had previously been dismissed by the provincial council, and returned to the post. In other decisions, it ruled the validity of his dismissal from the council, and did not allow him to return to his post. Thus, it issued extremely important and dangerous decisions regarding changing the legal positions of ministers, agents, general directors, and others, which in turn had a great impact on the state's path – positively or negatively – and yet there is not a single judge in them.

If there are courts of this danger, and if some of them issue liberty depriving decisions, that should only be issued by the judiciary, and despite that they were issued by some individuals who have nothing to do with the judiciary. How can you see it so much for a jurist of law, and the like, to interpret the texts of the constitution, even though the constitutional logic in the world confirms that this jurist is the most capable and the best in interpreting the constitution than the judge? Because it his job, and not the job of the judge!

Nevertheless, the Iraqi constitution did not exclude judges, because they have a more specialized role than others. It is mentioned in some specializations in Article (93) of the constitution, such as settling disputes that arise between the federal government and the regional and governorates governments, as the judge here is more capable than the jurist of law, and likewise, the expert in Islamic jurisprudence will be more capable than a judge, and the jurist of law, in interpreting the constants of Islam, and so on.

Fourth: **Fourth Evidence**: It is known that the judiciary has three types: there is a regular judiciary, an administrative judiciary, and a constitutional judiciary.

The first – the ordinary court –:

It is the judiciary that specializes in examining all types of disputes, except for what is considered by the specialized judiciary, and by this we mean the administrative judiciary and the constitutional judiciary.

The ordinary judiciary is represented by the courts of different types and degrees, starting with the elementary courts, passing through the courts of appeal, and ending with the Supreme Court - or as it is called in some countries by the Court of Cassation or Cassation - and these courts are only practiced by judges. Judicial capacity is considered in this type a necessary and inherent quality, and even a restriction on the practice of this type of judiciary. Nevertheless, we noticed in the above that some laws may grant some individuals other than judges the ability to access this judiciary in some of the specialized matters that we presented earlier in the second part.

And the second type – Administrative judiciary :**–**

It is the judiciary entrusted with the administration, and it is represented in that by the State Council - the Shura Council in some names of states - and its institutions, from the Administrative Court, the Personnel Court and the Supreme Administrative Court.

This judiciary is called a (judiciary) in all countries of the world, and it issues important and serious decisions even though it does not include a single judge. Rather, in many countries it is affiliated with the Ministry of Justice and is not independent like the independence of a regular judiciary.

As for the third pattern – Constitutional judiciary :–

It is the judiciary aimed at protecting the constitutional legitimacy and consolidating the supremacy and supremacy of the constitution. It is entrusted with the Constitutional Court or the Constitutional Council.

Some tend to call it (the political judiciary); This is due to the presence of some political dimensions that may appear on it, especially with regard to the composition and selection of its members. Nevertheless, it is known worldwide as (the judiciary). This does not mean that it must be practiced by judges, but rather – as the administrative judiciary – it means that it exercises the judicial function, represented by following formal and substantive procedures in the examination of constitutional cases, and the implementation of laws that regulate this work, such as the law Civil pleadings, and his decisions are final and binding, possessing the power of the adjudicated matter, and have authority over all; This is the meaning of the term "judiciary" being used for the second – administrative – and third – constitutional types.

Hence, it is a constitutional judiciary that practices the constitutional judiciary, and it is promoted by specialists, and it is not an ordinary judiciary that practices the regular judiciary that is limited to judges only. Perhaps the most prominent aspects differentiating this judiciary from the regular judiciary are represented by specialization and peremptory judgments. As for specialization, it, as mentioned above, means that this pattern is concerned exclusively with protecting the constitutional legitimacy and adjudicating the constitutionality of laws. As for the peremptory judgments, it means that the provisions of this type are final, peremptory, and with no appeal thereafter. Contrary to the provisions of the ordinary judiciary, in which litigation is based on degrees, the judgment begins with elementary judgments – the elementary courts – and then becomes an appeal – the courts of appeal – and then a cassation is presented (cassation) – the court of cassation or cassation. Even this litigation – serial – was considered a prominent feature of this judiciary.

Perhaps the failure of most Iraqis to distinguish between the constitutional judiciary, the conditions and manner of exercising it, the regular judiciary, the conditions and how to practice it, was one of the main reasons for the error and the belief that the Federal Supreme Court – the constitutional – should be limited to judges, and this belief may have led to the cynicism of all those who delved into

the issue and their tendency to find unconstitutional and illogical justifications, and their resort to diverting the constitution from its course and neglecting the explicit text; Confessing that error and confusion; Based on all of the four evidences presented in succession in the three parts of this section: Applying the constitution to the term or name (court) on the Federal Supreme Court and describing it as a (judicial body) is not evidence that its members should be judges only, but rather it means that it exercises a judicial function in the end. Because it has general jurisdiction on the one hand, and because its decisions possess the power of the adjudicated thing and are an argument for everyone on the other hand, and that the judiciary practiced by it is a specialized constitutional judiciary that differs radically from the pattern of the judiciary practiced by the regular judiciary, in terms of composition, membership and effects.

And you will see when we talk in the fourth section about the international experiences, in the formation of constitutional courts and the selection of their members, how they consist of multiple classes, not just judges, but you will be surprised also when you see that judges only represent the minority in most of these international experiences, and more than this there is no single judge in some of them.

Based on this, from the constitutional point of view – international and local – and from the legal point of view, the argument for the constitution's use of the term (court) and describing it as a (judicial body), as such, that its members should be judges only, becoms a disputting argument and there is no room for adopting it as an evidence at all.

Second: **The second argument**:

The use of the constitution as a term or description (**experts in Islamic jurisprudence**):

Some of them claim that the constitution's use of the term (Islamic jurisprudence experts) on representatives of Islamic jurisprudence in the Federal Supreme Court indicates that they are not original members of the court, but rather are merely technical experts or advisors. In fact, if some of those who invoke the first argument – mentioned above – are convinced with their argument, then I assume that those who invoke the second argument are not convinced with it within themselves. For its gullibility and superficiality!

Discussing this argument:

First of all, it must be emphasized again that the purpose of the study lies in responding to those who say that the Constitution in Article (92) did not accept the entry of jurists and experts of Islamic jurisprudence into the Federal Supreme Court as original members, but as advisors and technical experts. While we respect the personal opinion, whatever it is, as long as it is an abstract personal opinion; However, we do not accept that the constitution be skipped, interpreted according to whims and desires, and accusing it with what is not contained in it. Accordingly, the response is to this trend, and not to the abstract opinion. Noting that our response does not represent a tendency for one party over another, or merely the adoption of a personal opinion, but rather an explanation of the public opinion about the real position of the constitution that was manipulated by those who do not know! They also noted that our response is limited to constitutional dimensions only, and has nothing to do with political proposals related to the issue, such as if someone says: The entry of these experts will turn the country into a religious state, for example, as this proposition is political and has nothing to do with the constitution. Although this statement is fundamentally incorrect, and those who say it do not know the differences between the religious state and the civil state from the constitutional point of view, we will limit ourselves to explaining the rule of the constitution and we have nothing to do with the political propositions in this study. And maybe another opportunity to talk about it.

Generally speaking, it can be said – regarding the second argument – frankly: This argument is lesser than a spider's web, and it is not issued by specialists, of course. The Constitution and the law reject it outright, and here are the evidence for:

1– What we will present from the many evidences drawn from the constitution are related to the evidence we are relying on, and in brief we say – hoping that we will complete the detailed presentation later in the third section –: that the constitution was clear in its drafting when it said: "The Federal Court consists of a number of judges, experts in Islamic jurisprudence, and legal scholars "; Because it used a term or a word (consist) in many texts, which denote equality in composition. Depending on the wording of the text, the court's synthesis is equally triangular. If they were only meant as advisors, this sharp disagreement would not have occurred among the members of the constitution

drafting committee over whether or not they should be admitted to the court. This led to some concessions from some parties in order to pass the text, and led to their agreement at the time on the need to enact the law relating to the court by a two-thirds majority, in contrast to all other texts. If they were merely technical experts, then why is this complex majority that caused the failure of Parliament to enact this law for four sessions, and what all these disputes at its time ?!

Moreover, any court can seek the assistance of technical experts without the need for a text in the law or the constitution, as a matter of priority. Does such a matter require an explicit provision that they are genuine members in order for the court to be able to consult them! And other evidence that we will present in detail in the third section.

2- The question remains with the fair observer:

Why, then, did the constitution use the term (experts of Islamic jurisprudence) even though it means that they are original members of the court and not just advisors? Could it not have been possible to use other terms, such as: "Sharia jurists, religious scholars, clerics, and so on"? To answer this question, we provide the following:

A- First, we affirm once again that the constitution - represented by the constituent authority - has the right to use the term it deems to be compatible with the interest. some constitutions tend to use some constitutional terminology that is not common or unknown. For example: the executive authority is a well-known term in the constitutions, but the Lebanese constitution did not use this customary term, but rather the term (the procedural authority) was used. Thus, the legislature is a well-known term that does not need to be explained, but some Arab constitutions call this authority the term (the legislative authority). Constitutions differ in naming the House of Representatives (the House of Commons, the People's Assembly, the National Assembly, and the National Assembly), and in naming the Second House (the House of Lords, the Senate, the Federation Council, and the Council of States), and more than all of that we said earlier: A minister in America is a (secretary), and the prime minister is the term recognized between constitutions and states, but the German constitution describes him as "chancellor" - Article 62 of the German Constitution of 1949-.

Based on this, the constitution has the right to use the term (expert in Islamic jurisprudence) instead of other terms. For an interest that he sees, then (there is no problem in terminology).

Then, the most important reason for using this term lies in the sensitivity of (the Shiites). This is because they very carefully use the term (the jurist of Islamic law), as it means – from their point of view – that it is a reference, or at least diligent, with the ability to fatwa and derive the legal ruling, for this is the jurist according to the Shiite perspective. The other two were lower-ranked, they are not jurists, even if they hold 100 doctoral degrees. With this description (reference or mujtahid) it will not be possible to achieve it; This is because the Shiite jurists refuse to enter the state's executive institutions and others, and their work is limited to the honorable scholarly estate and centers of science – I confirm that the conversation is only about the reference and the mujtahid and not about any generalized account of people. This is not the case in (Sunni) jurisprudence, as it does not have this sensitivity to entering into the various state institutions – as it is known to all –, and he tolerates – at the level of the general, not the total – in using the term (the jurist).

Therefore, the failure of the Shiites to enter the court means the text is suspended. So they searched for a term other than the term (the jurist), so there were two other terms: (religious scholars) and (clerics), both of which might give a different impression to what the founders wanted, as well as their sensitivity and what might they cause, i.e., misunderstanding in the public opinion. The term (expert in Islamic jurisprudence) was the most appropriate term to use, especially since the constitution defined the parameters of the term, as it was combined with legal scholars and judges, so he is a person proficient in Islamic jurisprudence, even if he is not a jurist.

I am almost certain that if the constitution used another term, such as a jurist in Islamic law, for example, the dispute would still be there. Because it is not an objective difference that proceeds from objective foundations. And the sign of that is that the constitution gave a description of the highest consideration and value to the legal member of the court, who is (a jurist of law). We know that jurists are a term known to even the illiterate who does not read or write, and that these jurists are hardly represented among thousands of jurists except for the few, which I do not exaggerate if I say that it does not exceed the fingers of the two hands. And with this lofty value for (jurists of law), which represents the most that a jurist can

reach in his career (he was a professor, a judge, a lawyer, or a jurist), and with the constitution calling them (jurists) and not (experts), yet no one has remained, from those who have dealt with the issue in the media - including judges, lawyers and analysts - only said that they are just technical experts and advisors, and the court should be limited to judges only, as if they do not distinguish between a technical expert and a jurist of law, as if we are not in a constitutional court but in a personal status court and we want Determining the proverbial dowry, with all this naivety!

If the term "jurist of law" does not intercede and does not remove the disagreement, then how about "expert in Islamic jurisprudence"! All this indicates conclusively that the issue - as I mentioned earlier - is not related to the text and its interpretation, but rather to personal whims and desires. what a miserable situation the country is experiencing with this fanfare!

Based on the aforementioned, it becomes clear that this argument is invalid, and that it has no basis in the Constitution and the law. Based on what has been mentioned previously, and what has been mentioned above in the advanced parts, in addition to what will be mentioned later in the third section.

The second axis:

Other constitutional evidence supporting our opinion:

To begin with, I find it necessary to re-list the constitutional text in question for the reader to remember the topic. This text is Article 92 of the Constitution, which states the following:

2- The Federal Supreme Court consists of a number of judges, experts in Islamic jurisprudence, and legal scholars, whose number, the method of their selection, and the work of the court shall be determined by a law enacted by a two-thirds majority of the members of Parliament.

Despite the clarity of this text and its evidence of the original role of experts in Islamic jurisprudence and legal scholars, we will proceed to present confirmed evidence - taking into account the evidence previously presented - as follows:

1- The First Evidence: The constitutive authority agreement of the constitution on their role:

There was an agreement between the negotiating blocs in the Constitution

Writing Committee during the writing of the constitutional texts of the Federal Supreme Court on the role of judges, legal scholars, and original jurisprudence experts in the court, especially with regard to the final settlement of the constitution between the leaders of the blocs in what was called (the political kitchen) after the end of the work of sub-committees in the Constitution Writing Committee. As it was finally agreed that the court consists of three poles:

A- Judges: Their role is evident in resolving matters that need a judicial background, such as: the jurisdiction conflict between the federal judiciary and the district judiciary, and to charge indictment against the president of the republic and the prime minister, and so on.

B - Legal scholars: their role is highlighted in the interpretation of the constitution, and in determining whether the law violates the principles of democracy, or the fundamental rights and freedoms stipulated in the constitution.

C- Experts of Islamic jurisprudence: Their role is played when deciding whether the law violates the established rulings of Islam, and in the fact that Islam is the main source of legislation.

And while the Constitution includes among its folds all these matters; Therefore, this triple combination represented the basis of the work of the Federal Supreme Court, and some of them complemented the others; Because their role is complementary.

2- The Second Evidence: **Drafting the Text with Clear Significance**:

The text was written in a clear Arabic tongue, not in another language, so this confusion occurs. The text in Article (92) second says:

The Federal Supreme Court consists of a number of judges, experts in Islamic jurisprudence, and legal scholars.

So the court is made up of this tripartite combination, and they are all equally original members. And all legal means of interpretation confirm this, whether those means are related to the significance of the text, its expression, or its reference, and there is no room for dilligence in the text resource.

Moreover, the constitution followed this approach by using the word "consist" in the sense of "consisting of" in many of its texts. Here are the most prominent

ones:

Here is Article (48) of it that states the following:

The federal legislative authority consists of the House of Representatives and the Federal Council.

Article (47) states the following:

The federal authorities consist of the legislative, executive, and judicial powers. Is there any doubt that could arise in connection with the term "consist" mentioned here?

Article (66) states:

The federal executive authority consists of the President of the Republic and the Council of Ministers.

Article (89) states the following:

The Federal Judicial Authority consists of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Authority, the Judicial Supervision Authority and other federal courts.

The constitution was not satisfied with these texts, but went into other texts subsequent to Article (92), such as Article (116) which states the following:

"The federal system in the Republic of Iraq consists of a decentralized capital, regions, and governorates, and local administrations."

And Article (122) first, which states:

"The governorates consist of a number of districts, sub-districts, and villages".

All these articles came preceded by a term (consisting), and all articles precede Article (92) of the Federal Supreme Court, and some of them are subsequent to it, and all were understood and did not raise any confusion, but when it reached to Article 92 it was explained in another sense, i.e., it means that the categories mentioned in the text are three, Judges who are original members, experts in Islamic jurisprudence, and legal scholars who are only technical advisors and experts and not original members.

Without any slightest scientific evidence that can be relied upon with regard to this distinction, as if the evidence – frankly – is from the speaker's bag and nothing more!

Is something like this could be considered as a scientific reasoning with a valid argument, even if one percent from a thousand, and be uttered by whoever considers himself as a professional in legal ?!

3- If the (experts of Islamic jurisprudence and legal scholars) are considered merely as technical advisors or experts and not original members, then there are important questions that deny this claim, as follow:

A- If they were just advisors and technical experts, then why is all this effort in discussion, negotiations, sharp disagreements and concessions during the writing of the constitution, until those differences led to the necessity for formulating a law that will regulate the work of the Federal Court to be enacted by a two-thirds majority, in contrast to all other texts that did not require such a complex majority; This led to the destruction of the Parliament's efforts in its three successive sessions, and in this fourth session as well, in the enactment of this law, which has become a tight knot because of this majority ?!

B- If they were merely consultants and technical experts – according to this claim – then why were they included in the text that talks about the original members in the first place, without mentioning that they are mere advisors? !!

C- And now I address the question to everyone who has the slightest legal literacy:

Do advisors or technical experts basically need an explicit text in the constitution?!!

As it is known – any court can resort to the help of these on its own without the need for a text obligating it to do so? !! Even though I tend to think that the experts – principlally – are used in the ordinary, not the constitutional, judiciary!

D. Then if this claim was intended, then what prevented the writers of the text – who wrote it in an Arabic tongue and in the presence of some specialists in the Arabic language – from saying the following:

1- "The Federal Supreme Court consists of a number of judges.

2- The court may seek the assistance of some technical advisors and experts on some issues related to the fundamentals of Islam and the principles of democracy, and other issues of a specialized technical nature".

Although this text will be defective in terms of form; Because seeking the help of experts - as we mentioned - does not need a text in the law, and in the constitution!

3- The Third Evidence:

In addition to all of the aforementioned, saying that they are just consultants and technical experts is also a fallen saying. For another reason, which is that this saying prohibits the court from seeking the assistance from technical experts except in the field of Islamic jurisprudence, while the use of these experts - according to the belief of those who say and according to the general legal view - is available for all courts, and in all cases that the court assesses, whatever they are !?

4- The Fourth Evidence: **International Experiences**:

International experiences confirm that constitutional courts are often composed of multiple categories, and that the number of judges in them usually represents the minority, not the majority, in contrast to what is marketed in Iraq by some personalities and parties who are not familiar with the local and international constitutional contents, and who speak without guidance or an enlightening book. The origin of the preponderant theory in this regard - according to the experiences of the international constitutional courts, of which we will present the most important - is the inclusion of other groups in the court other than the judges, who will prevail and are more likely in many experiences.

You will notice that the predominance in these courts usually rests with the jurists and not the judges. In fact, there are international constitutional courts that do not have a single judge, as it will become clear.

The groups that make up the court may be represented by law professors in universities, lawyers, former presidents of the republic, some administrative officials, or some public figures, and so on. This evidence alone is sufficient to prove that the owners of the dissenting opinion were not familiar with the subject, their lack of knowledge, and the invalidity of their claim!

In general, we will list the most important international models in this regard. In order to reveal to the public the missing truth. These models represent (24) experiences of a constitutional court and three (3) experiences of constitutional councils in the world, from Europe, the Americas, and Asia, which are presented for the first time.