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Naeem Maher Lafta Al-Faraji
Public Low, Presidency of Dewan Al-Waqf Al-Sonny, Republic of Iraq

Corresponding Author:
Naeem Maher Lafta Al-Faraji
Public Low, Presidency of Dewan Al-Waqf Al-Sonny, Republic of Iraq

The emergence and development of the electoral system in Iraqi Legislation

Naeem Maher Lafta Al-Faraji

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Abstract
The assessment of the validity and effectiveness of any electoral system depends on the extent to which the system responds to the political and social conditions experienced by the state implementing it, as well as the values and priorities intended to be achieved and reinforced. Through the electoral system, efforts are directed toward enhancing political stability and competition. Electoral systems play a significant role in determining the nature of the political system and the form of political authority, and they directly influence the structure of the party system. The single-member voting system encourages a two-party structure, while proportional representation supports the emergence of multipartism, and the electoral list system promotes the presence of political parties. The more the electoral system helps express the popular will, the more it contributes to the formation of competent legislative bodies, thereby supporting the development of a democratic system in the state a subject discussed in the first section of this study.
Electoral systems are essential for selecting and determining elected representatives. The electoral process presupposes the existence of rules that allow for the calculation of votes in favor of candidates to determine the winners. It relies on specific technical methods that are often complex, and electoral systems vary from one country to another depending on historical, political, economic, social, and cultural circumstances deemed appropriate for representing the people in legislative councils a topic addressed in the second section of this study.

Keywords: Emergence, development, electoral system

Introduction
Political life and electoral participation are among the most vital areas encompassed by the reconstruction process. These aspects must be reorganized and restructured to ensure a sound political environment and to lay the foundations of an Iraqi state based on constitutional democracy that upholds human rights and respects the Iraqi society.
The Iraqi citizen must be aware of their role in participating in the electoral process both as a voter and a candidate stemming from a national sense of duty to contribute to the nation-building process and an awareness of the importance of participation in parliamentary elections. This includes selecting qualified and competent individuals to assume parliamentary responsibilities and to occupy representative positions in the Council of Representatives, given the gravity of such positions and the significant, influential role played by members of parliament.
The importance of the parliament (Council of Representatives) lies in its responsibilities, which include enacting, amending, and repealing laws in accordance with societal needs; monitoring government performance; and holding government officials accountable. Additionally, the Council plays a key role in the peaceful transfer of power, in line with the will of the people, by nominating the Prime Minister, overseeing public funds through approving and monitoring the national budget, and ensuring equal opportunities among citizens. The same applies to local elections (provincial councils), where all citizens have the right to participate in political life as both candidates and voters, guaranteeing the rights of all components of the Iraqi population. Each of these components is given the opportunity for representation in both parliamentary elections (Council of Representatives) and local elections (provincial councils).
Elections are considered the most effective and sole means of selecting representatives of the people in legislative bodies, regardless of the political system adopted by the state be it

republican, monarchical, presidential, parliamentary, or mixed. Iraq is among the countries that have laid the groundwork for a democratic experience based on the principle of peaceful transfer of power a principle explicitly affirmed by the Constitution of the Republic of Iraq of 2005. The Constitution includes clear provisions outlining the mechanisms that must be followed to realize this principle, whether in the selection of members of the federal legislative body (the Council of Representatives), local bodies (provincial, district, and subdistrict councils), or the executive authority.

This principle was also emphasized in the Law on the Election of Provincial, District, and Subdistrict Councils No. (36) of 2008, which limited the term of council membership to four years. Therefore, this study will be divided into two sections: the first will address the emergence of the electoral system in Iraq, and the second will examine the development of the electoral system in Iraq.

Statement of the problem

Most contemporary political systems tend to recognize the right to vote in their constitutions and ordinary legislation based on a fundamental and important principle that the people are the source of authority. This falls within the framework of adopting democratic principles in building political and constitutional institutions. Accordingly, elections have become the primary means for conferring authority and reinforcing its legitimacy through peaceful transfer of power. Authority, in its three branches legislative, executive, and judicial is exercised by individuals referred to as rulers, who are chosen by the people either directly or indirectly through elections. At the moment of election, the people are the true rulers, for it is they who decide through their decision they elevate individuals to positions of responsibility and power and remove others. However, the main issue that hinders the proper exercise of this right lies in the extent to which political systems are capable of, and committed to, providing the appropriate conditions that ensure the conduct of free and fair general elections. Thus, this study represents a modest attempt to discuss this issue in general and in Iraq in particular.

Significance of the study

The importance of this study lies in identifying the nature of political rights, particularly the rights to vote and to run for office, as well as how these rights are exercised. It also involves evaluating the legal framework related to political rights and the electoral and candidacy systems in Iraqi and Tunisian legislation.

Outcomes

The study aims to resolve the challenges that affect the electoral process and its alignment with national legislation. It also seeks to renew and organize electoral systems in a way that leads to positive outcomes, contributing to the stabilization of the political situation in the country.

Objective of the study

The objective of this study is to clarify the nature of political rights related to voting and candidacy, and to analyze the legal provisions that regulate these rights for citizens under the laws under examination. It also aims to identify the rules and principles governing a citizen's right to vote and run for office.

Research questions

Main question

What is the legal framework of elections in Iraqi legislation?

Sub-questions

1. How did the electoral system originate and develop?
2. What are the implications of the electoral system on political stability?

Section one: The emergence of the electoral system

Despite the relative modernity of the electoral system in Iraq, it has undergone numerous developments. Constitutional and legislative drafters have attempted to adapt the system to the emerging transformations in the structure of the political regime. The evolution of Iraq's electoral system can be traced through its transitions from one model to another. Based on the legislative systems designed to organize society, these systems must logically respond to the current demands across economic, political, and social domains. Necessity gives rise to law and serves as the impetus for choosing one legal system over another. Electoral systems constitute a significant factor that can either facilitate or hinder the functioning of democratic institutions.

The optimal electoral system is one in which political competition during elections is practiced with complete freedom free from obstruction, dominance, or monopoly. Electoral systems refer to voting methods, which serve as the primary means of expressing voters' will and as a crucial mechanism for selecting elected representatives. Within an electoral system, equality should prevail among all members of society. Particularly, the most marginalized groups often unable to participate or influence governmental policies and practices must be granted access and inclusion. This necessitates the effective administration of electoral systems, the legitimacy of law enforcement, and the assurance of integrity through cooperation with both citizens and political parties.

Elections are conducted according to mathematical rules that determine the winner based on the highest number of votes. Electoral systems can be classified into twelve main types, from which the most commonly used systems branch out forming various families. To clarify the nature of electoral system types and the components necessary for a successful electoral system in detail, this section will be divided into two subsections:

The first subsection will address the types of electoral systems.

The second subsection will examine the elements of a successful electoral system.

Subsection one: Types of electoral systems

Branch one: Proportional representation system

This system is considered the oldest electoral system in the world, first implemented in Belgium in 1889. Currently, around 60 countries apply this system. Its primary objective is to ensure that all political parties are represented in proportion to the number of votes they receive in elections. The system typically assumes the adoption of a list-based voting method, whereby the electoral district seats are allocated to the competing lists proportionally to the number

of votes each receives. This type of system is the most widely used and commonly applied around the world.
Proportional representation requires multi-member electoral districts, meaning larger constituencies and a higher number of candidates per district. For instance, if ten parliamentary seats are allocated to a particular electoral district, each party submits a list of ten candidates, and the voter casts a vote for one list. Each party then receives a number of seats in parliament proportionate to the total number of votes it received. If a party receives 60% of the votes, it gains six seats, which are filled by the first six names on its list. If another party secures 20% of the votes, it is granted two seats, occupied by the top two names on its list.
In the case of closed lists, voters select a party, and the winning candidates are determined by their order on the list. Conversely, open lists allow individual votes to influence which candidates from the list are elected, based on the number of individual votes each receives.

The advantages of proportional representation include the following:

- It is a straightforward system for both voters and election officials.
- It allows for a fair translation of votes into parliamentary seats, thus avoiding unstable or unjust outcomes.
- It facilitates the representation of minority parties.
- It distributes electoral results fairly, ensuring that the number of seats won corresponds proportionally to the number of votes received.
- It encourages parties to compile candidate lists that are socially inclusive and diverse.

Branch two: The majority (Plurality) electoral system
In each electoral district, either an individual candidate or a list of candidates wins based on the number of seats allocated to the district. The winner is the candidate or list that secures the majority of votes in the district. There are two main types of majority-based electoral systems:
Absolute Majority System: A candidate or list must win by obtaining more than half of the valid votes. If no candidate achieves an absolute majority, a runoff election is held between the top two candidates or between the two candidates with the highest vote counts.
Relative Majority System (Plurality): The candidate or list with the highest number of votes wins, regardless of the total number of votes obtained by the remaining candidates combined.
Neither the absolute nor the relative majority systems guarantee representation in parliament for smaller parties and political entities that reflects their numerical significance in terms of votes received.

Branch three: The mixed electoral system
This system combines elements of the two previously mentioned systems in an attempt to integrate the advantages of both into a single framework. Regardless of the variety and scope of electoral methods and systems, voting is generally limited to two principal methods: (individual voting) and (list voting). The first involves selecting a single candidate for a parliamentary seat from among several candidates within a small electoral district. The second involves choosing a number of candidates listed on a single party list either through voting for the entire list (closed list) or selecting a specific number of candidates from competing lists (open list).
The electoral system represents a significant institutional factor that can either facilitate or hinder the functioning of political institutions within a democratic framework. The optimal electoral system is one in which political competition is practiced freely, without oversight or monopolization, while preserving all possibilities and opportunities for free choice among citizens. It allows society to express itself through the electoral process in reaching, maintaining, or sharing political power.
Moreover, the electoral system is often the political institution most susceptible to manipulation, whether for better or worse. The process of selecting an electoral system is inherently political, rarely based on expert opinion regarding which system might be superior. Instead, political interests in Iraq play a central and continuous role in its design, and often a decisive role in its legislation. Electoral systems should ideally align with the social structure of a society and provide a framework that allows representation for all classes and groups that make up the state. However, self-interest calculations can interfere with this ideal.
Electoral systems across modern democratic experiences have varied depending on each country's unique conditions. In Iraq, the electoral system is the product of the existing political and party system. It is fluid and subject to different laws for different electoral processes.
The National Assembly elections in January 2005 were conducted under a proportional representation system with a closed-list format, with Iraq considered a single electoral district. The 2009 provincial council elections were also conducted using proportional representation, but Iraq was divided into eighteen electoral districts corresponding to its provinces. This posed a challenge in a country that had not conducted a population census since 1997 and had undergone major demographic shifts in recent years.
The electoral system approved in September 2009 was not a new law, but rather an amendment to Law No. 16 of 2005. It adopted a proportional representation system based on an open-list format and multiple electoral districts. This amendment came in response to demands from numerous political forces and civil society organizations in Iraq to develop the electoral process and make it more democratic.

2. Importance of the electoral system
Electoral systems play a prominent role in the conduct of electoral campaigns, as they can encourage or delay the formation of electoral coalitions among political parties. They can also incentivize political entities and parties to develop a broad popular base and adopt a consensus-based approach that benefits from tribal, familial, and kinship ties.
In a country like Iraq, violations of political rights pave the way for infringements on other constitutional rights whether personal, economic, or social. Attempts to impose restrictions on the rights to candidacy and voting by the legislative authority represent violations of the constitutional principles established by the legislature to build a political system based on democratic governance and peaceful transfer of power.
Thus, the issue is not merely whether these rights are enshrined in the constitution, but the extent to which they are realistically protected by public opinion and the oversight institutions connected to it.
The French thinker Raymond Aron views the electoral law

as the offspring and heir of the legitimate political system. It is the only law supported by political elites of its faction, while others see it as a reflection of the political system's image, with all its many advantages and disadvantages. Thus, most constitutions grant their citizens the right to exercise the right to vote within a framework that narrows or expands according to the nature of the democratic approach adopted by the ruling authority.

No electoral system is free of flaws, and its success depends less on its quality and more on its suitability to the nature of the society and its diversity. Nevertheless, legislators hope through several rules to consolidate a democratic system based on the principle of peaceful transfer of power, including:

- Enhancing the public's conviction of their role in expressing their opinion by shaping the political course of the state, whether positively or negatively.
- Ensuring broad representation that reflects the various social customs within the legislative authority.
- Adopting a system of wide popular participation in the electoral process, which strengthens the legitimacy of the legislative authority.
- Supporting the participation of competent independent individuals and small parties in winning parliamentary seats.
- Forming an opposition within the legislative councils capable of monitoring and overseeing the actions of the executive authority.
- Preventing the opportunity for women's representation in legislative councils from affecting electoral entitlements.

The legislator's organization of the method of election aims to achieve specific political objectives. The choice of a particular electoral system depends on its degree of compatibility with the country's social and political reality. The Iraqi legislator has identified several elements for the success of the electoral system.

Section two: Elements of the success of the electoral system

First subsection: General direct election

Some jurists believe that the right to vote has a distinctive characteristic that sets it apart from other legal matters, as it primarily concerns the individual before being a matter of legislation. Therefore, it requires a law that protects it. According to this context, the direct election system enables individuals to choose their representatives directly. However, no electoral system is free from defects that accompany its implementation process. Among the most significant of these defects are:

- The direct election system often allows various forms of voter manipulation, represented by the purchase of voters' votes in exchange for material or in-kind gifts or promises of positions offered by candidates or their electoral lists, most of whom possess influence, power, and wealth.
- The lack of knowledge, experience, and awareness among various segments of the electorate themselves, which leads to the election of candidates unqualified to bear the responsibility of membership and to manage duties in accordance with the requirements of the legislative authority.

Second subsection: List and individual election

Constitutionally, individual elections are defined as a system of multiple electoral districts in which the voter votes for only one candidate, and each electoral district has one representative. The large number of electoral districts in the individual electoral system facilitates voter bribery, whether financial or in-kind. Additionally, the small size of the electoral district facilitates governmental intervention and authoritarian coercion. Winning voters' support under the individual electoral system depends not only on the electoral program but also on the candidate's level of financial expenditure on their campaign. The advantages of the individual electoral system can be summarized as follows:

- Strengthening the relationship between voters and their representatives, whereby the elected official is directly connected to the needs and desires of the voters.
- Voters' knowledge of candidates and their qualifications gives voters the opportunity to choose the most competent and best suited to achieve their interests and needs.
- It provides an opportunity for young parties and independent individuals to win membership in the Council of Representatives, which they find difficult under large electoral districts, thus promoting political and intellectual diversity within electoral districts.

The list electoral system divides the country into governorates, each representing an electoral district. The voter's role is limited to choosing a specific list from among the electoral lists that include several candidates, even if the voter disagrees with some of its members. Competition between the lists is based on the projects they present. The main advantages of the list system can be summarized as follows:

- It gives voters an impression of public issues and enables them to compare the projects and programs offered by the electoral lists.
- It allows representatives to focus on the public interest over personal benefit in their electoral districts.
- It makes it more difficult for candidates to reach all voters and to exploit the influence of political money due to the wide geographical area of the electoral district.

Branch three: Proportional representation

The proportional representation electoral system relies on the use of ratios and proportions between the number of parliamentary seats and the number of votes obtained by competing political parties. It is usually implemented through electoral lists and rarely through individual candidacies, which independents use to nominate themselves for a parliamentary seat under this system. This system aligns with the list-based electoral method as well as with dividing the country into large electoral districts allocated a number of parliamentary seats, which are then distributed among competing lists according to the valid votes they received relative to the total votes of other lists. The advantages of the proportional representation system can be summarized as follows:

- It facilitates the formation of a strong opposition front within the parliament, creating a political force capable of confronting the parliamentary majority that forms the government, which is essential for a parliamentary democratic system.

- It results in an administrative body that reflects the true diversity of political and intellectual views among the people, which is not achieved under the absolute majority system.
- It considers the representation of minorities and religious groups, preventing these groups from claiming political underrepresentation, which could otherwise lead to negative tendencies and divisions that undermine societal stability.

The benefits center on two main points

First, it reflects the representation of all segments of society, ensuring a clearer democratic picture of social diversity.

Second, it guarantees avoidance of monopoly of power by one party or group over others.

In Iraq, ethnic, religious, and sectarian affiliations have led the legislature to adopt the proportional representation system at the national level (Iraqi parliamentary elections of 2014) and at the local level (provincial council elections of 2013). Based on this, each party or list received seats proportional to the number of votes obtained. This approach was also adopted by the authorities in the 2021 parliamentary elections, where the country was divided into multiple electoral districts with closed lists, thereby increasing the chances for small parties and independent candidates to win seats.

It should be noted that the legislature's authority in choosing the electoral system is discretionary but constrained by adherence to constitutional principles that safeguard the rights and freedoms of all segments of Iraqi society. The Iraqi Constitution, in Article 49(First), sets two guidelines for establishing the Parliament (Council of Representatives):

First: One seat is allocated for every 100,000 Iraqi citizens

Second: Representation of all components of the people, including a quota for women and minorities

The Electoral Law for the Council of Representatives No. 9 of 2020 stipulates that the parliament consists of 329 seats, of which 320 are distributed to provinces according to their administrative boundaries, and 9 seats are reserved as quota shares. Article 14 requires that women be placed sequentially at a ratio of one woman after every three men. Article 16 (paragraphs First and Second) further confirms that the representation of women should be no less than 25% of the total number of members in the Council of Representatives and the same percentage in provincial councils.

The researcher views the proportional representation system as the best and most appropriate system for achieving political representation that includes all segments of society, giving small parties and independent candidates the opportunity to obtain parliamentary seats and form an opposition front within parliament. This opposition acts as a counterbalance to large blocks and parties within the council, which positively reflects on the overall performance of the government.

Second topic: Developing the electoral system

Developing the electoral system to align with the challenges of the current phase means providing equal opportunities for all political currents and forces in society to express themselves through the electoral process, with the aim of participating in power. There are three goals that any electoral system must achieve, although it may not be possible to fully accomplish all of them. However, if the electoral system fails to achieve these goals comprehensively, voters may reject the election results and question their fairness and integrity. These goals are:

- **Transparency:** All participants in the elections, especially political entities and candidates, must understand the electoral system. A clear understanding of the electoral process and its vision must be maintained to ensure its proper conduct, thereby building trust among parties, voters, and the election results and restoring it.
- **Inclusiveness:** The electoral process must encompass all social interests, and society must feel included. No group should be excluded or feel excluded, for fear that this would alienate them from the government and erode trust in the electoral process and its outcomes. Violence must also be avoided. Some opposition forces to the political process have adopted this approach. Moreover, illiterate or disabled voters may not understand the electoral system or be able to correctly mark the ballot paper during voting. In this context, assistance can be provided to ensure that elections are truly inclusive.
- **Fairness:** Voters must feel that their vote and opinion are equal in value to those of other voters, so that election results reflect the will of the public. Different electoral systems lead to different outcomes. There are specific objectives the electoral system seeks to achieve, including:

a) It leads to a process of change and serves as an effective tool to mobilize public opinion and persuade it to engage with public affairs.
b) It enables broader popular participation and provides opportunities through candidates' programs.
c) It improves the performance of the parliament and provides all guarantees that enable members of the House of Representatives to perform their roles regularly without material or moral pressures from the executive authority (government).

Principles of the electoral system

The electoral system is based on principles and foundations that have evolved alongside the growth of democratic principles underpinning the electoral process, reflecting the free will of voters. Among these principles are:

Defining the number of eligible voters entitled to vote and participate in the election and establishing an accurate register of names for both genders (male and female) based on a comprehensive and precise population census.

Providing citizenship rights, freedoms of expression and opinion, and the establishment of political and social organizations according to clear and specific laws without restrictions.

Avoiding arbitrary conditions that prevent methods and means of nomination, election, or election campaigning, even if stipulated by law, such as property ownership requirements, tax payment obligations, high education levels, exclusion of women, loyalty to certain principles, or the existence of unfair controls and procedures.

Protecting the electoral process from the effects of violence and political money by ensuring that authorities and their bodies safeguard candidates, voters, the electoral process, and polling centers, and prevent any violations to limit the

influence of political money on the electoral process and its attempts to seize power.

Supervising elections by participatory bodies composed of representatives from various societal sectors (political, economic, religious, social), civil and humanitarian organizations, and intellectuals.

Addressing the issue of quotas with integrity, accuracy, and objectivity, as quotas for women, youth, or ethnic and religious minorities may undermine a fundamental democratic principle equality and weaken the concept of citizenship. However, these groups and minorities in culturally (socially, politically, and culturally) underdeveloped pluralistic societies may lack opportunities for representation, which forces society, and thus the legislator, to use the "quota" approach to ensure their fair representation in public political life.

The electoral weight of each voter's vote must be uniform and equal, and the voter must have the right to vote for only one candidate or for the list on which their name appears, as violating this undermines the principles of equality and "one person, one vote."

First requirement: The Fundamental Principles of the Modified Electoral System in Iraq.

The Iraqi electoral system stipulates that elections shall be general, conducted by direct and secret ballot, enabling voters the freedom to cast their votes without anyone being able to determine whom they voted for, and without facing any consequences for voting for one person over another.

According to the electoral system for the third parliamentary term in the 2014 elections, the Iraqi Council of Representatives consists of 328 parliamentary seats. This is compared to 325 seats in the second term elections of 2010, instead of 275 seats in the 2005 elections. This article is considered one of the most important amendments to the electoral law for the second election term. These seats were distributed according to Article 1 regarding the amendment of Law No. 16 of 2005, which canceled Article 15 of the law and replaced it with the following:

- The Council of Representatives consists of a number of parliamentary seats at a rate of one seat per 100,000 inhabitants, based on the Ministry of Trade statistics and the 2005 ration card, with an added annual population growth rate of 2% for each province.
- Minorities are granted a quota share calculated from the seats allocated to their provinces, provided that this does not affect their ratio if they participate in other lists. They are distributed as follows:

1. The Christian component has five parliamentary seats distributed among five provinces (Baghdad, Nineveh, Kirkuk, Dohuk, and Erbil) according to their population density and areas of residence.
2. The Yazidi component has one seat in Nineveh province.
3. The Mandaean component has one seat in Baghdad province.
4. The Shabak component has one seat in Nineveh province.

The law stipulates the division of Iraq into nineteen electoral districts, including two districts in Baghdad province, whereas Iraq was a single electoral district in the 2005 elections. Article 2 of the amended law states: "Each province, according to its official administrative boundaries, shall be one electoral district, with a number of seats proportional to its population, according to the latest approved ration card statistics."

The adoption of an open-list system instead of the closed-list system came after continuous discussions and sessions in the Council of Representatives, responding to broad popular demands criticizing the closed-list system, which allowed members to enter parliament without being voted for by the electorate. Article 3 stipulates this and Article 9 was repealed and replaced as follows: "Nominations shall be conducted under the open-list system, with no fewer than three candidates for each political entity and no more than twice the number of seats allocated to a single electoral district. Voters have the right to vote for the list or one of its candidates, and individual candidacy is permitted."

A specific percentage of seats is reserved for women under the name "quota." Article 3, paragraph 3, states that "the proportion of women in the Council of Representatives shall be no less than one quarter of the winners, granting them 25% of parliamentary seats, which is a relatively large percentage compared to other democratic systems."

The First Branch: Method of Calculating Parliamentary Seats in the Electoral System.

The method of seat allocation is considered one of the most important legislative texts in the electoral system, and continuous disputes have arisen regarding its calculation mechanism. The valid votes were counted, but the law was considered unfair to some candidates because it transferred their votes to entities for which other voters did not vote. The method of calculating parliamentary seats depends on the most varying cases between percentages and the electoral formula applied in the elections. According to the electoral system of the second round, one of two electoral formulas was adopted:

1. Largest remainder method

This is a globally followed method for distributing legislative seats based on the largest remainder using a formula. According to this method, the total number of valid votes, i.e., votes cast according to the electoral law, is divided by the total number of members of the Council of Representatives, or the number of parliamentary seats, to obtain the electoral quota. This is stipulated in Article 3, paragraph 3 of the amended electoral law, which states that the valid votes obtained by the list in one electoral district are summed and divided by the electoral quota to determine the number of seats allocated to that list. For example, if there are seven million valid votes, they will be divided by the number of members of the Council of Representatives, and the electoral quota will be 210,538. The number of votes obtained by each party or list is then divided by this quota, as happened in the 2010 parliamentary elections. Each entity received a number of seats proportional to the division result. If any seats remain vacant after the distribution process, they are granted to the winning lists according to the proportion of votes they obtained, thus awarding the vacant seats to winning lists based on the proportion of votes received (compensatory seats).

This method of calculating valid votes in elections is one of the quotas used in proportional representation systems to determine the number of votes required to win parliamentary seats. According to this method, the total valid votes are divided by the number of available seats to obtain the electoral quota. An advantage of this method is the calculation of the remaining votes, where these leftover seats from the first distribution stage are allocated to parties according to the largest remainder method.

This is the largest remainder method adopted by the Independent High Electoral Commission according to the "Hare Quota," which is the method by which winners in electoral coalitions are calculated. It is one of the simplest ways to count votes for winning lists in elections. In addition, there is another calculation based on this method that converts the number of valid votes each list receives into a percentage of the total number of valid votes received by all lists. Then, the percentage obtained by each list is multiplied by the number of seats allocated to it to calculate the number of seats per list.

The seats allocated to lists in the general electoral district are distributed according to the law and based on the internationally recognized largest remainder method as follows:

- The number of valid votes obtained by each list is converted into a percentage of the total valid votes obtained by all lists in the general electoral district.
- The percentage obtained by each list in the general electoral district is multiplied by the number of seats allocated to each electoral district to calculate the fractional number used to determine the number of seats won by each list and coalition.
- The whole number is the integer part of the fractional number, which is the initial number of seats obtained by each list according to the order of the candidates' names.
- If the distribution of parliamentary seats is not completed, the final number of seats allocated among coalitions and parties is determined by adding one seat to the list with the highest remainder, known as the "compensatory seats."
- If one or more lists win more seats than the number of their candidates, the victory of all their candidates is considered valid. Then, the number of votes obtained by that list is deducted from the total valid votes, and the remaining votes, combined with the remaining seats, are used to recalculate the seats won by other lists using the same method.
- If two or more candidates have the same number of valid votes, the decision is made by lot between the tied lists or candidates, in the presence of observers from the political entities of those coalitions, following a procedure agreed upon by the Electoral Commission and the authorized representatives of those coalitions and electoral lists.
- Highest Average Method: This method is also called the D'Hondt formula. According to this method, one seat is added to the number of seats previously obtained by each list based on the electoral quotient. One seat is granted to each list that did not win any seats. Then, the number of votes obtained by each list is divided by the number of seats (after adding one). This result is called the "average." The list with the highest average (after this division) receives an additional seat. Any remaining seats after the initial division are distributed. This division process is repeated until all seats are allocated.

In light of the above, and regarding the electoral system and its significance, some observations can be made, including:

- The simplicity of the electoral system means ease of understanding by voters, while ensuring fair representation for all minorities proportionate to their share in society. Seats are distributed according to the allocation of valid votes.
- Avoid calculating parliamentary seats using the two traditional methods, as they do not align with the current Iraqi context. Instead, seek a method better suited to Iraq's circumstances, preferably the Sainte-Laguë method, which was adopted in the 2013 provincial council elections.
- The electoral system in Iraq was unstable during the parliamentary elections of 2005 and 2010. It is not advisable to make radical changes to the electoral system with each election cycle.
- Elections were conducted under an open-list system and multiple electoral districts. This flaw in the electoral system led to the ineligibility of some remaining parliamentary seats in electoral districts until the electoral quotient was met, which in turn caused the issuance of votes that did not reach the minimum threshold.

Section two: The historical development of elections

The adoption of elections as the optimal and fundamental means for consolidating authority in contemporary democratic systems is not a universally established practice today. Elections were not a prominent basis in ancient democracies, which relied instead on direct democracy on the one hand, and suffrage on the other. Therefore, modern democracies do not depend on either direct democracy or suffrage alone, but rather on elections, due to the practical difficulties in implementing the former methods. Moreover, Islamic Sharia established a comprehensive system for selecting rulers based on principles that will be explained sequentially. Accordingly, the historical development of elections will be addressed as follows: the position of religious theories, then popular theories, and also the stance of Islamic Sharia.

First: The position of religious theories

These are known as the theocratic theories, which hold that God is the sovereign ruler, though they differ in some concepts and have historically evolved into three distinct theories. The first theory considers rulers as gods and grants them sanctity, viewing them as divine beings who govern the masses. This is reflected in certain verses of the Qur'an, especially during the era of the Pharaohs, who regarded themselves as gods. The Qur'an illustrates this in the Pharaoh's statement to the Prophet Moses (peace be upon him), when he invited him to worship God alone: "If you take a god other than me, I will surely put you among the imprisoned" (Qur'an 28:38). Also, God said, "I am your most high Lord" (Qur'an 87:2). This theory implies that the people have no freedom of choice, as the rulers are divine figures who imposed themselves and possess absolute authority that cannot be challenged. However, this theory ended following historical developments.

Subsequently, a new theory emerged, asserting that rulers are not gods but humans whom God has chosen over others and granted authority. This was confirmed under the Christian Church, where saints advocated that divine will is the foundation of all governance and power. This theory spread during the era of the French monarchy in the seventeenth century, specifically under Louis XIV and Louis XV, to consolidate their absolute power. It also appeared in Germany during the reign of Wilhelm II. As a

result, the will of the people in choosing their rulers was absent, because authority was assigned by God to a particular person and endowed with sacred power that could not be opposed. Undoubtedly, this theory, like its predecessor, has become obsolete and no longer exists.

It was replaced by a more democratic and advanced theory, which posits that rulers are neither gods nor derive their authority from divinity, but rather are chosen by the people, albeit under divine providence. This theory bears a democratic character insofar as the choice originates from the people. Nevertheless, this choice does not prevent the ruler from tending toward authoritarianism, as the ruler's persona remains sacred due to divine intervention guiding the people's will toward this selection.

It is thus observed that, under the three theories, the people's selection of rulers was not genuinely free, since religion formed the basis of choice, regarding the ruler's character as sacred and beyond reproach. In any case, these theories ended with the growth of popular awareness and the public's acceptance of elections as the fundamental means of selection.

Second: The position of popular theories

Here, we address the stance of popular theories regarding their acceptance of the principle of elections as the basis for selecting rulers, which revolves around two main theories: the theory of national sovereignty and the theory of popular sovereignty. The first theory, established by Rousseau in his book The Social Contract, holds that sovereignty is the exercise of the general will. It is an independent entity, separate from the individuals who compose it, and is not the property of the ruler. In other words, sovereignty belongs to the entire nation collectively and cannot be waived or divided. This theory found constitutional expression in the French Declaration of the Rights of Man and Citizen of 1789, as well as in the Constitution of 1795. Numerous implications arise from this theory, foremost among them being that election is a duty rather than a personal right. Consequently, individuals are obligated to participate in the electoral process to select their representatives. It also subjects voting to various restrictions, which may disqualify certain voters based on financial qualifications, origin, or gender.

In contrast, popular sovereignty opposes the first theory by asserting that sovereignty is divisible and independent from the voters who constitute the nation. Each individual holds a share of sovereignty and, by possessing this share, has the right to exercise control over it, thereby acquiring the right to vote directly or to delegate it. Voting here is a right, not a duty, and electoral restrictions are impermissible. Hence, voting is universal and unrestricted.

Third: The position of Islamic sharia

In this regard, we attempt to summarize the electoral process in Islamic Sharia, as the topic is extensive due to the variety of juristic opinions and clarifications on the matter. The two parties involved in the electoral process are the electorate known as "Ahl al-Hal wal-Aqd" (those who loosen and bind) and the ruler. The electorate must fulfill conditions established by Islamic jurisprudence, most notably justice encompassing its comprehensive requirements, and knowledge sufficient to determine who is worthy of leadership according to accepted criteria. The ruler, on the other hand, must possess wisdom and sound judgment, enabling the selection of the most suitable leader the most knowledgeable and competent in managing public interests. The process of selection is completed by "Bay'ah" (the oath of allegiance).

As for the ruler, certain conditions have been mentioned by various jurists, though there is no unanimous agreement on them. The most prominent conditions include Islam, justice with its comprehensive criteria, knowledge that encompasses ijtihad (independent reasoning) regarding new matters and rulings, physical and mental soundness, and sound judgment in managing public affairs. Additionally, the ruler should possess qualities such as courage, experience, and knowledge.

Section three: Pre-election day procedures

Undoubtedly, any electoral process must be preceded by certain procedures to ensure its success and confirm its legitimacy. Law No. 36 of 2008, concerning the elections of provincial, district, and sub-district councils, specifies these procedures, which we will address as follows:

Phase related to the two parties of the election

In this phase, we will discuss the most prominent aspects related to the two parties of the electoral process, such as the conditions required for voters and candidates, and the necessity of voter registration according to the principles explicitly stated in the election law. This will be clarified as follows:

Conditions required for the voter

Referring to the Provincial Councils Election Law, it includes general principles aimed at ensuring the freedom of voters in the electoral process. Article (3), paragraph (2), affirms this matter by stating:

This law aims to achieve the following

- **First:** The participation of voters in selecting their representatives in provinces, districts, and subdistricts.
- **Second:** Equality in electoral participation.
- **Third:** Guaranteeing the rights of voters and candidates to participate in the elections.
- **Fourth:** Ensuring the integrity and fairness of the elections.
- **Fifth:** Providing legal protection for the stages and procedures of the electoral process."

Article 5 of the law also emphasizes the freedom and fairness of elections, which must be direct, secret, and individual. It is notable that the Iraqi legislator confirmed a set of principles intended to guarantee the proper exercise of the voter's electoral right, a right that was affirmed by the Iraqi Constitution of 2005. These principles can only be achieved through specific conditions that must be met by the voter, as outlined in the Provincial Councils Law. These conditions are general and cannot be considered restrictive to the extent that they impede the smooth and successful conduct of elections. Therefore, the Provincial Councils Law affirms the right of every Iraqi man and woman to participate in the elections without discrimination based on gender, ethnicity, nationality, family, religion, sect, belief, opinion, or social status. Among these conditions are the following:

Citizenship conditions

Citizenship is a political and legal bond between the

individual and the state, which entails mutual rights and obligations. Citizenship may be either original (acquired by birth) or naturalized, obtained through residence in a particular country and granted on that basis. Electoral legislations differ regarding these two types in terms of the rights arising from them, including the right to vote. Most legislations agree on granting this right to those with original citizenship, while others do not extend this right to naturalized citizens. The Provincial Councils Law, however, adopts a different approach by granting any Iraqi individual the right to vote immediately upon acquiring Iraqi citizenship.

Here, it is proposed that the Iraqi legislator should not grant the naturalized individual the right to vote in provincial council elections until a period of no less than five years has elapsed since naturalization. This period is reasonable to ensure the individual's affiliation with their new country of citizenship, given the critical role a voter plays in political life through their choice of governance.

For example, Law No. 666 of 1980 (repealed) restores all civil and political rights to the individual upon regaining citizenship, while other legislations grant naturalized citizens voting rights only after a certain period, to verify their commitment to their new homeland. This is reflected in the Egyptian legislator's position in the Political Rights Exercise Law No. 73 of 1956, which requires a minimum of five years to have passed since acquiring citizenship.

The Lebanese legislation is stricter: the 2008 Parliamentary Elections Law No. 25 requires naturalized citizens to wait at least ten years after the issuance of their naturalization decree before being eligible to vote. The Egyptian and Lebanese legislators are commended for emphasizing the importance of citizenship in exercising electoral rights, although the Lebanese period is relatively long; a period of no less than five years would be more appropriate.

In contrast, the French legislator places no restrictions on the voting rights of naturalized French citizens, allowing them to vote immediately upon acquiring French citizenship.

Condition of legal capacity

Legal capacity is defined as the ability of a person to enjoy the rights and fulfill the duties prescribed by laws and internal regulations. It is one of the universally agreed conditions in electoral laws and comprises two aspects: first, mental capacity, and second, moral capacity.

The first aspect, mental capacity, means that the voter must possess full mental faculties and must not suffer from conditions such as insanity, mental incapacity, or dementia. Here, a distinction should be made between actual insanity and its absence. The former disqualifies the individual from exercising their right to vote, while the latter grants them this right.

Moral capacity means that the individual must not have been previously convicted of criminal acts that lead to deprivation of the right to vote. Marcel Perreau observes that "their vote is tainted by the wickedness they committed, rendering it worthless. By violating the law, which represents the general will, they placed themselves in a position of offenders and disgraced individuals before society, thus voluntarily excluding themselves."

The Iraqi legislator was explicit in stipulating this condition, requiring voters to have full capacity. The text is absolute and applies to all forms of capacity, encompassing any case where the electoral capacity may be questioned.

Other electoral laws have similarly emphasized this condition. For example, the Egyptian Political Rights Exercise Law suspends the exercise of political rights for those legally incapacitated, those with mental illnesses, prisoners during their imprisonment, and individuals declared bankrupt for five years from the date of bankruptcy unless reinstated. Political rights are also denied to those who have lost their moral capacity, such as those convicted of felonies without reinstatement, those penalized by the Ethics Court with asset confiscation for five years from the date of judgment, and those sentenced for crimes such as theft, concealment of stolen goods, fraud, issuing checks without funds, breach of trust, treason, bribery, bankruptcy by fraud, forgery, perjury, witness tampering, indecent assault, corruption of youth morals, violation of public morality, or desertion to evade military or national service. Those convicted of attempting such crimes are similarly disqualified unless the sentence is suspended or they have been reinstated.

Disqualification also extends to those sentenced to imprisonment for crimes specified in Articles (41-51) of that law unless their sentences are suspended or they have been reinstated. Furthermore, anyone previously dismissed from state or public sector jobs for dishonorable reasons is barred for five years unless the dismissal decision is overturned or compensation awarded.

It is notable that the Egyptian legislator has broadened the scope of voter disqualification due to loss of moral or mental capacity, whether the disqualification is permanent or temporary (with the loss condition removed). The Lebanese legislator follows a similar approach.

Voting rights cannot be exercised by those deprived of civil rights, those permanently or temporarily barred from ranks or public offices, or during the term of such deprivation. Disqualification includes those convicted of felonies or dishonorable misdemeanors such as theft, fraud, issuing bad checks, bad credit, embezzlement, bribery, perjury, rape, intimidation, forgery, use of forged documents, false testimony, offenses against public morals, or crimes related to the cultivation, manufacture, or trafficking of narcotics.

The scope also includes persons held in judicial custody for the duration of their detention, those declared bankrupt fraudulently, and those subjected to penalties under Articles (689-698) of the Penal Code, as well as those sentenced under Articles (329-334) of the Penal Code.

The French legislator has set general provisions requiring voters to have full legal capacity, which undoubtedly includes both moral and mental capacity.

Age requirement

Electoral laws worldwide generally agree that a voter must have reached a specific minimum age to be eligible to cast their vote. The Iraqi legislator requires that the voter must have completed the age of eighteen during the year in which the elections are held, rather than merely having reached puberty. This means that the voter must have fully attained this age limit, not just reached the stage of puberty. Here, a distinction is made between reaching puberty and completing the age requirement. Additionally, the age completion must coincide with the election year.

Similarly, the Egyptian legislator has set the minimum voting age at eighteen years, although it does not explicitly specify whether this age must be attained at the time of voting or candidacy. This lack of clarity is considered a legislative oversight that needs correction.

In contrast, the Lebanese legislator has not explicitly clarified the minimum age for candidacy. However, Article 3 of the Lebanese election law refers to the Constitution of 1926 for the age limit, which stipulates that every Lebanese citizen who has reached the age specified in the Constitution is entitled to vote, provided they meet the other conditions set by the election law. The Constitution specifies that any Lebanese citizen who has reached the age of twenty-one is eligible to vote, subject to the requirements of the election law.

It is noticeable that the Lebanese legislator set a higher minimum voting age compared to the Iraqi and Egyptian legislators and, unlike the Egyptian legislator, did not specify the timing for reaching this age. The age of twenty-one is considered somewhat excessive; hence, it would have been preferable for the Lebanese legislator to follow the example of the Iraqi and Egyptian legislators by setting the minimum voting age at eighteen. Setting a higher voting age narrows the scope of electoral participation. Moreover, the age of majority should be attained by the time of the election.

Meanwhile, the French legislator has established the voting age at eighteen years.

Registration in the electoral register

In some electoral legislations, it is referred to as the voters' register. The voters' register is defined as (the register that includes the names and data of voters, which is prepared by the authority and published for review and filing objections). The importance of the voters' register stems from being the fundamental basis that determines who has the right to vote in elections. Therefore, the current administration continuously reviews it in an attempt to avoid the phenomenon of double registration. The register is created by the Independent High Electoral Commission, in cooperation and coordination with the offices of the regions and governorates. It is an electoral register that organizes the electoral process, as a voter is not allowed to vote unless their name is listed in it. This register is also used to determine the proportion of seats allocated to each electoral district. Every person who meets the necessary conditions has the right to request the registration of their name in the register, and also has the right to verify the inclusion of their name in it. Registration in more than one electoral district is not permitted.

Conclusion

At the conclusion of this study, which examined the origin and development of the Iraqi electoral system after 2005, we can infer that the effectiveness of implementing the electoral system depends on many determinants that either support the democratic process or become obstacles hindering democratic transition. The study addressed the types and components of the electoral system and its evolution according to various theories and the position of Islamic Sharia. In closing this modest research, several conclusions, recommendations, and proposals were reached, which can be summarized as follows:

- There is a close relationship between majority systems and the two-party system, and perhaps also the one-party system, whereas proportional representation systems are clearly linked to multi-party political systems.
- The application of proportional representation and mixed systems requires the existence of an institution with extensive and specialized experience in the field of elections to manage and implement electoral processes. This is because these systems are characterized by complexity, especially in the counting and sorting of votes and the distribution of parliamentary seats among winning lists and their candidates.
- The proportional representation system is considered a guarantee for preserving political and party pluralism in many countries and is regarded as the optimal system for application in countries emerging from eras of dictatorial governments or foreign occupation, as it leads to the representation of all political and social groups and currents that are often marginalized under authoritarian and despotic regimes.

Proposals

- Avoid political concessions to make radical changes to the electoral system with every election cycle in order to prevent parties from controlling the legislation of the electoral system.
- The legislation of the electoral system must be conducted by specialists, and committees should be formed to study the electoral environment before enacting the system to protect it from the whims of influential parties and political entities.
- The electoral system should include a provision preventing parties that fail in elections from nominating candidates and revoke the license of the political entity for a period of several subsequent years.
- Begin regulating the use of social networks, assessing their impact, and monitoring them during election campaigns.
- Promote civic and electoral education in cooperation with civil society organizations.
- Adopt a closed multi-member district system to avoid the exploitation of government positions in vote-buying, especially concerning special ranks (governors, general directors) and directors of central departments.

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