

Conceptual Developments in the Legitimacy of Government in Modern State Theory and Their Application to the Iraqi Constitution

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Abstract

This study examines the conceptual evolution of governmental legitimacy in modern state theory and traces its transition from traditional forms of legitimacy based on domination or symbolic authority to a multidimensional conception grounded in constitutionalism, democratic procedures, the protection of rights, effective governance, and international standards. It applies this framework to the Iraqi constitutional experience, particularly in the period following 2003, when recurrent crises in government formation, contested interpretations of the Constitution, and declining public trust challenged political legitimacy. Using descriptive, analytical, and comparative methods, the study analyzes the 2005 Constitution of Iraq, the 2004 Law of Administration for the State of Iraq for the Transitional Period, relevant legislation, national judicial practice, and international human rights standards. It concludes that governmental legitimacy in Iraq extends beyond the formal legitimacy conferred by elections and depends on the interaction among constitutional order, the protection of rights, institutional effectiveness, and public trust.

Keywords: legitimacy; modern state; political legitimacy; constitution; Iraq

Received: 02 April 2026

Revised: 17 September 2026

Accepted: 24 September 2026

Initial Publication 24 September 2026

Final Publication 01 February 2027



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Citation: Khudhair Jawad Al-Duraye, B. & Rajaei, M. (2027). Conceptual Developments in the Legitimacy of Government in Modern State Theory and Their Application to the Iraqi Constitution. *Legal Studies in Digital Age*, 6(2), 1-16.

1. Introduction

The concept of “governmental legitimacy” occupies a central position in political and legal thought. Within the framework of modern state theory, this concept is grounded in the constitution, the rule of law, and the popular will, and is intended to ensure stability, justice, and participation. Nevertheless, this model encounters challenges in countries undergoing political transition, such as Iraq, where developments following 2003 have led to recurrent crises in government formation, disputes over constitutional interpretation, and declining confidence in political institutions. The study of governmental legitimacy has therefore become necessary for understanding its sources and limitations within the framework of the Iraqi Constitution, particularly in light of continuing debates concerning its foundations: Is legitimacy based on elections, popular consent, adherence to the Constitution, international recognition, or a combination of these elements? Despite the adoption of the 2005 Constitution as the supreme legal authority, its implementation has been characterized by divergent interpretations and political

practices that have weakened the stability of constitutional legitimacy and created a gap between legal legitimacy and popular acceptance. Moreover, the role of the international community has raised the question of the relationship between international legitimacy and national sovereignty. Accordingly, this research seeks to redefine the concept of governmental legitimacy from a perspective that integrates political theory and constitutional analysis with their application to the Iraqi experience, with the aim of identifying shortcomings and presenting reform-oriented perspectives that contribute to consolidating a model of constitutional government that combines legal and substantive legitimacy and strengthens a balanced relationship between authority and society.

2. Concept of Legitimacy

If “legality” refers primarily to the conformity of acts and situations with legal texts and procedures, “legitimacy” goes beyond this to address the question: Why does the law itself deserve obedience, and what is the source of the authority of the institutions that enact it? Legality may therefore exist without legitimacy when formal laws are completed and enforced without resting upon a normative foundation acceptable to the political community. Likewise, social or political legitimacy may be achieved even where legal legitimacy is incomplete, if texts and institutions do not fully embody it. As for “acceptability,” it is based on immediate psychological and social consent that may arise for implicit reasons which, by themselves, are insufficient to establish a right to govern. Meanwhile, “competence” refers to the capacity of an authority to achieve results and secure the public interest. It is a supporting indicator of legitimacy, but not its source. Through this distinction, legitimacy emerges as a foundational framework that precedes all other descriptions and determines their effects (Osama ibn, 2022).

Legitimacy cannot be reduced to a single formula. In the modern state, it is generally constituted around constitutionalism, the principle of popular sovereignty, representation of the general will, and protection of fundamental rights as normative constraints on power, while preserving the values of transparency, accountability, judicial independence, and peaceful transfer of power. The embodiment of these principles, however, is not mechanical; rather, it is mediated by historical, cultural, and legal context, turning legitimacy into a complex standard that combines form and procedure on the one hand with substance and value on the other. Accordingly, any description of legitimacy outside this composite framework is incomplete: voting without constitutional safeguards may produce procedural legality without ethical legitimacy, just as strict textual guarantees without political and social dynamism may leave legitimacy merely as an abstract substance on paper (Muhammad Ali Mustafa Ali, 2009).

The distinctive characteristics of the modern state impose additional burdens on the concept of legitimacy. Authority within it is conditioned upon the application of modern legal principles: defining jurisdiction, restricting power through law, linking public objectives to the public interest rather than personal whims, and preventing public authority from being transformed into private privilege. Moreover, the nature of contemporary political society, with its cultural, religious, and ethnic pluralism, requires legitimacy to be understood as a technique for managing difference within a unified framework rather than as an instrument for imposing compulsory homogeneity. Legitimacy therefore becomes dependent on the existence of mechanisms that ensure representation and participation, protect minority and individual rights, and permit the exchange of meanings and values in the public sphere without symbolic or physical violence (Abd al-Qadir Uthman Abd, 2022).

2.1. Linguistic Concept

At the level of historical semantics, the root family developed from the material to the abstract and from the sensory to the normative. The term *sharī'ah* originally referred to a path leading to water, and Arabic usage subsequently borrowed it to denote the systematic path of religion and its rulings. Accordingly, the values of “clarity,” “guidance,” and “normative authority” gradually became layered within the word. From this semantic layering, *sharī'ah* came to refer to the body of rulings grounded in a higher source, “legitimate” to that which conformed to those rulings, and “legitimacy” to the condition of normative conformity with what was regarded as authoritative law. In the modern period, however, the term underwent a semantic shift parallel to transformations in political and legal structures. It entered the conceptual translation of imported terminology relating to government and law, and its scope expanded to indicate the “legitimacy of an authority or system” in terms of its derivation from a recognized source and its operation within established constraints. The term therefore contains

two layers: an older layer denoting conformity with the provisions of religious law, and a modern layer expressing the “normative right to obedience” within the modern state, whether grounded in a religious text or in positive law. This constitutes a natural semantic expansion insofar as the structure of the concept permits abstraction and transfer of description from one field to another while retaining, at the core of the meaning, the idea of “relationship to a prior standard.”

Accordingly, “legitimacy” denotes a tripartite relationship: a prior standard—whether religious law, constitution, statute, or covenant; a collective or authoritative actor claiming conformity with that standard; and a public audience from whom recognition, obedience, and compliance are demanded. This relationship means that the meaning of “legitimacy” is affected by both text and contemporary context, because describing a decision as “legitimate” differs according to whether the context is jurisprudential, positive law, or public international law, and according to whether the audience is a specialized legal community or a broader political community. The practical dimension is also apparent in the fact that “legitimacy” is employed in political discourse to stabilize or challenge the existing order. Labeling an authority “illegitimate” constitutes an act of withdrawing recognition, whereas labeling it “legitimate” constitutes an act of granting recognition; both speech acts go beyond the transmission of information to exercise constitutive and regulatory effects. The function of “legitimacy” is thus revealed as a normative term possessing performative force, shaping discursive reality and guiding collective behavior (Ibn Faris, 1983).

“Legitimacy” also performs a normative function in testing evidence, rulings, and rules. A “legitimate rule” is one grounded in valid evidence derived from textual authority, consensus, analogy, or legal objectives. A “legitimate act” is one that conforms to such evidence and is contrasted with an “innovative act” or one that “conflicts with the primary rule.” With the adoption of this term in modern law, it came to appear in expressions such as “constitutional legitimacy,” “procedural legitimacy,” and “democratic legitimacy.” These additions define the relevant framework of assessment. Constitutionality refers to the conformity of an act with the ethical principles of the constitution, rather than merely with its formal texts. Procedural legitimacy refers to the conformity of procedures with rights of defense, transparency, and impartiality. Democratic legitimacy refers to the conformity of power with mechanisms of representation, deliberation, and participatory rights. Accordingly, the designation of “legitimacy” has become an instrument for structuring the legal and ethical evaluation of an act, decision, or institution and thereby contributes to generating public trust and institutional stability (Ahmad ibn Muhammad, 1999).

2.2. Technical Concept

When the analysis is directed toward the texts of the 2004 transitional framework, it becomes clear that legitimacy, within the terminology of that framework, is founded on a detailed description of the nature of the political system: republican, federal, democratic, and pluralistic, with powers distributed among the federal government, regional governments, governorates, municipalities, and local administrations. The federal system is based on geographical and historical realities and the separation of powers, rather than on origin, race, ethnicity, nationality, or sect. Through this precise definition, legitimacy acquires a firm operational meaning. It is determined by the institutional structure’s adherence to the principle of federalism as described; by commitment to the separation of powers as a foundation of the system rather than merely an organizational recommendation; and by adherence to a negative criterion preventing legitimacy from being based on considerations of origin, race, ethnicity, nationality, or sect. This, in turn, prevents identity from becoming the basis for the institutional distribution of authority. In their specific terminology, these formulations make legitimacy dependent on the lawfulness of the distribution of authority and on its objective foundations, incorporating into the definition itself a mechanism designed to prevent deviations in the establishment or exercise of authority on grounds other than those identified by the text.

Between the characterization of authority in form and its definition in substance lies the function of the “separation of powers” as a foundation of the federal system. Its association with geographical and historical realities suggests that legitimacy is not merely a designation for a republican or federal model, but indicates a method by which concentration and encroachment of authority are prevented. Where authorities are separated and distributed within a federal structure according to objective realities, the conditions necessary for describing the exercise and oversight of authority as legitimate become available. The text further emphasizes that the division of powers is not a momentary political distribution but a legal framework extending to the federal government, regional governments, governorates, municipalities, and local administrations. The concept therefore moves from a general description to a precise determination of jurisdictional positions. Legitimacy in this context is determined by the degree to which institutional performance conforms to the requirements of this distribution and structure and by the

degree of adherence to the principle that the system must not be based on origin, race, ethnicity, nationality, or sect. This is a negative principle forming part of the definition of legitimacy, rather than merely a value-based recommendation, because it is formulated as a foundational prohibition within the establishment of the political order (Al-Ali & Auf, 2020).

3. Foundations of State Formation and the Development of Theories Explaining Its Origin

This study addresses the fundamental principles governing the understanding of the modern state and examines its constituent elements, conditions of continuity, and pathways of emergence. It presents an integrated perspective that brings territory, authority, population, recognition, and legitimacy together within a single analytical framework while highlighting points of interaction and tension among them. It examines key theories concerning the origins of the state, ranging from divine conceptions to social contract theories, and incorporates theories of power and domination as well as economic interpretations. This serves as an entry point for distinguishing the intellectual foundations that shape the relationship between ruler and governed. In addition, the study clarifies the structural differences between the ancient and modern state in terms of their objectives, instruments, and scope of responsibility. Finally, it proposes levels of legitimacy that can be observed both temporally and functionally within constitutional and political structures. The purpose is to provide a comprehensive framework against which subsequent analyses of Iraqi constitutional texts and their implementation can be conducted.

3.1. Elements Necessary for the Formation of a State

The discussion of the elements necessary for the formation of a state, within the conceptual framework governing this research, appears as an organizational approach that releases the subject of the state from ambiguities arising from the overlap between material facts and legal standards, and between conditions of existence and evidence thereof. A public entity is not defined merely through the accumulation of implicit indications, nor, conversely, can it be reduced to normative formulations detached from reality. Rather, it is formed where pillars with distinct functions and complementary effects support one another, collectively producing the structure of the state and providing the means for its continuity and recognition. The discussion of constituent elements is therefore not merely an enumeration of conditions that are automatically fulfilled, but an explanation of interdependent links. If one link is broken, the structure becomes impaired even if the remaining components are sufficient to preserve certain functions. This is because the logic of the state, in its modern form, is based on the superimposition of a spatial framework, human resources, institutional capacity, governing standards, and mechanisms of external integration, such that each element constitutes a condition of possibility for the others rather than merely a descriptive characteristic. This understanding requires distinguishing between what belongs to the essence of the state as a public legal entity and what appears in its outputs as evidence of effectiveness. It also requires caution against circular reasoning whereby the state itself becomes the condition for explaining the state. Instead, it requires an approach that orders the elements according to their respective positions: subject, bearer, method of action, standard, and frameworks of recognition (Sufi Hassan Abu, 1994).

When the analysis moves from the spatial framework to the human element, “society” emerges as a composite concept encompassing both the people and the population within the bond of citizenship. The people, as the original holders of public authority in the contemporary understanding, differ from the population, which is a demographic description encompassing residents, whether citizens or non-citizens. Distinguishing between these two concepts helps prevent confusion between political eligibility and numerical presence. The human element required for state formation is not a specific statistical percentage or an arbitrarily agreed minimum threshold, but rather the existence of a human community within a territory governed by a unified legal framework that establishes citizenship, defines political membership, and thereby makes possible the distribution of rights and duties and the organization of public participation. This element is not negated by the fact that some members of society live in the diaspora or are dispersed across different regions, because the emphasis lies on the existence of a legal bond enabling the state to confer citizenship upon its nationals and represent them. Likewise, the plurality of cultural, religious, and linguistic components within society does not invalidate it, since diversity remains a social reality recognized by the constitutional framework. Society does not fall short of the description of a nation as long as the political community is governed by a supreme instrument regulating the public covenant. Accordingly, the human element goes beyond numbers to encompass organization, because it is not meaningful to speak of a state in which the legal status of the individual

cannot be defined and the boundaries between subjects and authority, and between citizens and non-citizens, remain ambiguous (Abd al-Qadir Uthman Abd, 2022).

There was also a need for an element expressing the “method” through which a community becomes an entity capable of legislating, executing, and adjudicating internally and representing itself externally. This is what “governance” refers to in terms of organizing public decision-making within institutions and rules, and what “capacity to establish international relations” refers to in terms of the ability to exercise legal will within a complex network of obligations. Governance here is not merely an administrative slogan but an indication of institutional effectiveness measured by the capacity of the public system to produce general rules transcending individuals, by the proper distribution of powers, and by the availability of guarantees preventing authoritarianism and improving the management of resources and capacities. External competence, in turn, represents the attainment by a state of a level that enables it effectively to establish international relations, assume obligations, and fulfill them. This requires the existence of diplomatic and legal machinery expressing a unified will and ensuring a coherent approach. Such competence does not require significant international influence or a particular level of economic achievement, but rather a minimum level demonstrating unity of discourse and decision-making and allowing the state to become a credible party to treaties and possess an independent international status. These two dimensions therefore support one another: where internal governance weakens, external effectiveness declines, and where external authority becomes detached from internal unity, domestic structures are exposed to consequences that undermine public action and cause the system to lose coherence (Abd al-Latif, 2009).

3.1.1. *Territory*

The territory within which public authority is exercised constitutes the tangible framework in which relations between the state and individuals are organized and upon which the capacity of the public entity to act legally, both internally and externally, is built. Where a defined territorial sphere has not been established, it becomes impossible to describe precisely the scope of legislative, executive, and judicial application, just as it becomes impossible to define the boundaries of responsibility for security, the environment, resources, and facilities. The term “territory” here does not refer merely to land as a solid surface, but to an integrated territorial sphere in its legal sense, encompassing the land and everything structurally connected to it, from its subsurface to its surface, including adjacent internal waters, the territorial sea, and the airspace above it. This makes it possible to understand territory as a unified system within which jurisdictions are distributed and legal consequences arise. Under this conception, territory becomes a condition of possibility for the remaining elements of the public entity: through it the political community is distinguished from others, through it the operation of public facilities is regulated, and through it the rules of responsibility for incidents, crimes, and damages are determined, because jurisdiction has no meaning without territory, just as public obligation has no meaning without a spatial sphere through which those subject to it may identify the sources of obligation, the limits of obedience, and mechanisms of protection (Abd al-Hamid, 1977).

This perspective requires boundaries to be treated as a technical legal matter possessing its own stages and methods rather than as arbitrary lines drawn on maps without factual or field-based foundations. Once established, a boundary line rests upon a combination of criteria: historical facts reflected in memoranda of understanding and treaties; geographical data highlighting the courses of rivers and mountain ranges; and evidence of accumulated administrative practices manifested in taxation systems, public utilities, policing, education, and judicial activity in adjacent areas. The process is then completed by determining the physical character of the boundary through agreed markers. Natural changes may gradually occur in waterways and alter the course of a river or shoreline. Technical rules therefore distinguish between gradual changes, which may require corresponding adjustment of the boundary line, and sudden changes, which do not alter the legal status of the boundary. At the maritime level, questions of adjacency and continuity are managed through solutions involving median lines or equitable considerations in light of the characteristics of coastlines and islands, while in riverine environments navigational channels and their depth may be taken into account in particular cases. All of this demonstrates that territory is a complex concept that cannot be fully understood without awareness of the nature of the media of which it is composed and the limitations associated with each in the allocation of authority.

The importance of territory increases when it is viewed as the location of natural resources placed under public responsibility and administered for the benefit of society. It determines the scope of exploitation of subsurface and surface resources, defines

the boundaries of protection against depletion, pollution, and environmental degradation, and imposes duties of care, prevention, and compensation on public authorities. This dimension shifts the discussion from the sphere of “ownership” to that of “governance,” because even where resources are located on privately owned land, the state remains responsible for regulating their exploitation through controls that maintain a balance between individual rights and the public interest and that take account of urban density, climate change, and the risks of natural disasters. This requires precise systems for land surveying, registration of rights, land-use planning, designation of conservation and development zones, and regulation of expropriation for public purposes and compensation, all of which are based on a coherent conception of territory as a repository of public rights rather than merely a collection of private ownership maps (Abd al-Qadir Uthman Abd, 2022).

3.1.2. *Governance or Capacity to Establish International Relations*

The competence to conclude treaties lies at the core of this concept, including the stages of negotiation, drafting, signature, ratification, and publication. Such competence requires control over political and technical requirements; definition of the limits of what may be undertaken in light of the constitution and substantive and procedural guarantees; determination of the body authorized to approve commitments; supervision of the incorporation into treaty texts of necessary clauses preserving the balance between rights and obligations; and formulation of a sound policy concerning reservations and interpretative declarations in a manner that achieves the objectives of accession without emptying the commitment of its substance. The issue of domestic enforceability is linked to this capacity: whether international obligations operate directly by virtue of the higher legal text, so that they become self-executing within the national legal order, or whether they require legislative transformation through statutes or regulations; how publication and accessibility of texts are to be guaranteed; how interested parties may invoke them; and how potential conflicts are to be addressed through a clear hierarchy of norms. Ignoring these controls creates an external obligation that is ineffective domestically, thereby undermining confidence and depriving the state of the capacity to fulfill its commitments effectively (Tariq, 1996).

The diplomatic and consular framework serves as a field in which this competence is tested. The accreditation and acceptance of envoys require guarantees for the immunity of missions, premises, documents, and correspondence. They also require facilitation of consular functions relating to the protection of nationals, issuance of documents, and communication with authorities of the receiving state within established limits. This necessitates the creation of operational links among the ministries of foreign affairs, justice, interior, and finance, as well as security and municipal authorities, for regulating residence, movement, privileges, and exemptions. It additionally includes managing cases involving persons declared *persona non grata* in accordance with professional conduct and the principle of reciprocity. Competence here is measured by procedural accuracy, speed of response, and the absence of contradiction among agencies. It is also measured by the ability to respect the cultural particularities of different states without compromising applicable standards and by the protection of public officials abroad within established legal frameworks. This reflects an institutional structure capable of managing the delicate balance between the firmness of sovereignty and the flexibility of protocol.

This overall picture depends upon a material, human, and knowledge-based structure that enables the foreign-relations apparatus to manage complexity. Continuous training of diplomats and legal and economic advisers, mastery of languages and advanced negotiation techniques, establishment of databases and observatories for risks and obligations, use of measurement, monitoring, and analytical instruments, and development of participatory mechanisms with universities, think tanks, the private sector, and civil society regarding issues arising under international economic, environmental, and humanitarian law are all elements that enhance effectiveness and prevent decision-making from being confined to narrow bureaucratic circles. They also enable the state to act rapidly during crises without violating applicable controls, to balance independence and participation within networks of reciprocal obligations, and to maintain coherence between its discourse and actions. At this level, the criterion of competence in establishing international relations becomes an indicator of the maturity of the state in managing itself and interacting with the world, as well as of its capacity to transform legal personality from a mere textual characterization into regular and repeated conduct that generates cumulative confidence and produces practical effects in security, the economy, and public rights (Ahmad Abd al-Rahim, 1976).

3.2. Theories and Views Concerning the Origin of the State

Addressing theories and views concerning the origin of the state requires clarification of the question by resolving methodological ambiguities that have long conflated inquiry into how a political entity came into existence with inquiry into how it ought to be constituted. Discourse concerning origins lies at the intersection between historical-social description and normative-legal foundation, where narratives coexist that explain the emergence of public authority over territory through material, coercive, and evolutionary causes, while other narratives ground governmental legitimacy in consensual agreement or a supra-human authority. No judgment concerning any of these approaches can be made unless the distinction between “causes of existence” and “grounds of obligation” is preserved, and unless the nature of the modern state as a legal entity defined by an institutional and normative structure is taken into account—a structure that cannot be reduced to the force of conquest or exhausted by the rhetoric of consent. This requires a cumulative reading that traces the layers of formation from facts to rules and from actual authority to legitimate power, restoring to each theory its proper analytical significance: Does it describe the process of formation, provide a justification for obedience, or combine both functions to differing degrees? (Muhammad Fathi, 2003).

The comparison shows that the principal theories concerning the origin of the state are distributed, according to their premises and analytical instruments, among narratives that elevate the role of metaphysics and transcendent authority; narratives based on the hypothesis of consent and an assumed contract; a third account that explains origin through the logic of power, conquest, and monopolization of the means of coercion; and a fourth that attributes the phenomenon to economic structure, division of labor, and the production of surplus. Reconciliatory approaches have also emerged that incorporate psychological-social and cultural-symbolic considerations into the construction of the “story of origin.” What unites all these narratives, however, is their search for the point at which human society moves from the dispersion of primary bonds to a legal order in which authority is entrusted to a public institution transcending individuals and continuing over time. In this context, completion of this order presupposes the integration of social and civil forces into political and constitutional processes, so that institutional action becomes a reflection of social interaction rather than a substitute for it. Achieving this integration gives the legal structure its vital character and prevents it from being confined within the logic of elites or isolated authority (Al-Ali & Auf, 2020).

The social contract hypothesis presents an apparently contrasting narrative, assuming that the transition from a pre-political condition—whose examples are conceptual rather than historical—to the establishment of the state occurred through explicit or implicit consent among free and equal individuals who decided to transfer part of their freedoms to a public authority in exchange for security and guaranteed rights. Legitimacy is therefore grounded in original consent or its renewal through elections, representation, oversight, and accountability. This framework allows a distinction to be drawn between pre-state “rights” and “authority” derived from the state, transforming the supreme legal document into a political and legal covenant governing the acquisition, exercise, and renewal of authority and preventing power from degenerating into brute force. At the same time, however, contractual logic presupposes realistic mechanisms for transforming consent from an abstract concept into institutional practice. This requires regulation of the relationship between majority and minority, the limits of representation, and the sources of obligation where it is impossible to invoke actual “consent” in every specific case. The symbolic foundational element must therefore be distinguished from the mechanical operational element so that the assumption of consent does not become merely a metaphor concealing underlying power relations within political society (Uthman, 1972).

Any attempt to reduce the origins of the state to a single cause results in a reductionism that distorts both fact and norm. In most cases, the establishment of a public entity has been the product of a gradual interaction among the need for security, transformations in production, models of cultural legitimacy, mechanisms of representative consent, and the meaning of covenant embodied in the supreme legal document, in addition to the effects of geography, demography, and international politics in accelerating some processes and slowing others. It is therefore more appropriate to treat these theories as analytical lenses, each highlighting one dimension while obscuring another, and to reorganize them not in opposition but in complementarity: the divine approach identifies the value-based standard required of authority; the contractual approach elaborates mechanisms of consent and renewal; the conquest approach explains the construction of administrative machinery, monopolization of coercion, and the process by which it is transformed into legitimate force; and the economic approach reveals

the constraints of material resources within which institutions operate. Taken together, these approaches form a complex, multicausal framework better equipped to explain the transition from natural society to an organized political-legal community.

3.2.1. *Divine Views*

This structure requires the phrase “Islam is the official religion of the State” to be read as confirmation of a referential identity that is not merely symbolic. Its conjunction with the phrase “and it is a fundamental source of legislation” moves it from the sphere of cultural definition into that of legal obligation. The practical significance of divine views therefore becomes present within the legislative process itself, in terms of the hierarchy of sources and limits on contradiction. Describing Islam as a “fundamental source” establishes a hierarchy that protects the content of ordinary legislation through a prior objective constraint. The prohibitory formulation “no law may be enacted...” creates a preventive rule that predetermines and guides legislative will and prevents it from transgressing the “established provisions of Islam.” In this sense, the divine perspective, as an expressly declared reference in Article 2, becomes part of the structure of state legitimacy—not as a substitute for the parliamentary mechanism but as a normative boundary within which that mechanism must operate. Two levels thus converge: the level of acquiring and exercising authority through representation and accountability, and the level of assessing legislative content through a declared normative standard contained in the supreme legal instrument (Jamal, 1993).

In this context, the phrase “established provisions of Islam” stands out as a firm core referring to a sphere of norms that may not be violated in legislative drafting. Consequently, discourse on divine views is defined by what establishes these fixed principles and transforms them into a reference for “preventing contradiction,” not for “neutralizing the mechanism.” In other words, it directs the legislature to avoid what conflicts with the established principles while simultaneously leaving room for legislation in other matters in accordance with the requirements of a democratic parliamentary system. It therefore combines the requirements of referential identity with those of parliamentary practice. This suggests that the objective is not to impose an external rule that invalidates what the supreme legal document provides, but rather to incorporate the reference itself into the core of the document so that it becomes part of the constitutional standard and, consequently, part of the definition of legitimacy within the state (Muhammad Ahmad Sulayman, 1961).

Article 2 establishes an ordering rule among sources by presenting a “fundamental source” and binding the legislature to a limiting boundary. When read together with the description of the parliamentary representative system, this arrangement places us before a dual structure operating from within the document rather than outside it: “procedural legitimacy,” created through representation, parliament, and democracy, and “substantive legitimacy,” constrained by the normative source. This duality does not generate a structural contradiction insofar as the text assigns the Constitution the function of guaranteeing unity, because such a guarantee presupposes the removal of sources of conflict from within the structure itself by defining the position of each element of legitimacy. The source of legislation is therefore not confused with the mechanism through which legislation is produced, and mechanisms of representation do not contradict limitations designed to prevent substantive conflict. Rather, each operates within its own sphere so that, in practice, conformity is tested at two levels: Was the law produced through the democratic mechanism of parliamentary representation? And is its content free from contradiction with the established principles? When both requirements are satisfied, the rule acquires the characteristic of legitimacy within the framework provided by the constitutional text itself.

3.2.2. *Social Contract Theory*

Under this definition, the parties to the contract, its subject matter, and its purpose are understood within a single framework. The parties are free individuals of equal initial worth whose value derives not from lineage, belief, or wealth but from their membership in the political community. The subject of the contract is the establishment of a public legal entity to which legislative, executive, and judicial powers are delegated by authorization rather than ownership, so that power becomes a function rather than a privilege and a defined responsibility rather than absolute domination. Its purpose is to protect life, liberty, and both intellectual and material property and to preserve the boundaries between private and public spheres in a manner that prevents the collective power of society from becoming an instrument of private domination. From this contract arises a constitutional conception embodying this transition in a supreme legal document that organizes rules, specifies institutional positions, distributes competences, and safeguards rights. The state therefore derives its legitimacy not merely

from the capacity to coerce but from the conformity of its actions with the substance of the contractual will codified in this document and regulated by procedural and substantive guarantees (Hassan, 1980).

This theory assumes the existence of rights that predate the establishment of political authority—rights that the state does not create but rather recognizes and guarantees. Accordingly, a framework of fundamental rights and freedoms is formulated at the heart of the supreme legal document, ranging from freedom of belief, conscience, religion, expression, assembly, and movement to bodily integrity, legitimate property rights, and procedural safeguards. This framework constitutes the inviolable core of the contract and cannot be breached even by an overwhelming majority. Around it, judicial, legislative, and administrative mechanisms are constructed to restrict exceptional powers and define the conditions under which certain rights may be limited for the protection of a greater right or the prevention of imminent danger. Such restrictions must be based on necessity, suitability, proportionality, and temporariness so that the exception does not become the norm and necessity does not become a pretext. In this manner, the demand for security is balanced against the demand for liberty, and emergency powers are interpreted as contractual rather than arbitrary, thereby preventing a slide toward a political “contract of submission” emptied of its substantive meaning (Muhammad Abdullah, 1949).

Social contract theory emphasizes the role of pluralism within the unity of the state. Legitimacy derived from consent is not measured by universal agreement but by the system’s capacity to manage disagreements peacefully while preserving the equal legal status of all citizens regardless of religion, sect, ethnicity, or cultural affiliation. Citizenship is therefore formulated on the basis of equality before the law and non-discrimination. Cultural and religious particularities are recognized within the framework of public order and fundamental rights. Mechanisms of representation, local government, and decentralization are designed to reduce tensions and bring decision-making closer to citizens without compromising the unity of sovereignty. This philosophy prevents the majority from monopolizing the public sphere just as it prevents the minority from possessing a permanent veto. It establishes a balance of power that guarantees rotation of authority, preserves the unity of the political community, and maintains the social contract as a unifying framework rather than merely a formal umbrella over dispersed and antagonistic groups.

In its external dimension, the social contract is linked to the state’s capacity to act on behalf of an obligated community within a network of international commitments. The conclusion of treaties, accession to organizations, and assumption of transnational obligations acquire legitimacy only insofar as they pass through representative and oversight channels prescribed by the Constitution and insofar as fundamental rights are protected in the process of integrating international standards into the domestic legal system. Mechanisms of delegation, ratification, publication, and harmonization thus become contractual rather than merely procedural instruments. They preserve coherence between external and internal will and prevent the public entity from being divided into two separate entities: one that creates obligations abroad and another that is incapable of fulfilling them domestically. This conception obliges the state to exercise transparency and clarity in negotiation and commitment and empowers the judiciary to regulate implementation and prevent conflict between domestic law and international obligations within a defined hierarchy that neither disregards sovereignty nor empties international commitment of its substance (Muhammad ibn Shakir, 2013).

4. Differences Between the Ancient and Modern State and Levels of Legitimacy Within the Structure of the State

4.1. Differences Between the Ancient and Modern State

It is necessary to begin by highlighting the transformation in the general conception of authority from a personal relationship between ruler and subjects to a public legal institution transcending the persons of rulers and prominent individuals. The ancient state, in most of its manifestations, was based on bonds of personal, religious, or tribal loyalty, with the scope of influence determined by the ruler’s capacity for expansion and extraction and its affairs administered through instruments of privilege, confiscation, appointment, and grant. Its order therefore depended on the strength of the ruling group, abundance of spoils, or extent of prestige. By contrast, the modern state is built upon the depersonalization of authority and its attribution to an institution governed by general and abstract rules that take precedence over individuals. The transfer or retention of authority is conditioned by procedural and objective mechanisms that do not conform to the whims of an autocratic ruler but instead subject the ruler to a higher standard. Accordingly, the conception shifts from “authority over the people” to “a duty to serve

the public interest” and from “possession of government” to “a function exercised in accordance with law.” At this first level, a rupture therefore occurs in the very definition of authority: from possession of decision-making power to a supervised public body, and from a relationship of loyalty to a legal bond of citizenship (Zuhair Abd al-Majid, 2023).

The difference also lies in the structure and status of law. The ancient state was dominated by a multilayered customary legal order whose rules were dictated by community traditions, councils of elders, and the authority of the ruler. Justice was often administered according to locality, social status, and mediation, while personal discretion prevailed over general rules. The modern state, by contrast, establishes a clear hierarchy of legal norms headed by a supreme document that regulates powers, defines rights and freedoms, and specifies mechanisms of review and supervision. Around this document are built legislative rules, substantive and procedural laws, independent judicial institutions, and public prosecution services. Justice is administered according to guarantees of a fair trial, the principle of legality, and the prohibition of retroactive application of laws. State functions are separated to ensure mutual checks and balances and the limitation of authority by law. In this transition, the balance of legitimacy changes from understanding justice as something embodied in the person of the ruler to its realization through a pre-existing legal text to which both rulers and governed are equally subject.

The difference is further evident in the relationship between authority and the instruments of legitimate violence. In the ancient state, means of coercion were intertwined with networks of private and tribal loyalty and operated according to balances of power between the center and the periphery. Authority might resort to custom and tribal organization to fill a vacuum of power, thereby creating a personalized security system rather than public security. By contrast, the modern state institutionally and legally monopolizes the means of coercion and integrates the armed and security forces into a unified command structure subject to law as well as parliamentary, judicial, and administrative accountability. Their function is thereby transformed from service to individuals into protection of public order, the constitution, and national borders. Exceptions in situations of danger are governed by temporal, procedural, and substantive guarantees. Force thus changes from a “means of survival” into an “instrument of protection,” used only under the narrowest conditions and subject to supervision by multiple independent institutions (Jamal, 1993).

In the sphere of legitimacy, the differences extend to the very substance of the concept. The legitimacy of the ancient state derived from a mixture of domination, lineage, symbolism, sanctity, and tradition and was reproduced through prestige, conquest, abundant benefaction, and rituals of power. By contrast, the legitimacy of the modern state is measured by a dual criterion combining the integrity of the process of attaining power with the compatibility of the substance of decisions with fundamental rights. Thus, where safeguards are violated, outcomes may be invalid even if the ruler has acquired support, while rights remain attributable to their holders even if they conflict with prevailing popular preferences, because rights cannot be reduced to numerical majorities and public decisions cannot be reduced to temporary inclinations capable of overturning the foundations of the constitutional compact. Legitimacy is renewed through peaceful transfer of power, separation of powers, rule of law, accountability, and transparency. It is translated into public confidence, evident in voluntary compliance with law and willingness to bear public responsibilities insofar as they are connected to tangible public service for which officeholders remain accountable. This informed obedience, however, is not detached from the intellectual heritage established by Muslim scholars when they associated knowledge with guidance. Obedience grounded in insight thus becomes a form of rational legitimacy sustaining the political order through reason and faith together (Khalid, 2004).

4.2. Levels of Legitimacy

The procedural dimension advances in defining another level of legitimacy in terms of the methods through which power is acquired, renewed, and exercised. It is not sufficient for a regime merely to proclaim a supreme legal text in order to establish its legitimacy if the mechanisms that transform public will into a controlled and supervised mandate are obstructed. Criteria relating to the integrity of the process therefore become crucial: fairness of elections or selection mechanisms, equal opportunities for candidates, transparency and accountability in decision-making, separation of powers and judicial independence, neutrality of administrative and security forces, and soundness of financial procedures. The more reliable this process is, the higher the level of procedural legitimacy and the stronger the connection between text and reality. If, however, these mechanisms are reduced to formalities with predetermined outcomes, or participation becomes a symbolic ritual whose

results are decided behind closed doors, procedural legitimacy collapses and the gap between government and those who exercise it becomes apparent even if supreme constitutional texts remain formally intact.

Integrating this dimension into the analysis prevents legitimacy from being imposed on society from above and transforms it instead into a reciprocal relationship in which the state improves its responsiveness to social demands and regulates them through law, while society improves its ability to translate its demands into peaceful channels capable of producing legitimate effects.

These internal levels intersect with a fifth level related to the external environment, where legitimacy is perceived through the lens of the international and regional order by means of formal recognition, respect for the rules of peace and security and fundamental human rights, and fulfillment of treaty obligations. This does not mean that external forces create legitimacy *ex nihilo*, nor does it mean that the standard of international acceptance takes precedence over national sovereignty. Rather, it means that a state's ability to act as an entity accountable to others and to benefit from rules of cooperation and common institutions depends upon a minimum degree of coordination between its internal and external affairs: a clear and enforceable supreme law, transparent and auditable procedures, policy content that does not conflict with peremptory norms, and social consent capable of ensuring stability. Where these elements are impaired, external suspicions accumulate and channels of representation, funding, and cooperation become restricted, even where the state formally continues to invoke its legitimacy (Abd al-Halim, 1983).

Scientific analysis requires the definition of instruments for testing each level without reducing the phenomenon to a single indicator. The soundness of the foundational level is measured by the clarity and practical integrity of the supreme legal document, the hierarchy of norms, and the effectiveness of constitutional review. Procedural soundness is measured by the independence of the judiciary and electoral management bodies, neutrality of the public service, effectiveness of mechanisms governing access to information, and quality of internal institutional regulations. Performance-based soundness is measured by indicators of public expenditure directed toward fundamental rights, effectiveness of procurement systems, balance and sustainability of the budget, and independence of oversight bodies. Social acceptance is measured by levels of voluntary compliance, trust in institutions, rates of participation, and the ability of protest to remain within peaceful and legal frameworks. External coherence is measured by the regularity of international reporting, compliance rates with agreements, and the clarity of policies concerning reservations and legislative harmonization. These criteria do not substitute for qualitative analysis but provide research with instruments that are comparable over time and across different sectors (Saad Khalifa, 2021).

A comparison over time demonstrates that any project aimed at reforming legitimacy requires the prioritization of objectives according to the source of the problem. Where the defect lies in the foundation, "performance programs" alone are insufficient; where it lies in procedure, "achievements" alone are insufficient; where it lies in performance, "constitutional designs" alone are insufficient; where it lies in social acceptance, "institutional techniques" alone are insufficient; and where it lies in external coordination, "declarations of sovereignty" alone are insufficient. Effective reform is reform that precisely diagnoses and addresses the damaged layer without causing the collapse of the overall structure, while simultaneously restoring coherence among the layers: procedures should reflect higher standards, outcomes should translate rights into practice, consent should be the product of justice, and external recognition should result from internal coherence rather than substitute for it.

4.2.1. *Primary Legitimacy*

The essence of this level is revealed in the establishment of a normative unity that transforms the constituent elements of territory, society, and authority into a legal structure. Territory is no longer merely an area controlled by the strongest hand but a sphere governed by legislative, judicial, and administrative authority in a defined manner. Society is no longer a subject classified according to origins and classes but recognizes equal citizenship under a general principle. Authority is not exercised as domination but as a function restricted by defined purposes and limits. From this arise the characteristics of constitutional supremacy, namely the superiority of foundational rules over all subsequent texts. A hierarchy is established between the supreme text and ordinary statutes and regulations, while the judiciary assumes responsibility for ensuring the enforcement of this supremacy, thereby creating bridges between norm and practice. This structure gives primary legitimacy its character as a "measure" against which the validity of legislation, integrity of procedures, and legality of public acts are assessed, so that judgment is not left to political whims or commands of power (Abbas Muhammad, 1959).

The foundational level also reveals its primary procedural dimension: legitimacy of access to power is not left to subsequent arrangements but is regulated from the outset. Conditions for accession to authority through elections or appointments are defined according to supervised standards; rules of integrity, equal opportunity, and transparency are established; conditions and limits of delegation are determined; and the legislative process—from proposal through deliberation, approval, and publication—is delineated. Judicial independence is protected to guarantee application of these rules to both public authorities and individuals. At the heart of this structure lie the principles of transparency and the right of access to information, which enable society to monitor decision-making processes, together with mechanisms regulating conflicts of interest that prevent private interests from influencing public decisions. Without this procedural foundation, primary legitimacy becomes merely an abstract ethical rule incapable of preventing manipulation of the levers of power (Muhammad Umar Saeed, 1970).

Primary legitimacy possesses an equally important social dimension. Legitimacy is not tested exclusively in court records, but also through its capacity to become a culture of voluntary obedience and civic virtue transmitted through education, the media, and everyday practices in institutions, schools, courts, and police stations. The more individuals feel that their dignity is protected and that law stands above persons, the more willing they become to align their interests with general principles rather than with personal connections. Similarly, the more they experience an equitable distribution of services and public projects, the less space remains for rejection and passive resistance. The success of the foundational level is therefore measured by its capacity to generate “public trust,” which underpins procedural and performance-based legitimacy at later levels and bridges the gap between text and practice through mechanisms of participation, accountability, whistleblower protection, and access to information. Without this social dimension, legitimacy is reduced to documents read in official halls while reality imposes its own rules in practice.

Another fundamental requirement of legitimacy is regulation of the relationship between the central government and regions within federal states. This includes conclusively defining the competences of federal and local authorities in order to prevent conflict, establishing mechanisms for resolving constitutional disputes, preserving the unity of the state’s external will while acknowledging diversity in domestic implementation, and respecting the normative supremacy of the higher law in the face of any conflicting local legislation. Vertical consistency is a prerequisite for the credibility of legitimacy: where boundaries remain ambiguous, regions and the central government disagree over jurisdiction, public services fragment, and investors, citizens, and judges lose confidence in the state’s decision-making authority, thereby reducing both domestic and international legitimacy. Where, however, the supreme document regulates procedures and is administered according to the principle of supremacy, the federal structure remains sound and leaves no room for interpretations capable of allowing regional identity to undermine political unity (Nasib Muhammad, 2010).

4.2.2. *Secondary Legitimacy*

In its legislative form, this legitimacy rests upon three essential pillars: competence, form, and procedure. For an ordinary law to acquire legal force, it must be enacted by an authorized body acting within the sphere determined by the higher text, and its form must comply with the rules governing proposal, deliberation, voting, and approval. Its procedures must also comply with requirements relating to quorum, majority, stages of consideration, transparency, drafting, publication, and accessibility. In addition, the law must be clear, understandable, accessible, and predictable in its effects. It must further respect the principle of legal certainty, which prevents legislative surprise, restricts retroactivity, reinforces the connection between law and the reality of those to whom it is addressed, provides where necessary a period before entry into force, and prevents transitional provisions from becoming back doors for circumventing higher authority. In this manner, primary legitimacy is reproduced within ordinary legislation, ensuring that parliament does not become an uncontrolled source of power and that procedure is not reduced to a symbolic ritual concealing an absence of competence or procedural defects (Muhammad Jamal al-Din, 1988).

This balance becomes increasingly necessary in composite states in which jurisdictions overlap among federal, regional, and local levels. Within this context, secondary legitimacy establishes criteria for separation and integration, defines the scope of exclusive and shared competences, lays down rules for resolving conflicts of laws, gives priority to the supreme law and to related federal constitutional legislation to the extent expressly provided, establishes mechanisms for legislative and supervisory coordination and cooperation among these levels, and supports the principle that jurisdiction may not be usurped

from a lower or higher level under the pretext of necessity or urgency. On this basis, the legal effect of local laws in relation to federal legislation is redefined, while procedures for review, supervision, and dispute resolution are established to prevent institutional pluralism from turning into conflict that weakens the legal position of those subject to the law and undermines public confidence in the coherence of the state.

5. Conclusion

1) This study demonstrates that legitimacy is a complex structure in which constitutional legitimacy is supported by procedural, substantive, performance-based, and external legitimacy. The definition of the state in the 2005 Constitution as a federal, representative, parliamentary, and democratic republic makes conformity of governmental practice with this definition a necessary condition of legitimacy. This requires regular elections, peaceful transfer of power, separation of powers, transparency in decision-making, and reciprocal oversight. It is further reinforced through the protection of rights and freedoms as general guarantees rather than exceptional privileges and by linking public obligations to measurable public interests. The external structure is completed through adherence to the principles of non-use of force, non-intervention, peaceful settlement, and good faith. Legitimacy is therefore understood as an ongoing effect of conformity between constitutional text and its implementation rather than merely as a formal description of the system of government.

2) The combination of the propositions that “Islam is the official religion of the State and a fundamental source of legislation,” that Iraq is a “parliamentary, democratic republic,” and that legislation must not conflict with rights indicates that the interpretative framework is required to combine source-based criteria with rights-based criteria. Legislation does not acquire legitimacy if it violates the established principles of Islam, just as it does not acquire legitimacy if it diminishes guarantees of freedom, equality, and dignity distributed across the constitutional provisions relating to rights and democratic mechanisms. The “fundamental source” is understood as a criterion of content, just as democracy and rights operate as criteria concerning the effects of legislation on freedoms. Conflicts are referred to constitutional and judicial institutions within a federal parliamentary structure. In this way, the identity of the state is preserved without emptying constitutional guarantees of their substance. Legislative legitimacy is determined by simultaneous adherence to both constraints.

3) The constitutional text provides that Iraq is “a country of multiple nationalities, religions, and sects” and that the Constitution “guarantees the unity of Iraq.” Legitimacy is therefore determined by the capacity of the state to manage diversity without sectarianism or exclusion. This means that representation and access to public services constitute rights derived from citizenship and that policies relating to education, language, worship, and public symbols are subject to the principles of equality and the prohibition of direct and indirect discrimination. Respect for this framework is measured by the protection of places of worship and the provision of access to the administration of religious endowments for all groups within a framework of transparency and accountability. The explicit identification of particular communities—Christians, Yazidis, and Mandaeans—reflects an intention to make these guarantees explicit rather than ambiguous. The greater the ability of institutions to translate recognition into effective implementation, the stronger legitimacy becomes.

4) The Transitional Administrative Law provides that the federation is based on “geographical and historical realities and the separation of powers,” rather than on “origin, race, ethnicity, nationality, or sect.” This becomes an objective criterion for the legitimacy of the distribution of power. Decentralization is measured by its ability to bring services and decision-making closer to the people rather than by its capacity to perpetuate closed identities. The separation of powers is understood as a safeguard preventing the concentration of authority and enabling horizontal and vertical accountability. Any administrative, financial, or electoral arrangement reconstructed on the basis of identity-based affiliation weakens legitimacy by violating an explicit constitutional principle. In addition, the unity of the state is interpreted as the consequence of these objective criteria rather than as a slogan imposed through domination. In this way, a balance between unity and diversity is preserved.

5) Free and fair elections constitute an essential prerequisite for renewing political mandates, but their effect remains merely symbolic in the absence of a comprehensive network of safeguards. This network includes an accurate electoral register, equitable electoral districts, equal access to media and financing, independent electoral administration and neutral security forces, protection of candidates, voters, and observers, and a professional, expeditious, and reasoned judiciary for adjudicating electoral appeals. Acceptance of election results by the losing party is assessed in light of this procedural environment rather than merely through rhetoric. The more open data and citizen monitoring are implemented, the greater voluntary compliance

becomes and the lower enforcement costs become. Elections then move from being a seasonal ritual to becoming a recurrent institutional practice that generates legitimacy.

6) Judicial independence and proper administration of justice function as guarantees of legal legitimacy. Legitimacy is measured through the regularity of judicial proceedings; the reasoning and consistency of judgments, or clear explanations for departures from precedent; facilitation of legal aid for vulnerable groups; reduction of pretrial detention; effectiveness of administrative courts in restraining public power and annulling corrupt contracts; and the role of constitutional courts in preserving the supremacy of law. Publication of judgments and case statements enhances legal certainty and predictability. Transparency becomes reconnected with public trust and consequently reduces the scope of administrative arbitrariness. When mechanisms of appeal and compensation are fully institutionalized, the presumption of legitimacy surrounding public decisions is strengthened. Power thus becomes a subject of rigorous scrutiny rather than being left unchecked.

6. Recommendations

1) It is recommended that the principle of “objective federalism” be systematically activated through the adoption of a framework law regulating the distribution of authority among the center, regions, governorates, and municipalities on the basis of geographical and historical realities and the separation of powers, accompanied by public performance indicators for measuring service quality and responsiveness to requests. Such legislation should require the publication and periodic updating of schedules of competences and associated resources; invalidate any organizational arrangement based on origin, race, or sect; establish a rapid constitutional arbitration mechanism for resolving jurisdictional disputes; link fiscal transfers to corresponding transfers of responsibilities and revenues; and make local participation a necessary condition in the formulation of development plans.

2) It is recommended that judicial independence be strengthened through an autonomous and protected budget; a merit-based and transparent system of appointment and promotion designed to prevent conflicts of interest; an obligation on courts to publish and provide reasons for their judgments and to harmonize legal interpretations or explain reasons for departing from prior decisions; and reduction of pretrial detention through lawful alternatives. It is also proposed that the administrative judiciary be empowered to supervise public services and annul contracts that violate constitutional requirements while providing effective remedies; that instruments of constitutional adjudication be completed to allow review of laws and regulations; that an open judicial data portal be established; and that continuous training be provided concerning fair trial standards and human rights.

3) It is recommended that the electoral system be reformed to guarantee fair and periodic competition through an externally audited electoral register, fairness in constituency delimitation, neutrality of electoral administration and security services, transparency in political financing, equal access to media, and protection protocols for candidates, observers, and voters. This should be linked to an expeditious and reasoned electoral judiciary capable of resolving appeals within prescribed deadlines, immediate publication of results and primary data, adoption of accessibility standards for persons with disabilities, women, and displaced persons, and mechanisms for evaluating the electoral process after each cycle and introducing reforms in light of lessons learned.

4) It is recommended that implementing regulations be issued guaranteeing freedom of expression, assembly, peaceful demonstration, and the right to know; specifying procedures for notification, security, protection, licensing, and appeals in accordance with the principles of necessity, proportionality, and temporariness; and distinguishing protective regulation from disabling restrictions. Such regulations should also establish a single point of contact for receiving access-to-information requests subject to binding deadlines and published statistics; interpret exceptions narrowly and subject them to judicial review; publish maps of routes and security controls before public events; and require dispersal operations to be documented and subjected to accountability.

5) It is recommended that legislation governing civil status and the national identity card be reviewed in a manner that preserves the right of minor children to future religious choice, so that a child remains registered in the original religion until reaching legal age and may thereafter choose his or her belief freely, with clear procedures for correcting restrictions. This should be accompanied by guarantees of the neutrality of civil-status instruments as means of evidencing rather than creating identity; an obligation on civil-status offices to provide reasoned notifications when making any amendment; an expeditious

complaints mechanism; publication of aggregated and anonymized data for measuring the impact on religious communities; and administrative training concerning proper implementation.

6) It is recommended that an institutional interpretative mechanism be established for determining the meaning of the “established provisions of Islam” through reasoned interpretation by the Federal Supreme Court and prior legislative referral procedures in a manner that ensures compatibility between the normative source and democratic guarantees and rights. A supporting studies department should also be established within the Court to integrate comparative legal and Islamic jurisprudential analysis; Parliament should be required to attach a “legal and constitutional impact assessment” to every draft law concerning religious or family freedoms; explanatory memoranda should be published; expert hearings should be conducted; and criteria should be developed for distinguishing immutable substantive principles from variable regulatory matters.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

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