

Constitutional Options for Post-War Iraq

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Preface

For some time in diplomatic and political circles in both Iraq and elsewhere we have been hearing references to the relevance of a federal system for Iraq. To explore this topic, the Forum of Federations conducted an exploratory study on the possibilities available to Iraq in matters of multi-level governance and, more specifically, federal governance.

To understand the context in which these discussions took place, we believe it is essential to trace the institutional evolution of Iraq. It is of course impossible to retrace the entire history of a centuries-old country in a short paper; however, even a condensed overview of Iraq's history allows us to better understand why certain models of governance are studied instead of others. This topic is undertaken in the first chapter.

The second chapter concentrates on an inventory of political arrangements which are presently being discussed in Iraq and elsewhere. These discussions are focussed principally on models of decentralized, federal, or confederal systems.

The third chapter takes the analysis a little further and presents constitutional models which are more applicable in a multi-ethnic context. It discusses the necessary processes to achieve multi-ethnic representation and also suggests steps to follow. We should not, however, see these steps as a prescription to be followed but rather as an indication of the logical sequence of events.

Finally, the last chapter examines the role which the Forum of Federations could play given its experience as a resource for both countries which are reforming their own federal system and countries which are interested in adopting a federal constitution.

Céline Auclair
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Chapter 1

Institutional History of Iraq

Peter Sluglett

Ottoman Iraq

Between the end of the sixteenth century and the end of the First World War, the greater part of what is now Iraq consisted of two or more provinces of the Ottoman Empire. For much of the sixteenth century, what is now northern and eastern Iraq was fought over between the Persian Safavid state, based first in Tabriz and later in Isfahan, and the Ottoman state, based in Istanbul. At the end of his long reign, the Persian Shah Abbas (1588-1629) was still attempting to incorporate the lands of southern Iraq into his empire, but that represented the last effort of its kind. Although the frontier between the Persian and the Ottoman empires was demarcated by an Anglo-Russian boundary commission in 1914, Ottoman rule over 'Iraq' in fact went unchallenged between the middle of the seventeenth century and the end of the Ottoman empire in 1918.

The word 'Iraq' is a modern designation, in the sense that what became the modern state had no separate existence before the peace settlement after the First World War. While it is generally true that modern Iraq is composed of the three former Ottoman provinces of Basra, Baghdad and Mosul, parts of these provinces extended beyond the state's present boundaries at various times, as late as the nineteenth century. Thus parts of the province of Mosul extended into what is now Syria, and parts of Basra extended into what is now Saudi Arabia. In addition, at various times Basra was part of the province of Baghdad, then a province in its own right, and then a sub-province of Baghdad again. The precise details need not concern us, but it is important to understand the fluidity of Ottoman administrative divisions, even after the enactment of a law designed to streamline provincial administrative structures, the Law of Vilayets, in 1864. It is also worth mentioning that in the secret negotiations between the Allied Powers in 1915-16 (the Sykes-Picot Agreement), Mosul was originally assigned to the French sphere (that is, to Syria), and then ceded to Britain in December 1918. Thus there was nothing predetermined about the shape of modern Iraq, and it was only *after* the creation of the state that its inhabitants could begin to think of themselves as 'Iraqis' (in contrast, for instance, to 'Egyptians', who have a much longer national history). Finally, in this brief attempt to set the scene, it should be pointed out that Karbala and Najaf, the main shrines of Twelver Shiism (the sect to which about 90 per cent of Iranians and 60 per cent of Iraqis belong), are located in Iraq, further complicating an often tense relationship between the Ottomans and the Safavids, and their successors, including the modern states of Iraq and Iran.



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In spite of the claims of Arab nationalist historians, the Ottomans were not widely regarded as 'intruders' by the population of the Iraqi provinces. This was partly because 'modern' notions of national identity took some time to reach the Arab world. Furthermore, with all its limitations, the ideology of the Ottoman Empire was that of an Islamic state, in the restricted pre-modern sense that the duty of the state and its rulers was to provide the backdrop against which the good Islamic life could be led. Although there were significant numbers of Jews in Iraq (mostly in Baghdad), and an important Christian minority (mostly in Baghdad, Mosul and some villages in the north of the province of Mosul), some 90 per cent of Iraqis were Muslims and for the most part did not regard being governed by Turkish-speaking Muslims as the unbearable imposition of foreign rule. They may have resented being taxed, and not receiving any tangible benefits in return, or being conscripted, but as yet no 'national feeling' entered into that resentment. However, many people in the three Iraqi provinces did not speak Arabic as their first language, and some not at all; Kurdish, Persian, Turcoman, and Ottoman Turkish were the main languages in various parts of the area. 'Forging a nation', therefore, in the aftermath of the First World War, was a larger task than some wishful thinkers would have us believe. In the words of Neal Ascherson, a historian of Eastern Europe, 'all nations are forgeries, more or less', and Iraq remains an obvious case in point.

Between 1839 and the 1870s, the Ottoman state enacted a series of major administrative, civic, legal and military reforms, culminating in the promulgation of a constitution in 1876, and a parliament which met in 1876-77; this whole reform package is known collectively as the Tanzimat, or 're-ordering.' Thus the nineteenth century was far from being a period of stagnation. It is true, however, that the distance between Baghdad or Basra and Istanbul meant that not all the Tanzimat reforms trickled down to every corner of the Iraqi provinces. Nevertheless, the myth of the 'Turkish oppressor', zealously perpetuated by Iraq's British conquerors, does not stand up to serious scholarly investigation. Again, although the provincial governors and their immediate subordinates in charge of military and financial matters might well be ethnic Turks, and the administration was carried out in Turkish, most second tier administrators and their subordinates were locals, recruited locally, and recruited in increasing numbers, to staff the new departments of government which came into being as a result of the Tanzimat.

Iraq under British occupation and mandate, 1914-1932

On 6 November 1914, a week after the Ottoman empire had entered the war on the side of the Central Powers, an expeditionary force of the Indian Army landed at Fao in southern Iraq. Their subsequent occupation and *de facto* annexation of the area consolidated a connection with a region in which Britain had long been economically dominant. The force marched swiftly northwards, at first meeting little resistance; the euphoria this created encouraged those in charge in Delhi and London to contemplate an immediate dash for Baghdad. But it was poorly supplied and, at least initially, badly led, and



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early in 1916 it was checked by a Turkish rally at Kut. Eventually, reinforcements from Britain and the transfer of the military command to London made possible the capture of Baghdad in March 1917. In November 1918, a few days after the end of the war, the city of Mosul was occupied, and the surrounding province was also deemed to have fallen into British hands.

In the course of the war, Britain, France, Italy and Russia had entered into a series of agreements under which, in the event of an Ottoman defeat, Anatolia and the Arab provinces of the Ottoman Empire were to be divided between the Allies. With a number of important modifications, this division eventually formed the basis of the peace settlement in the Middle East, under which France was assigned the areas that are now Lebanon and Syria, and Britain was assigned the areas that became Iraq, Transjordan and Palestine (and later Israel). However, the entry of the United States into the war in April 1917 had introduced a new, and somewhat unnerving, political element into the Allies' calculations. In the words of a senior member of the India Office late in 1917: '[w]e must at least consider the possibility of a peace which will not give us the absolute political control of Mesopotamia that we should like to have ...'. Early the next year, President Woodrow Wilson stated his war aims in his famous Fourteen Points speech; the twelfth point promised 'absolutely unmolested autonomous development' to any territories that might be 'liberated' from Ottoman rule.

The eventual result of this sea change in the international climate was the mandates system. Under this system the newly-founded League of Nations assigned territories to one or other great power on an avowedly temporary basis, formalized, for the Middle East, in the San Remo Agreement of April 1920. The system was designed as a means of preparing the states concerned for independence within a period, which if not precisely defined, at least envisaged an eventual end point. Colonization, annexation, or imperial incorporation were thus ruled off limits. By the summer of 1920, after Britain had been administering some parts of the country for nearly six years, there was a major rising in central and southern Iraq against the British presence. The '1920 revolution', in which a number of disaffected elements joined together to try to oust the occupiers took the form of a religio-political movement. Influential leaders in the Shiite Holy Cities (almost all Persians or of Persian origin) urged the southern tribes to rise against the British, and many of those Sunni Arab officers who had fought with Faisal, Iraq's future king, in the Hijaz, led tribal units in the so-called 'Sunni triangle' in the north. The efforts were certainly coordinated, but the claim that this was a national uprising needs a little more investigation, since the two wings of the rising had little in common except a desire to expel the occupiers. It was also the case that British policy makers, and public opinion in Britain generally, remained divided for some time on whether or not to 'Quit Mesopotamia.'



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The rising, which evidently took the British by surprise, was put down after some four months of fierce fighting. In December 1920, a British official in London was asked to contact Faisal, son of Sharif Hussein of Mecca, the leader of the British-sponsored 'Arab revolt' in the Hijaz, which is now in Saudi Arabia, who had been king of Syria until his removal by French forces in July 1920, to see whether he would consent to become king of Iraq. After some demurrals over the prior claims of his elder brother Abdullah, Faisal accepted, and following a somewhat comic opera referendum organised by the British had found in his favour, was enthroned on August 23 1921. The designation 'mandate' was formally dropped, and replaced by an Anglo-Iraqi treaty, initialled in October 1922, and finally ratified, after many vicissitudes, in June 1924.

Over the next few years a series of institutions were created for the new state. The legal system and the system of land tenure generally followed the 'reformed' Ottoman model, but a new constitution had to be drafted and passed by a Constituent Assembly. In theory, the form of state was a constitutional monarchy, where the king ruled through parliament. In reality the franchise was extremely limited, and political parties were little more than fortuitous combinations of temporarily like-minded individuals. In consequence, the executive (the king and the cabinet), which was dependent on British good will, regularly rode roughshod over the legislature, gerrymandered elections, and generally brought the democratic process into disrepute.

One of the main features of the new state, reflected in the constitution and in the creation of the national army in January 1921, was that it was tilted in favour of the Sunni Arabs, who were a minority in the country as a whole. Extrapolating backwards from the earliest accurate census in 1947 (when there was still an important Jewish minority, especially in Baghdad), if 90 percent of Iraqis were Muslims in 1920, 60 per cent of those Muslims would have been Shiite Arabs, about 20-22 per cent Kurds (who were largely Sunni but included some Shias as well as the heterodox Ali Ilahis and Yazidis). The remainder, between 18 and 20 per cent, were Sunni Arabs. Thus the British set up an *Arab* state in Iraq, when it seems probable that the majority of its inhabitants would have been more comfortable with a *Muslim* state (in the limited sense already described, of a state whose moral framework was based on Islamic principles). Certainly, a Sunni state would not have been appealing because most of the Arab Muslims were Shiite. Even an Arab state would not have been popular because of a substantial Kurdish minority.

Remoter parts of this new state, it should be remembered, had barely felt the effects of 'government' because of the Ottoman state's lack of resources. In this fragile state, defence and internal security were to be provided by a combination of the Royal Air Force, a new branch of the British armed services anxious to define a viable role for itself in peace time, and various local forces, principally the Assyrian levies, recruited from a Christian minority which had arrived in Iraq as refugees during the First World War, and the Iraqi army. In 1920-21, Britain spent £32 million on the defence of Iraq; by 1926-27 the figure



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had dropped to £4 million, and by mid 1930 to £480,000. In October 1921, seventeen battalions of the British and Indian armies were stationed in Iraq; by 1930, there were no British army units at all (apart from the individuals attached to the British military mission training the Iraqi Army), but four squadrons of the Royal Air Force. Although attempts were made to paper over the facts, the RAF was regularly employed to bomb or otherwise punish reluctant and/or indigent tribes, mostly in southern Iraq, whose crime was not to have paid the taxes they owed to the Iraqi government. Perhaps the most serious long-term consequence of the ready availability of air control was that it gradually developed into a substitute for administration. With such powers at its disposal, the Iraqi government was not encouraged to develop less violent methods of extending its authority.

The creation of an Iraqi army in many ways paralleled the constitutional arrangements arrived at for the new state. In hindsight, it is clear that both the shape of the state and the shape of its military contained within themselves major elements of instability which worked their way to the surface over time. The army came into existence in January 1921, and increased in size in the course of the mandate from 3,500 to 12,000 men. Initially, it was little more than a glorified gendarmerie acting as an occasional adjunct to the RAF, and the Iraqi government knew this and resented it, but in the longer term, it functioned as another instrument of Sunni Arab dominance, in the same way as the constitution and the other political structures. As late as 1941, there were no Shiite officers at all; similarly, most Iraqi cabinets contained only one, or at most two, Shias.

Thus, by a combination of accident and design, the political and military institutions which the British created gave most of the authority in the state, in effect, to the Sunni Arab elite, now composed, of the former Ottoman land-owning, religious and service aristocracy, and former officers in the Ottoman army, the most influential of whom had fought with Faisal ibn Hussein and his British associates in the Arab Revolt during the First World War. In a sense, this can be regarded as a natural consequence of the Ottoman legacy. The Ottoman state was a Sunni institution, and even with the great expansion in the bureaucracy that had taken place since the mid-nineteenth century, only Sunnis (together with some members of the non-Muslim communities) had been employed. Similarly, what educational facilities the state provided were rarely if ever patronised by the Shiite community, which had its own schools. In general, although other factors were involved, religious Shias in particular tended to view the state (whether Ottoman or Qajar), as a sort of necessary evil, and were thus not inclined to press for bureaucratic, educational or military employment.

A certain degree of equilibrium was maintained for the duration of the mandate, partly because of Britain's supervisory role, and partly because of the personality of Britain's choice as ruler, Faisal. Like his brother Abdullah, Faisal had been picked to play a certain role in the formation of a new state, and to a certain extent he did, and to a certain extent he did not, do Britain's bidding. He died aged 50, in 1933, having piloted the state to a sort



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of independence from Britain: the mandate had ended in 1932, and Iraq was in theory an independent state, a member of the League of Nations. Faisal's successors were fashioned from much coarser clay; his son Ghazi, king from 1933 to 1939, was a lightweight, his nephew, the Regent Abd al-Ilah (1913-1958) effectively on the throne between 1939 and 1958, was widely hated for his slavish obedience to Britain. His more innocent grandson Faisal II (1935-58) was so tarred with his uncle's brush that neither of them stood much of a chance against the revolutionaries who came for them and for Nuri al-Said in July 1958.

'Independent' Iraq, 1932-1958

After Faisal's death in 1933, Iraqi politics degenerated into a series of unseemly struggles for power until 1941, when the exigencies of the Second World War were such that Rashid Ali al-Gailani's government's unwillingness to honour earlier treaty commitments to Britain precipitated a 'second British occupation'. In 1936, Iraq had the dubious distinction of hosting the first military coup in the Middle East, and the eight ministries formed over the next five years were largely dependent on the favour of a tightly knit group of army officers known as the Golden Square. (In spite of occasional claims to radicalism, Rashid Ali's prime ministerial predecessors between the coup October 1936 and his own second ministry of April 1941 had generally been careful not to fall out with the British). British troops stayed in Iraq until the end of the war and the RAF bases were only evacuated after the Revolution of July 1958.

After the end of the Second World War, British forces withdrew from Iraq, but, as before, Britain kept a firm hand on the wheel. In terms of political developments, the 1930s, 1940s and 1950s saw the rise of three main tendencies, 'Iraqist', 'Arab nationalist' and 'leftist', though there was an obvious overlap. Subsequent Baathist propaganda has tried to give pride of place to the doctrine of pan-Arab nationalism, the notion, in its more extreme and/or most simplistic form, that the Arabs are one people from the Atlantic (Morocco) to the Gulf (Iraq). Since this is a notion whose main appeal would be to Sunni Muslims, who formed at most 20 per cent of the Iraqi population, it seems more likely that, at least until the rise of Nasser in the 1950s, 'Iraqism', advocating independence from Britain and far-reaching social reforms in which the main agent of political and economic development would be a reformed Iraqi state, enjoyed wider popularity. This was a less doctrinaire version of the programme of the Iraqi Communist Party, founded in 1934, which gradually took over the leadership of the unofficial opposition between the 1930s and the overthrow of the monarchy in 1958. In general, the permitted political arena was extremely circumscribed, and Iraqi politics continued to be characterized by the cronyism that had been its hallmark since the 1920s. There was no sense in which the opposition could have defeated the government and then have acceded to power peacefully (as was more or less the case, in say, Turkey). Finally, given the onset of the Cold War, there was a deep-rooted fear of 'communism' on the part of Britain, the United States and the Iraqi ruling class, and



an accompanying tendency to make wild overestimations of the immanent danger posed by the rising popularity of the left.

Iraq since 1958

In brief, by the late 1950s, encouraged by the success of the Egyptian revolution and the subsequent defeat of Britain and France at Suez in 1956, a loosely organized society of Free Officers had come into being in the Iraqi army. In July 1958 the Free Officers staged a coup, which became a revolution. They overthrew the monarchy, declared a republic and eventually dismantled the rest of the old regime; these actions met with very little resistance. However, while most Iraqis before July 1958 had known what they were *against* (the old regime and the British connection), they were far less clear about what they were *for*, and the next decade was punctuated by a series of coups and counter-coups from within the military until 1968, when two coups occurring within two weeks of one another brought the Baath party to power. Saddam Hussein became Vice-President in 1969, and President in 1979.

In 1964, a provisional constitution had been adopted by the Revolutionary Command Council. It was heavily influenced by the Egyptian constitution; indeed 73 of its 106 articles were identical, presumably to facilitate the future union of the two states. (The United Arab Republic [of Egypt and Syria] had lasted from February 1958 to September 1961, and Arab political and economic union, although never especially popular in Iraq, had been widely discussed in the late 1950s and early 1960s). The 1964 constitution also stressed the inviolability of private property, presumably to disassociate it from communism, and banned all political parties. A few weeks after the Baath coup in July 1968 a group of five military officers drew up another provisional constitution, but this was never formally ratified. A National Assembly was 'elected' for the first time in March 1980 and met sporadically until the overthrow of the regime in 2003, but it had no effective powers, and all its members were vetted by the security services.

Since 1958, and more ruthlessly and efficiently since 1968, Iraq has been ruled as a dictatorship, nominally by the Baath party but in fact by a small group of powerful individuals closely associated with, or in the wider extended family of, Saddam Hussein. All pretence of the rule of law or due process was summarily set aside; about three million Iraqis went into exile, and hundreds of thousands were imprisoned, tortured and executed. Saddam Hussein gained his ascendancy by three principal means: control of the security services and the Baath party machinery, beginning in the 1960s; the nationalization of oil in 1972; and his long and intimate relationship with the United States through the 1970s and 1980s. Nationalizing Iraqi oil, although certainly a popular move, in fact meant that the state's oil revenues went directly to the government, which of course was Saddam Hussein and his circle. Baathism is a crude form of Arab national socialism, under which almost anything (the invasion of Iran, restraint on the Arab-Israeli issue, virulent declarations on



the Arab-Israeli issue, the invasion of Kuwait, and so forth) can be justified in terms of the wider interests of 'the Arab nation'. Opposition to the leader's projects is tantamount to treason, so that 'politics' became reduced to public displays of approval for the leader's decisions, or almost suicidally risky. Without his intimate relationship with the United States, Iraq would have fallen to Iranian forces in the 1980s; again, Saddam Hussein would not have had the resources to maintain himself in absolute power throughout the 1980s and 1990s without the sophisticated military and surveillance equipment, and the means of making chemical and biological weapons, which he obtained from his friends in the west.

The Kurds

It is necessary to say a few words about the Kurdish minority of northern Iraq. As has been mentioned in passing, Kurdish leaders were originally promised some form of autonomy in the early 1920s, but this was quickly forgotten when its impracticability became apparent. The Kurds resisted the Iraqi state for most of the 1920s, and a Kurdish national movement rose again in the late 1930s and 1940s, encouraged by similar developments in Iran. In 1946, however, the Iranian Kurdish movement was defeated by the Iranian Army, and the Iraqi Kurdish leader Mulla Mustafa Barzani went into exile in the Soviet Union until the Revolution of 1958.

It should be said immediately that there is no history of immemorial conflict between Arabs and Kurds. Rural Kurdistan long remained a tribal society, dominated by tribal leaders who had their own military retainers, and who had generally managed to keep the state out until the arrival of British aeroplanes in the 1920s. As more young Kurds became educated, and/or migrated to the larger cities in search of work, there were a number of challenges to the traditional leadership, and some of the 'new generation' were attracted by the pronouncements of the Arab nationalist or Baathist political leadership in Baghdad which seemed relevant to their interests, especially attacks on 'feudalism' and landlordism. Until the mid 1970s, however, in any conflict between the central government and the Kurds, the latter managed to resist attempts at encroachment on their territories on the part of the former because of their mastery of the mountainous terrain in which they live, and also because of the support of Iran, which chose, for some time, to take Saddam Hussein's anti-imperialist pronouncements seriously. The Iranian/Kurdish alliance was also assisted by a limited amount of US assistance, in the years before the US had fully grasped the Iraqi regime's potential value.

In the early 1970s the Baath set out a manifesto for Kurdish autonomy (*hukm dhati*), which, as later events were to show, it had no intention of honouring. In particular, the regime showed no inclination to define the physical extent of Kurdistan, or at least showed no willingness to recognise large areas populated by majority Kurdish populations as Kurdish. This and other foot-dragging eventually aroused Kurdish fears and suspicions, and the Kurds eventually began to attack government forces in 1974, with Iranian



assistance. However, in a meeting with the Shah in April 1975, Saddam Hussein agreed to recognise the Iranian version of the boundary between Iraq and Iran if Iran would stop assisting the Kurds, and when this assistance was withdrawn the Kurdish resistance collapsed. For the rest of the 1970s, Arabs were settled in the Kurdish areas, and tens of thousands of Kurds were forcibly removed from their homes to model villages, or resettled in southern Iraq. During the war with Iran (1980-88) the Iraqi regime had more pressing concerns than maintaining control over the north, with the result that the Kurdish resistance movement was able to regroup. In March 1988, the Iraqi Air Force bombed the town of Halabja with chemical weapons, causing at least 5,000 civilian deaths, and in the months which followed a campaign of genocide took place (*al-Anfal*), under the command of 'Ali Hasan al-Majid, one of Saddam Hussein's cousins, in which up to 200,000 Kurds were killed. Between 1975 and 1990 the regime destroyed or made uninhabitable some 4,000 villages.

In the spring of 1991, in the aftermath of Operation Desert Storm, which removed Iraqi forces from Kuwait, there were uprisings in the Kurdish north and the Shiite south. When it became clear that no external aid was to be forthcoming, a mass exodus of Kurds fled to Iraq's borders with Turkey and Iran; by early April there were about 2.5 million refugees, whose plight was clearly visible on the world's television screens. Eventually, the US and Britain declared the area north of latitude 36° N as a safe haven (a military exclusion and no-fly zone), an arrangement which gradually permitted the emergence of a *de facto* Kurdish autonomous area.

Thus, over the past twelve years, a substantial part of northern Iraq has not been ruled by Baghdad – although, it should be pointed out, this does not correspond to the whole of Iraqi Kurdistan. In any settlement of the future of Iraq as a whole, it will presumably be difficult to persuade the Kurds to accept less control of their own affairs than they now have, which means that some form of federal solution will need to be arrived at. Here it should be pointed out that the Shias would not seek similar treatment; they are not, after all, either an ethnic or a linguistic minority. At the same time, there is no evidence that the Kurds would be interested in seceding from a democratic and constitutional Iraq, if they could continue to run their own internal affairs.



Chapter 2

A Survey of Possible Political Arrangements for Iraq

Gareth Stansfield and Hassan Abdulrazak

Introduction

The debate over how Iraq should be arranged in a political sense began in earnest following its 1991 defeat after the invasion of Kuwait in 1990.¹ In a series of spontaneous uprisings that shocked the states of the Middle East and the international community alike, Saddam's regime came close to being deposed and replaced with an unknown political arrangement, but one that would have probably been Shia dominated. The south of Iraq fell out of the control of the emasculated government, with Shias and Sunnis together venting their fury against the excesses of the regime. The Kurdish north similarly broke free from Saddam's grip, with the possibility of a Kurdish state forming looking to be likely. Events were moving with an alarming degree of alacrity as it appeared that Saddam's reign was coming to a bloody end with no prior forethought as to what would replace his regime. Ultimately, however, Saddam managed to survive the crisis.² Even though he had invaded a neighbouring Arab state (Kuwait) and had earlier inflicted hundreds of thousands of casualties on his eastern neighbour (Iran), neither regional states nor members of the international community were willing to assist in ushering in a new era in the Middle East by politically rearranging Iraq in a seemingly *ad hoc* manner, or at least not for another decade.

How close Iraq came to regime change in 1991 greatly concerned those US policy-makers who envisaged Saddam's Iraq as being the bulwark against Iranian Shiite expansion, even after the invasion of Kuwait and Iraq's newly found pariah status. It also caught the attention of scholars who had previously identified Saddam as being a permanent feature on the map of the Middle East. Until this time, questions regarding the political development of Iraq rarely embraced the notion that the regime itself may be transient. However, from 1991 onwards, the traditional discourse surrounding Iraqi politics was challenged by a new agenda focusing upon the dictatorial nature of Saddam's regime. The kaleidoscopic nature of politics in Iraq became a common theme, along with what it would take for Iraq to be democratized and for a representative government to be institutionalized. Acting as a catalyst for such material was the rather unexpected appearance of a *de facto* Kurdish state in northern Iraq. Far from collapsing under the pressure of administering a devastated region existing under external UN sanctions and internal Iraqi ones, the Kurds organized multi-party elections in May 1992 and created an

¹ I would like to thank various members of Iraqi political parties for discussing the subject, and especially Dr Latif Rashid of the Patriotic Union of Kurdistan. However, views expressed in this paper are my own and should not be considered to reflect the position of any particular party.

² See Faleh A Jabar, 'Why the Uprisings Failed', *Middle East Report*, May-June 1992, pp. 2014.



indigenous Kurdistan Regional Government (KRG). The presence of an autonomous region attempting to promote democratic ideals within the territorial confines of an Iraqi state governed over by the authoritarian tendencies of the Baathist state served to further the debate regarding Iraqi political development and heightened awareness of the frailty of Saddam's regime.

Conflicting Ideas

The physical realization of the desires of those seeking the political re-arrangement of Iraq did not turn out to be a quick affair. Saddam's mocking decade-long survival in the face of UN sanctions and US-led military containment from 1991 until his removal by coalition forces in March 2003 promulgated an intense debate within academic, governmental, Iraqi opposition and media circles regarding what political arrangement could feasibly establish and foster a sustainable democracy in Iraq. The debate ranged from considering the structural problems of maintaining Iraqi territorial integrity, through to the problem of promoting democratic ideals in a state with a history tainted by authoritarianism and ethno-religious fissures. However, while the debate was undoubtedly varied, general agreement was reached on several basic issues.

Though undeniably heated, the debate often seemed to be futile because Saddam remained in unchallenged control of Iraq. Several coups failed, US covert attempts to oust the dictator proved to be ineffective and Saddam continued to gain popular credibility as UN sanctions continued to erode the standard of living of Iraqis. Within the cauldron of the 'replacing Saddam' debate, it proved to be difficult to develop any of the grand ideas further without having access to Iraq itself. While certainly grand in scale and exemplary in terms of paying heed to democratic standards, it was often the case that the proposals for the constitutional design of a future Iraqi state often displayed little originality and merely restated the accepted norms of democratic systems. Implementation of these ideas, however, remained elusive.

A constant theme in all of these discussions remained the promotion of a federal structure in a post-Saddam Iraq. The principal exponents of federalism were the Iraqi Kurdish political parties. Aspects of self-rule have remained a mainstay of Kurdish political discourse since the founding of modern Iraq and were reinforced following the Kurdish revolution in 1961.³ The intractable problem of being a non-Arab people living in a state dominated by a strong Arab nationalist agenda haunted the Kurdish experience in Iraq, with Saddam's being the last in a line of Sunni Arab regimes resorting to repression of the Kurdish region.

³ For an assessment of the development of the Kurdish *de facto* state in Iraq, see Gareth Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy*. London: RoutledgeCurzon, 2003.



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Kurdish leaders also promoted a federal arrangement as being in the interests of the Shiite majority in Iraq. The exiled Shiite leadership, comprised principally of the Supreme Council for Islamic Revolution in Iraq (SCIRI) reluctantly embraced federalism as the best mechanism to accommodate Iraq's diversity. They disagreed, however, about the possible elements of federation proposed for Iraq, and particularly whether a federal system should be built according to an ethnic, sectarian or territorial framework. There has also been a general agreement that the marginalization of both Shiite and Kurdish communities should be eliminated while maintaining the country's territorial integrity. However, most parties agree on the federal principle as a means of re-organizing Iraqi polity.

For Kurds, as for any component of the Iraqi opposition, it proved to be a difficult task to secure the attention of the US administration during the 1990s up until 2002. Even though Kurdish leaders, including Jalal Talabani and Massoud Barzani and opposition leaders such as Ahmed Chalabi of the Iraqi National Congress (INC) embarked on extensive diplomatic missions to gain some support for their federalist intentions, the US administration first of Clinton and then of Bush seemed to be unwilling, or perhaps unable, to publicly support a federal alternative for the political arrangement of Iraq. The evident lack of any systematic analysis and assessment regarding how Iraq would be political arranged after the removal of Saddam became worryingly clear as the move toward regime change gained pace after the events of September 11 2001. As the drive toward regime change gathered momentum, it became apparent that the US was beginning to look at federal models as a potential possibility. In a press briefing before the war, President Bush outlined his vision of a free and democratic Iraq that would represent all Iraqis:

'I'm convinced that a liberated Iraq will be important to a troubled part of the world. The Iraqi people are plenty capable of governing themselves. Iraq's [a] sophisticated society. Iraq's got money. Iraq will provide a place where people could see that the Shia, the Sunni and the Kurds can get along in a federation. Iraq will serve as a catalyst for change, positive change.'⁴

Not all commentators shared President Bush's confidence and optimism. Some even objected to any notions of attempting to democratize Iraq as they feared that any attempts to build a democracy in the Arab world were destined to fail, and would further stoke anti-Americanism in the Middle East and Islamic world to even greater heights.⁵ Two such skeptics, Daniel Byman and Kenneth Pollack, advanced at least five objections as impediments to creating a democratic Iraq. They argued that:⁶

⁴ Carol Castiel, 'Role of Kurds and Shia in Post-Saddam Iraq,' *Iraq Crisis Bulletin*, March 26, 2003.

⁵ See Adam Garfinkle, 'The New Missionaries,' *Prospect* (April, 2003), pp. 22-24; R. Kaplan, 'A Post Saddam Scenario,' *Atlantic Monthly*, (November, 2002).

⁶ Daniel Byman and Kenneth Pollack, 'Democracy in Iraq?' *The Washington Quarterly* (Summer 2003), pp. 199-120.



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1. There were acceptable alternatives to democracy for Iraq that remain more feasible and more likely to ensure the stability and cohesiveness of the country.
2. Iraq is not ready for democracy.
3. Iraqi society is too fragmented for democracy.
4. The transition to democracy in Iraq would be too perilous and the resulting government too weak, therefore, the institutionalization of democracy, and particularly a federal form of it, would ultimately fail.
5. The United States lacked a clear political strategy for post-Saddam Iraq, and thus Iraqi people were and remain too hostile to give democracy the necessary time it would need to become a sustainable feature.

The US administration is possibly still confronted by the problems listed above. Indeed, there is no clear indication yet from the US administration or the Coalition Provisional Authority (CPA) on how political authority and administration in Iraq is to be organized. The voice of what had been the Iraqi opposition has received greater attention despite the persistence of divisions among them with respect to federalism in Iraq.

The Federal Option

The origins of the federal option can be traced to the passing of a decree in 1992 by the Kurdistan National Assembly (KNA). A few months later, the INC accepted the federal proposals of the Kurds in its second conference held in Salahadin in northern Iraq. The INC subsequently reaffirmed its support for the proposed federal system at its 1998 reconvening in New York. In their final statement at the London conference of December 2002, all the participants of the Iraqi opposition groups - Kurds, Shias, Sunnis, and the representatives of confessional and ethnic minorities - called for the creation of a democratic, pluralistic and federal Iraqi state within the existing territorial limits of Iraq. The highly public acceptance of federalism at the London conference was a result of the work of several Iraqi parties, and especially the PUK and KDP, which were involved in the creation of a framework for the democratic transition in Iraq, as well as the work of the Democratic Principles Working Group (DPWG). The DPWG was a group of some 30 exiled Iraqi academics and activists primarily in the United States and Western Europe. Following an approach by the US Department of State, the DPWG was convened over a series of meetings held in the UK in September 2002 in order to discuss and debate the structure and mechanisms of a future Iraqi government, with a focus on federalism as the basis of a new Iraqi polity.⁷ The extensive document which was subsequently produced, entitled *Transition to Democracy in Iraq*, was heralded as a blueprint for the expected post-Saddam era.⁸ Members of the

⁷ The meetings were held between 3 and 5 September at Cobham, Surrey, under the sponsorship of the State Department. Thirty-two Iraqis were gathered under the auspices of the 'Future of Iraq' programme and tasked with discussing i) transitional issues ii) human rights and the rule of law iii) civil society and democratization, and iv) federalism as the basis of a new Iraqi polity.

⁸ An unabridged version of the '*Transition to Democracy in Iraq*' document can be found at <http://www.iraqfoundation.org/studies/2002/dec/study.pdf>



DPWG came from a variety of sources, including the Constitutional Monarchy Movement (CMM), the Iraqi National Accord (INA), and representatives of the Assyrian population, in addition to the KDP, PUK and INC. Furthermore, the promotion of some form of federal structure for Iraq was not solely the preserve of the secular parties and the Kurdish nationalists. Perhaps the most influential of the religiously orientated Shiite parties, *Hizb al-Da'wa al-Islamiyya* (the Party of the Islamic Call, commonly referred to as *Al-Da'wa*) openly espoused federalism within its political publications, asserting that the 'the project of the Iraqi opposition calls for creating a democratic federal system as being the suitable solution of the religious and sectarian and ethnic divisions in Iraq.'⁹

Though these varied groups agreed upon the need to implement a federal arrangement for Iraq, there proved to be divergence on the details as to along what lines such an arrangement would be structured, and how power would ultimately be devolved within the Iraqi state. Each group had its own history colouring its involvement in negotiations regarding their position within a future state, with each adopting differing positions toward the constitutional and institutional frameworks of the proposed federal system. It is therefore necessary to analyse and assess the existing positions of the principal actors within post-Saddam Iraq, including the views of the US administration.

The United States' Position

The most discernable institutional preference within the US administration is one of *consociational federalism* by which a post-Saddam Iraqi government would be constructed according to Iraq's ethnic, religious and sectarian identities. Iraqi communal diversity is over-simplified as crosscutting cleavages between Shias and Sunnis, and between Arabs and Kurds. Consequently, the solution envisaged involves the division of Iraq into three regional units: one for the Kurds in the north; one for the Sunni Arabs in the 'centre' and Al-Jazira; and one for the Shiite Arabs in the south. The concept of consociationalism promotes constitutional recognition of ethnic groups as corporate entities with proportional and often separate representation in public institutions.¹⁰ A consociational approach underpinned the constitution of Bosnia-Herzegovina under the terms of the Dayton Peace Accords of November 1995 and the US administration looks upon this experience favorably.

However, Bosnia-Herzegovina of 1995 is rather different from Iraq in 2003 and the appropriateness of such a power-sharing system as a solution for Iraq's woes is regularly called into question. The main objection to adopting consociational federalism in Iraq is that it could undermine Iraq's integrity and severely damage inter-communal cooperation, as indeed happened in Bosnia. Within the current Iraqi state characterized by the Arab-Kurdish

⁹ Adel Abdul Raheem, *Hawllah Ma'ashru Taghyeer al-Nidhaam as-Siyassi fi al-Iraq (The Project for Changing Iraq's Political System)* Islamic Centre of Political Studies, 2002.

¹⁰ See Arend Lijphart, 'Consociational Democracy', *World Politics*, Vol. 21 (January), 1969; *Democracies*. New Haven: Yale University Press, 1984.



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divide, some Kurdish minorities who have aspirations to stay in Baghdad are even now often told to go back to their own regions.¹¹ This highlights existing concerns about Iraq's fragmentation along ethnic and sectarian lines.

Recognizing these issues, the US State Department has suggested an alternative regime of consociationalism - a *consociational oligarchy* for Iraq in which members of the elite from all of Iraq's major ethnic, religious, tribal geographic and functional groupings are empowered with the task of forming a government of national unity. This regime would not necessarily be pluralist in a strict sense, but an attempt would be made at least for it to be vaguely representative of Iraqi society.¹² This plan, presently in the first stages of implementation with the establishment of the Iraq Governing Council (IGC) on July 13, 2003 is an amalgamation of several earlier ideas. However, a serious structural issue is apparent with plans to institutionalize a consociational oligarchic regime. Such a regime would find it problematic to maintain any kind of authority and power in Iraq because it lacks requisite legitimacy. Furthermore, Saddam's brutality and ruthlessness eliminated any leaders with a national stature who could potentially threaten his continued rule. Such targeting also resulted in the atomization of Iraqi society – the weakening of political affiliation of any communal type and the encouragement of Baath Party membership.¹³ Thus, Iraq currently lacks potential oligarchs untainted by association with the activities as Saddam's regime – clearly a problem if one is seeking to empower them.

A further scenario under consideration by the US Administration is to constitute a loose federation in Iraq. This federal proposal would be target leaders of Iraq's three major groups - Shiite Arabs, Sunni Arabs and Kurds. This scenario aims to persuade the relevant leaders that such a federation would be based on the political model of the 'Great Compromise' of 1787, which enabled the establishment of United States.¹⁴ This type of system, as an example, would attempt to give each of Iraq's three major sub-groups equal representation in an upper house in order to protect their respective interests at the national level. A loose federal system is thus proposed as the best means of assuring regional autonomy, protection against the return of tyrannical central government, and an equitable disbursement of Iraq's oil revenues.

¹¹ Quoted in Mark Lattimer, 'Challenges for Establishing Inclusive Democracy,' in Y Ghai, M Lattimer & Y Said, *Minority Rights Group Report: Building Democracy in Iraq*, London: Minority Rights Group International, 2003.

¹² Byman and Pollack, *Democracy in Iraq*, p. 121.

¹³ For an analysis of the atomization of Iraqi society under Saddam, see Isam al-Khafaji, 'A Few Days After: State and Society in a Post-Saddam Iraq', in T Dodge and S Simon, *Iraq at the Crossroads: State and Society in the Shadow of Regime Change*. International Institute of Strategic Studies (IISS) Adelphi Paper 354. London: IISS / Oxford University Press, 2003.

¹⁴ C John Hulsman and James Phillips, 'Post-War Political Settlement in Iraq', in *Journal of South Asian and Middle Eastern Studies*, (Winter 2003), pp.4-21.



The Kurdish Position

The Kurdish position is perhaps the best developed, and extreme, of all possibilities and may at times be more associated with 'confederalism' than 'federalism'. In their call for a federal system, the Kurds consider Iraq to be home to two principal ethnicities – Kurdish and Arab – and as such their proposal is based upon ethnicity as being the key determinant of political cleavage. Kurdish plans envisage a federal Iraq as being composed of two constituent regions, one Arab and one Kurdish. Each would have a share of executive and legislative powers within the democratically elected central executive and national legislature. There would be a bicameral legislature - one tier representing the Iraqi people as a whole, and one (with their two separate assemblies) for the two federal regions. It is apparent that the Kurdish proposal would in effect be seeking the managed partition of the Iraqi state, with the Kurds entering into an equal bilateral agreement with their Arab partners.

Both the KDP and PUK have put forward their federation-style proposal and draft constitution, claiming that they provide a coherent and sustainable socio-political framework for Kurdish-Arab co-existence. However, their ideas have several elements are likely to be opposed both by other Iraqis and Iraq's neighbors. Within an Iraq divided into a northern Kurdish state and a southern Arab one, the Kurds incorporate the oil-rich governorate (province) of Kirkuk, exercising rights over its oil revenue. The Kurds also ultimately want influence over national defence and would expect to have courts that are independent of the central government of Baghdad. Among other things, it is also stipulated in the Kurdish proposal that its parliament should have powers to negotiate international treaties and pursue its own monetary/financial policies.

Such proposals are not intended to promote the establishment of an independent Kurdish state, no matter how secessionist they may seem. Instead, they are a reflection of the trauma that the Kurds have experienced in a unitary Iraq in which freedoms have not been safeguarded. For the last decade, as they have controlled their *de facto* state, the people of northern Iraq have enjoyed newly found prosperity relative to the rest of the country and it is a condition that the Kurdish leadership is seeking to preserve through gaining extremely high levels of autonomy.

For the Kurdish leadership, such a federal arrangement would give them power and security that an easily revocable autonomy law does not, as they found out to their cost during the first half of the 1970s. However, the full weight of their demands cannot be expected to receive the necessary consent of the Kurds' Arab partners, who form 80% of Iraq's population. The status of Kirkuk will be particularly problematic as the Arab population of Iraq consider Kirkuk to be an Arab city and, perhaps underlying this fear, recognize that whoever controls Kirkuk's oil will secure economic and political



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predominance. The KDP President Massoud Barzani, perhaps the most vociferous of exponents of a two-state federation, made clear the position of Kirkuk in a recent interview:

‘The Kurdish Regional Assembly has voted to accept a federal solution for Iraq. . . we are not ready to make any concessions on this. . . . Kurdistan is one region and it is up to our Arab brothers [to] decide if they want one or two other regions. The issue of Kirkuk is very significant. It is a matter of principle and comes up on top of our priorities. Kirkuk has a Kurdistan identity. It is part of Kurdistan soil. The September revolution led by Mulla Mustafa Barzani came to an end in 1974 because of our position on Kirkuk and we were not ready to make concessions on this city. In the meantime, we are ready to accept the realities of having to live together and co-exist with other nationalities like the Turkmens and other Muslim sects being run by an administration with special status. For this we have no sensitivities but for the Kurdistan identity of Kirkuk it is something that we consider as a matter of principle.’¹⁵

It would seem that the KDP at least is seemingly not in the mood to entertain other possibilities. However, this policy is creating no small degree of angst to the north of Iraq. Amongst regional neighbours, the Turks in particular fear the Iraqi Kurds achieving such high levels of autonomy, where they are effectively a regional power in a territorial sense, and joint equal partners in Iraq in a political sense.

The Position of the Iraqi Opposition

The position of the DPWG calls for a federation based on geographic definition rather than ethnic principles: ‘The future all-Iraqi federation should not be one of competing nationalities but one of different geographically defined territories within which different national groups may form a majority.’¹⁶ The DPWG approach recommends a combination of a bottom-up and a top-down approach to institution building. It stipulates that Iraq’s federal system consists of 18 units representing the current administrative governorates (provinces) of Iraq, and it is these provinces which should form the federal components of the Iraqi state. It is considered that by maintaining the current administrative structure as the basis of Iraq’s federal system, the material and physical interests and needs of Iraqis would be served whilst at the same time avoiding an inordinate emphasis on ethnic or sectarian entities. To guarantee such achievements, it would be necessary to identify a constitutional arrangement that accommodates Iraq’s social and cultural mosaic, transforming diversity into an agent for positive change.¹⁷

¹⁵ Quote from Turkish Daily News (TDN) article by Ilnur Cevik, ‘Barzani: Iraq is not an Exclusively Arab State’, 24 July 2003.

¹⁶ DPWG Report, *Al-Mutamar*, 331, 22 December 2002.

¹⁷ Dawisha and Dawisha, 2003.



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Each of the 18 units would be allowed to elect a regional government and send representatives to the federal parliament. The federal parliament would be constructed on the basis of regional representation with checks built into the system to prevent the centralization of power. Such a system would help Iraqis to check and balance the policies undertaken by both the central and local governments to minimize corruption of both sides. This approach has been favoured and supported by Iraq's neighbours. Turkey in particular strongly supports this plan as it correctly sees it as negating the formation of a Kurdish entity in northern Iraq while simultaneously weakening the power of the KDP and PUK who would be left controlling perhaps one governorate each (Dohuk and Suleimaniyah respectively). Shiite groups who support the federal model tend to favour the 18 unit model as they would be virtually guaranteed political hegemony in the south of the country and, perhaps, even Baghdad. However, the Shiite political position is heavily nuanced, particularly regarding the constitution of the Iraqi state.

The Position of the Shias

The Shias represent more than 65% of Iraqi population and therefore have the most prominent political role in a pluralist Iraq. Perhaps even more so than the Kurds, the Shi'a suffered greatly under the predominantly Sunni regimes, which have remained a constant throughout Iraqi history. The key Shiite groups which are engaged in discussions regarding the political arrangement of Iraq are SCIRI and *Al-Da'wa*. *Al-Da'wa* has showed a positive response towards establishing a federal system in post-Saddam Iraq, viewing it as the most suitable framework to accommodate Iraq's religious, ethnic and sectarian diversities. *Al-Da'wa* supports the federal system on the basis of Iraq's current administrative division of 18 regional units, asserting that 'applying a federal system based on Iraq's administrative structure will make federalism more effective in keeping Iraq's national integrity, and at the same time refute the arguments and suspicions raising against the unity and future of Iraq.'¹⁸

SCIRI was initially more reluctant to embrace a federal model for Iraq as it was committed to pursuing some form of Islamic state in Iraq. However, as SCIRI developed closer relationship with the other parties of the Iraqi opposition and dealt with the US more openly, it began to realize that it would be excluded from the political process of the US-dominated CPA if it continued with promoting a policy deemed inimical to Washington's position.

Furthermore, in July 2002, a broad range of Shiite academics, professionals, religious leaders, intellectuals, military personnel, tribal leaders, and businessmen issued the '*Declaration of the Shias of Iraq*.' This declaration was the result of two years of discussion and deliberations aiming to answer questions that concern the Shias in Iraq.

¹⁸ Abdul Raheem, 2002, pp. 8-9.



Perhaps the most contentious of the questions was 'No. 9: What do the Shi'a want?' What was quite an open question led to an endorsement of a federal system for post-Saddam Iraq. The answer asserts that the Shias do not want to solve their own sectarian problems by antagonizing other groups. Rather, they claim to be seeking a solution by adopting a system that would guard the rights of all the constitutional elements of Iraqi society, whereby all will equal within the state.

The Shias also assert in their declaration that Iraq's federal structure would not be based on a sectarian division but rather on administrative and demographic criteria. This would avoid the formation of sectarian-based entities that could be a prelude for partition and the dismantling of Iraqi national and territorial integrity. The declaration also stated that the proposed federal system would grant considerable powers to the regions thereby removing the possibility of the centre falling under the control of a dominant group which would extend its hegemony over the entire country.¹⁹ The spectre of Saddam is obviously never far away from their deliberations and it would seem that the fear of returning to a one-party Sunni dominated system is more of a formative influence than the pursuance of an Islamic state.

Conclusion

From being an almost ignored aspect of political discourse surrounding Iraq in the 1990s, and one kept alive by the marginalized Kurds, the federal political arrangement of Iraq is becoming an increasingly dominant feature of the political discussion surrounding post-Saddam Iraq. The impetus behind the Kurds championing their version of federalism is clear to see – after heading a *de facto* state for over a decade and enjoying standards of living far in excess of those in the rest of Iraq, the Kurdish leadership and people see an ethnically based federalism as the most effective means by which to preserve their autonomy and safety.

The federal solution was gradually adopted by other Iraqi opposition parties, including the influential INC, throughout the 1990s, with SCIRI being the last major group to sign onto a federal agenda after the removal of Saddam in 2003. However, with the US now occupying Iraq and the political restructuring of the country now being a definite rather than hypothetical event, the debate has only just started to gain pace as to what federal system would be most appropriate for the Iraqi state. The problem is that each group, including the US, has its own position as to what is in the interests of Iraq. The Kurds cling to their ethnically-based federalism and, perhaps worryingly, it may prove difficult to win them over to any other potential model which does not allow for the formation of a Kurdish region. The Shiite Arabs tend to favour a more geographically designed form of federalism, thereby guaranteeing them pre-eminence in the new Iraqi state. The Sunni Arabs, perhaps

¹⁹ Declaration of the Shia of Iraq, July, 2002.



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more noticeable by their absence rather than their presence in the current debate have yet to find a representative voice, yet one can imagine that they too would favour a geographic-variant of federalism (if they had to accept it at all) in order to preserve some form of power-base and prevent the fracturing of the country.

The most important dynamic in this equation is to understand how the US administration will react to these problems. With the formation of the consociational oligarchic IGC, it is apparent that elections are some way off for Iraq and long term planning is perhaps somewhat lacking. Ultimately, the US may have to identify the option which is 'least worse' for its own interests rather than in the best interests for Iraq. As such, the solution which allows for an Iraqi government to take control of the country in the shortest possible timeframe whilst seemingly being democratically elected would be the most attractive. It would therefore seem that the public relations initiative surrounding the establishment of the IGC may be a precursor to its institutionalization, leaving questions regarding the detailed political arrangement of Iraq for a later date.



Chapter 3

Toward a Sustainable Institutional Arrangement for Iraq

Gareth Stansfield

Introduction

The task of analyzing and assessing which set of institutional arrangements would be most likely to succeed in building a sustainable, stable and representative government for a multi-ethnic Iraq is one fraught with serious problems, as the Coalition Provisional Authority (CPA) is beginning to realize.²⁰ The problem is compounded by the fact that, whilst many possible models are mentioned such as the German and Japanese post-WWII examples, Bosnia and Kosovo, no one model adequately fits the unique and rather anomalous conditions found in Iraq.²¹ Rather ominously, it is more straightforward to outline the reasons as to why such a quest may be elusive, rather than identify and embrace strategies that may ultimately promote the establishment and development of such an arrangement.

The problem facing them is that when one comes to piece together the remains of Iraq, there is little raw material to work with which can be used in a manner which supports the establishment and promotion of a sustainable, stable and representative Iraqi government. Two important British decisions of nearly a century ago are now coming back to haunt the coalition. First, the conjoining of the predominantly Kurdish Mosul province with the Arab provinces of Baghdad and Basra gave Iraq a patchwork identity which, in an ethnic sense, ran even deeper than the Kurdish-Arab divide so often portrayed. Second, and perhaps of even more consequence, was the British decision to continue with the Ottoman tradition of maintaining minority Sunni Arab hegemony over the Iraqi state.²²

The product of these decisions has been a brittle, fragile Iraqi state. The underlying weaknesses of the state would ultimately allow for the emergence of a dictatorship, which would subordinate all groups in Iraq under its own power and influence through whatever means was at its disposal. The underlying problems did not disappear however, and the coalition has inherited a state which may be considered to be artificial at birth and subsequently perverted by successive years of tyranny. Throughout Iraq's short history, various themes have emerged which remain apparent in today's post-Saddam environment. It is a useful task to outline the basic structural problems which need to be overcome and

²⁰ I would like to thank Professor Liam Anderson of Wright State University, Ohio, for his role in developing the arguments of this paper, and Hassan Abdulrazak of the University of Exeter for undertaking some of the preliminary research.

²¹ See Marina Ottaway, 'One Country, Two Plans' in *From Victory to Success: Afterwar Policy in Iraq*. Carnegie Endowment for International Peace/Foreign Policy, July 2003, pp. 55-56.

²² See Liam Anderson & Gareth Stansfield, *The Future of Iraq: Democracy, Dictatorship or Division?* New York: Palgrave Macmillan (forthcoming), Chapter 8 'The Democracy Dilemma'.



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resolved in order to facilitate the development of a sustainable, stable and representative Iraqi government.

Legacy of Structural Weakness

The Kurds have never been willing participants in the Iraqi state. Whilst such an absolute statement may provoke consternation from Iraqi observers, one only has to look at the sporadic uprisings of the 1920s, and rebellions of the mid-twentieth century and the continued guerrilla action against central government since 1961 to realise that there has been a significant and persistent Kurdish political antipathy toward the state of Iraq. It is not the case that Kurds fought only the regime of Saddam Hussein. The identity of the central government has not been the primary reason behind the Kurds choosing to take up arms, rather it is the fact that there is a central government in the first place. Since 1991, the Kurds have enjoyed *de facto* statehood and shown that they are indeed capable of managing their own affairs, if with the assistance of the international community. They will be unwilling to relinquish their autonomy without a struggle.

Perhaps of even more consequence, has been the dominance of the institutions of government of Iraq by the Sunni minority. With the removal of Saddam and the much-vaunted move toward democratic institutions, it is highly unlikely that any democratically designed arrangement would maintain Sunni hegemony. A dangerous competition is therefore readily apparent. The old ruling group of the minority Sunni Arabs is now challenged for control of the Iraqi state itself by the traditionally ostracized Shias. This situation is, however, complicated for a variety of reasons. The sectarian divide between the two has always been complex, and is made even more so because class divisions and non-sectarian identities permeate both groups. Furthermore, the degree of geographic mixing between the two is much greater than between Arabs and Kurds. Politically, the dominance of the Sunni and the disenfranchisement of the Shias is difficult to comprehend unless one looks toward the polarization of political attitudes, and the use and abuse of such attitudes by political leaders. For the Iraqi government, the Shias remained a useful scapegoat that served to unify Iraqi nationalist sentiment behind the incumbent regime. Particularly after the Islamic Revolution in Iran in 1979, the association of radical Iraqi Shias with their co-religionists in Tehran served as a precursor to the widespread oppression of the Shiite South which culminated with the brutal crushing of the 1991 uprising. For the Shiite religiously orientated political groups, and most notably *Hizb al-Da'wa* and the Supreme Council for Islamic Revolution in Iraq (SCIRI), the focus has been the secular nature of the Iraqi government and the attempts of successive regimes to control the religious life of the state.

Since the removal of Saddam, the polarization of political forces has increased. Kurdish nationalism, as expressed by the autonomous tendencies of the principle political parties of the Patriotic Union of Kurdistan (PUK) and especially the Kurdistan Democratic Party (KDP), is now a vibrant force with a strong popular basis in the north. Arguably,



popular nationalist sentiment amongst the Kurds is even stronger than that expressed by their newly confident political masters. Kurdish aims are distinctly regional in their colouring. The issue is not really about who governs Iraq, but who controls Kurdistan. This level of polarization is also apparent when one considers Shiite political activity. The most effectively organized political force amongst the Shias remains the religiously orientated parties and the religious establishment (the *hawza*) of Najaf led by Grand Ayatollah Ali Sistani. Secular Shiite or nationalist parties have not coalesced in the same powerful manner as have the religious groups such as *al-Da'wa*, SCIRI and the seemingly extremist *Sadriyyun* of Muqtada al-Sadr.

Alongside the Kurdish territorial imperative and the emancipation of the Shias in the post-Saddam Iraq remains the legacy of nearly a decade of Sunni dominance – a belief in the pre-eminence of the Sunni Arabs within Iraq to control the direction of the state. This legacy is manifesting itself in these immediate post-Saddam days as aggression toward US occupation of the country. Of course, such a scenario runs the risk of categorizing Iraqis as naturally predisposed to violence and unable to embrace democratic ideals. However, such accusations would seem to be false. Within their groups, and even between them at times, Iraqis have displayed quite clearly their leaning toward representative systems of government. The existence of the beginnings of a democratic system in Iraqi Kurdistan since 1991 should provide clear evidence of this. What is perhaps more accurate is that whilst it is ridiculous to state that Iraqis as people are unable to be democratic, it may be the case that Iraq as a political construct is not a conducive place for its establishment or development, at least not in its current centralized arrangement. With this brief grounding in Iraqi political dynamics as they may affect the future of Iraq, the following analysis discusses the pros and cons of the democratic institutional arrangements which are currently being discussed.

Analysis of Institutional Arrangements

In analyzing the appropriateness of the institutional arrangements currently being discussed as possible models for Iraq, a key consideration haunts the task – quite simply, each interest group has a distinct idea as to what Iraq 'is' and what it should 'be'. Alongside the plethora of domestic normative positions is the perhaps overriding position of the US administration, which now has its own interests to satisfy with regard to Iraq. If this were not enough, domestic positions and the US agenda are also joined by a vibrant regional debate. As a state, Iraq has received its fair share of regional interference in its affairs from Iran, Saudi Arabia, Turkey and Israel. Hence, the end of Baathist rule in Iraq offers its neighbors greater opportunities to influence the reconstruction process.



Toward Oligarchy?

If the recent actions of the CPA are to be taken into account, it would appear that the formation of the Iraqi Governing Council (IGC) would indicate that the US administration may ultimately consider an arrangement which could be described as being a consociational oligarchy to be acceptable, at least for an interim period of as yet undisclosed length.²³ For more detail on this issue, refer to Chapter 2.

The willingness of the CPA to directly appoint a body which is composed of both exiled politicians and home-grown figures is often criticized as being undemocratic and a ploy by which the US seeks to empower those politicians deemed to be more US-friendly in their outlook, particularly when compared to those groups which have emerged since the demise of Saddam (with the *Sadriyyun* often mentioned). Indeed, the announcement of July 30 seemed to support this contention strongly. From a council which consists of 25 persons, nine members were selected in order to rotate as president for a period of a month each. While seemingly a neat move in order to ensure that all groups are identified with the leadership of the IGC at some point, it is perhaps more of a reflection that a single president could not be identified nor agreed upon. Furthermore, when one considers the list of nine members, it is apparent that it is those figures that had previously been part of either the exiled political community, or the Kurdish leadership, which have a predominant role.²⁴ One can therefore sense that the political independence may already be culpable of being strongly influenced by occupying powers even at this early stage. Furthermore, even if the nine presidents turn out not to be puppets of the CPA, it is the perception of their complicity amongst the Iraqi population which is perhaps the more important factor.

However, even if the potential influence of the CPA/US Administration can be seen by analyzing the political make-up of the IGC, there are several positive aspects to promoting a consociational oligarchy which should be illuminated. First, if done correctly, the accommodation of political elites within a political decision-making structure would be an

²³ The members of the IGC are: Samir Shakir Mahmoud (Sunni); Sondul Chapouk (Turkmen, woman); Ahmed Chalabi, Iraqi National Congress (Shia); Naseer al-Chaderchi, National Democratic Party (Sunni); Adnan Pachachi, former foreign minister (Sunni); Mohammed Bahr al-Ulloum, cleric from Najaf (Shia); Massoud Barzani, Kurdistan Democratic Party (Kurd); Jalal Talabani, Patriotic Union of Kurdistan (Sunni Kurd); Abdel-Aziz al-Hakim, Supreme Council for the Islamic Revolution (Shia); Ahmed al-Barak, human rights activist (Shia); Ibrahim al-Jaafari, *al-Da'wa* (Shia); Raja Habib al-Khuzai, southern tribal leader (Shia); Aquila al-Hashimi, foreign affairs expert (Shia); Younadem Kana, Assyrian Democratic Movement (Assyrian Christian); Salaheddine Bahaaeddin, Kurdistan Islamic Union (Kurd); Mahmoud Othman (Kurd); Hamid Majid Mousa, Communist Party (Shia); Ghazi Mashal Ajil al-Yawer, northern tribal figure (Sunni); Ezzedine Salim, *al-Da'wa* (Shia); Mohsen Abdel Hamid, Iraqi Islamic Party (Sunni); Iyad Allawi, Iraqi National Accord (Shia); Wael Abdul Latif, Basra governor (Shia); Mouwafak al-Rabii (Shia); Dara Noor Alzin; Abdel-Karim Mahoud al-Mohammedawi, Hezbollah from Amara (Shia).

²⁴ The nine rotating presidents are: Ahmed Chalabi (INC); Iyad Allawi (INA); Jalal Talabani (PUK); Massoud Barzani (KDP); Abdel Aziz al-Hakim (SCIRI); Ibrahim al-Jaafari (*al-Da'wa*); Mohammed Bahr al-Ulloum (exiled Shi'i); Adnan Pachachi (exiled independent); Mohsen Abdel Hamid (Islamic Iraqi Party).



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obvious way to bring together the perceived leading figures of all Iraq's major ethnic, religious and tribal groupings in an attempt to establish the kernel of a national unity government. If one were to assume that the empowered political elites had the interests of their constituents at heart, then one could further expect that such an oligarchy would be a guarantor of the basic interests of component represented groups.

The problem is with the assumptions of Iraqi society and its political structures. If Saddam managed to do anything with any efficiency at all, it was the effective atomization of society, dissolving political structures apart from his own Baath Party apparatus. This was done with such rigor that it is now a very problematic task to identify the principal political social groups in Iraq, and encourage leaders with true popular support to come forward and partake in a political endeavour that are dominated by the CPA and US administration. Because of this fundamental problem of being unable to identify and empower political elites that remained in Iraq throughout the atrocities of Saddam's tenure, the US cultivated various exiled groups. Whilst well known in Washington DC and London, figures such as Ahmed Chalabi and Iyad Allawi struggle to establish and maintain a popular support base in Iraq itself. Similarly, the Kurdish leaders, whilst claiming political popularity in their own areas, struggle to overcome years of internecine fighting between themselves and therefore it is difficult to categorically assess how popular they really are. Furthermore, the allegiance to Iraq of Barzani and Talabani is regularly called into question by their Arab co-nationals who remember years of Kurdish rebellions which claimed the lives of their family members, and how Kurds fought alongside Iranian forces during the Gulf War of 1980-1988.

In a demographic sense, the move toward consociational oligarchy also uncovers further problems. Iraq is a predominantly urban society, perhaps three-quarters of Iraq's 25 million people lives in cities and urban areas. However, the 25-member IGC is composed of representatives mainly from religious groups, provincial Kurds or rural tribal sheikhs. The IGC therefore represents the Iraq of 1943 rather than the one of 2003.

Lastly, and certainly the most important factor to take into consideration, is that the fundamental weakness of a consociational oligarchy as manifested in the IGC is that it is not a democratically elected structure. It, and any future authority selected by the CPA/OHRA/US administration, is seen in the eyes of the Iraqi people as ultimately being a puppet in the hands of the US occupiers. After years of living under a repressive dictatorship, it is impossible to imagine that the Iraqi people would accept the handing over of their country and their future to an externally appointed body, no matter how representative it is.



Federalism

Iraq therefore has several serious structural problems that need to be resolved. The complex and tragic legacy of eighty years of Iraqi history may prove insurmountable to overcome and, in the absence of an authoritarian central government willing to resort to high levels of coercion, it is a searching question as to how Iraq can continue in its present unitary form. Consequently, preference for a devolved system is gathering momentum since it is seen as being the most appropriate arrangement for a future Iraq. However, as was illustrated in Chapter 2, there remain several areas of contention regarding the details of a federal arrangement, and principally whether Iraq is divided by ethnicity or by geography.

Two Regional Federal Units

The first model is that forwarded by the Kurdish parties. Under this system, Iraq would be divided along ethnic lines into a Kurdish 'North' and an Arab 'Centre-South'. Recognizing the sensitivity of ethnic identification, the Kurds are keen to describe this model as being inherently territorial (perhaps based on the Ottoman Mosul province) yet there is a distinctly ethnic tone which is impossible to ignore, particularly as the driving force behind this proposal is the continued decade-long existence of the *de facto* Iraqi Kurdish state. Over the two federal units would be a national government in which the Kurds and Arabs would share executive and legislative authorities.

For the Kurds, this model has been the *idée fixe* of their political lobbying since the formation of a *de facto* Kurdish state in 1991. It is also a position which they are seemingly unwilling to negotiate upon. For the Kurdish people and then the parties, their existence in an Iraq where power is held centrally in the hands of a Sunni Arab elite - for Kurds, King Faisal and his Sharifians are little different to Saddam Hussein and his Tikritis - has resulted in successive waves of oppression, lack of investment, targeting of cultural identity and their employment as proxy forces by neighbouring states. Under their own government, the Kurds have enjoyed a modicum of internationally guaranteed security, have used Kurdish as the official language and represented themselves to the world at large. They have also developed strong economic linkages with neighbouring powers, and especially Turkey and Iran. Kurdistan has enjoyed for over a decade the fruits of independence in all but name and it is a situation which they will protect by whatever means necessary. Indicative of this independent streak is the existence of the Kurdish *peshmerga* - militia loyal to either the KDP or PUK. After previously guaranteeing the de-mobilization of the *peshmerga* to the head of the CPA, Paul Bremer, the KDP President Massoud Barzani tied the standing down of his forces to the provision of autonomy for Kurds. For the Kurdish leadership, guarantees of autonomy from a central power in Baghdad are worthless. Saddam promised them autonomy in 1970 only to recant in 1975. The only solution they see is for Iraq to be divided into two states and with Kurdistan to have within its territorial limits the oil-city of Kirkuk.



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It is doubtful, first, whether other groups in Iraq would welcome such an arrangement, and, second, whether the US would be willing to facilitate it. This proposal would not receive the backing of the majority of Iraq's 75% Arab population as it would result in a dismantling of Iraq's sovereignty through what would be the establishment of a state within a state. The arrangement would also provoke serious and potentially violent argument over the status of Kirkuk and, perhaps, Mosul. Such territorial disputes over the creation of a Kurdish entity would also prompt the likely intervention of Turkey and Iran on the premise of Turkey's mandate to protect the Turkomans' rights in Kirkuk, and the concerns both Turkey and Iran have of the potential secession of Kurdistan from Iraq, however unlikely an event that may be.

Three or Five Regional Federal Units

According to this arrangement, the division of Iraq would be based on ethnic, religious and sectarian lines. Three federal states would be created: a Kurdish north, Sunni central region, and a Shia south, essentially mirroring the geographical distribution of Kurds, Sunnis and Shias. This view has received a great deal of attention from media sources which have accepted the reductionist tendency to describe Iraq as being divided into these three communities, without acknowledging the complexity of the situation. This thinking has been further reinforced by the division of Iraq into three security zones, designated north, centre and south for reasons of military efficiency rather than any proclivity toward ethnic/sectarian identity. The division of Iraq into five units is a subtle development of the three-unit idea which would divide Iraq into a Kurdish north (without Kirkuk), a southern zone including Basra and Nasiriya, a 'Shiite zone incorporating Karbala and Najaf, a north-western zone centered on Mosul, and a federal capital of Baghdad which may also include Kirkuk in order to reduce the sensitivity of it belonging to the Kurdish region.

The problem of these approaches, and particularly of the three-unit design, is that they are based upon an appraisal of Iraqi society which is inherently false and, if not held together by some occupying force, would run the risk of facilitating the unmanaged partition of the Iraqi state. Identifying such close divisions between ethnic and sectarian groups precludes the fact that there is a significant overlap between them, and such administrative arrangements may in fact entrench societal differences rather than encourage a national identity. The arrangement does not adequately allow for the existence of other minority groups, including Turkmen and Assyrians and could potentially provoke disastrous ethnic cleansing as Sunnis would not be welcomed in the south, the one million Kurds resident in Baghdad would perhaps be seen as foreigners, and the system becomes characterized by polarized ethnic and sectarian identities.



Eighteen Regional Federal Units

This arrangement is inherently geographic in design and based upon Iraq's present administrative structure of 18 provincial executive governorates, as established by the Iraqi Governorate Law of 1969.²⁵ As such, the identity of the units would be by reference to history and geography, rather than to any particular ethnic or sectarian group, and would be an accepted part of the Iraqi political landscape. All units would share the same high levels of autonomy with considerable domestic power, with representatives of each unit constituting the central federal government in Baghdad. The closest analogy to this design would be the US federal system.

This proposal stems originally from Shiite parties (including *al-Da'wa*). Recognizing that a federal arrangement would seem likely, but remaining unconvinced by the arguments promoting ethnic/sectarian federal units, the proposal was an attempt to promote a federal system which would seem more attractive to the Arabs and neighbouring powers (by reducing Kurdish advancement) but would maintain Shiite predominance in a future state (as the majority of the governorates would return Shiite representatives). Turkey similarly favours this proposal as it would automatically weaken the possibility of a Kurdish region emerging as it is expected that the KDP would gain one province (Dohuk), the PUK another (Suleimaniyah) with Erbil and Kirkuk possibly going one of many ways, and not necessarily Kurdish.

Implementation

There is obviously a great amount of difficulty ahead for the architects and builders of the new Iraqi state. Arguably, Iraq as a state has rarely 'worked' and has suffered throughout its existence from inherent structural instabilities. For the US occupiers and their Iraqi partners to identify and, more importantly, implement a system which could go some way in allaying these problems is a task fraught with difficulties for the US, and danger for the Iraqis.

An immediate problem to rectify is the issue of legitimacy. Any authority empowered by the US to undertake activities in Iraq, whether it is collecting rubbish on the streets or policing troubled areas and ultimately governing the country has a problem of legitimacy in the eyes of Iraqis if they are seen to have been placed in positions of authority by the US. This would be equally true for the architects of any new Iraqi political system. With this in mind, the processes of establishing a new Iraqi government and associated structures should be internationalized at the earliest opportunity, both within the country (i.e. internationalize the CPA) and outside (by bringing the UN more into the decision-making process). UN Secretary General Kofi Annan authorized the establishment of a UN

²⁵ Government of Iraq, *Al-Waqai'a al-Iraqya qaanum al-Muhafadhat*, (Iraqi Governorate Law), 1969.



Transitional Authority on 17 April 2003. However, UN activity in Iraq still remains very much under the shadow of the CPA. Ideally, the situation should be reversed. Areas such as security and provision of basic services should be similarly internationalized. Such a process may indeed promote more instability in the short-term, but in the timeframes needed to put into place a new system of government, it would ultimately be a case of false economics not to embrace such a strategy at this point.

To introduce something as radical as a federal system to Iraq would need to be done with the mandate of the Iraqi people – something that can only be achieved through democratic elections. With this in mind, Iraq needs to be politically stabilized, by an international force. Iraqi society needs time to adjust to the tribulations of the democratic process and political parties need time to coalesce. The Kurdish example could be followed closely, where municipal elections were held allowing for the election of town mayors and officers without changing the overall political color of the region. Even some Islamists were elected in areas deemed loyal to the KDP or PUK. A series of elections at different levels of government could perform the vital transitional role currently needed in Iraqi society. For such a policy to be undertaken in a structured manner would require the presence of international experts.

During this transitional period (which could be several years if done comprehensively) the IGC should be recognized as being representative of the building blocks of Iraqi polity, if not of the Iraqi people themselves. For the IGC to work closely with the CPA or proposed Transitional Authority would obviously be paramount, but a clear division of roles would be needed with the IGC tasked with executive tasks at the ministerial level, and the CPA/TA held responsible for national policy direction.

With security restored, an executive of sorts in operation and civil political activity being encouraged, it may be expected that elections could be held to identify which political arrangement would be most acceptable for Iraqis, and which Iraqis would be empowered to make the changes.

Conclusion

It would seem obvious that to identify an institutional arrangement which satisfies the Iraqi people (and their occupiers) as a whole is an exercise in futility. There are too many interest groups, positions, conflicting histories and agendas being exercised in the post-Saddam Iraq for one position to be universally accepted by all. However, if dictatorship (even if benign) is not entertained as a possible option (and one cannot be sure that it is not) then it would seem to be clear that the future for Iraq by necessity involves promoting a form of federal arrangement for the state. Whether such an arrangement should be based upon ethnic/sectarian identity or geographic/historic divisions remains open to debate. One would find it most difficult to argue against the well-rehearsed position of the Kurdish national



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movement after the years of bloody oppression waged against it in the interests of maintaining the territorial integrity of Iraq and the pre-eminence of Sunni government. Similarly, the right of the Shiite majority to express their majority status in terms of controlling the Iraqi government is difficult to deny, even for a well-armed occupier.

But, for Iraq to truly develop in a sustainable manner as a democratic entity in the Middle East with a representative government, it would seem to be clear that any solution also has to satisfy the region as much as satisfy the Iraqis, rightly or wrongly. With such a reality in mind, it is difficult to imagine how a two-state solution, with Iraq being divided into an Arab and Kurdish zone, could ultimately be a stable entity without the Kurdish zone in particular receiving a great deal of protection and support from the international community – which is certainly not guaranteed. To promote the creation of an independent Kurdish entity may be one task too many for the US occupiers to promote, and the Kurds by themselves could not force the situation politically amongst their co-nationals, no matter how righteous their cause or grievous their suffering has been.

If one therefore had to identify one position over another, however tentatively, the merits of a geographically designated federal arrangement warrant further detailed study and analysis. It is true that such a system may be little different to what happened under previous regimes, however, the difference would be the influence the regions exert over the centre, rather than the centre's predominance over all. If designed and managed correctly, such extensive managed partition could perhaps serve as a recuperating force for an Iraq ravaged by years of dictatorship. However, it would still require the presence, support and assistance of the international community for many years to come.



Chapter 4

Canada's Potential for Contribution

Paul Morton and Rupak Chattopadhyay

The role of the broader international community in the reconstruction of Iraq is not yet clear. It is, however, clear that at least some countries will push for a process that is multilateral, rather than simply international. Canada has consistently argued in favour, in the case of Iraq and elsewhere, of a strong multilateral approach in post-conflict reconstruction. Canada's contribution in Iraq should therefore continue to reflect this commitment.

If there is indeed an interest in seeing a Canadian contribution to a multilateral effort, some attention should then be given to how Canada could contribute best. With the involvement of multiple countries in the reconstruction process, it seems reasonable that countries should contribute in areas in which they are relatively experienced, or have a comparative advantage. Given the scope of the work that needs to be done in Iraq, the potential areas of involvement for Canada are considerable.

Within the context of this document, this chapter will focus on one particular area of potential contribution, that of multi-level governance and decentralized institution building. This is an area of intervention that both responds to a pressing need in post-conflict Iraq, and which would build upon extensive experience in this country and elsewhere.

A new institutional structure in Iraq will not entirely replace the existing one; nor should it try to. While modern Iraq was cobbled together from otherwise disparate regions, the existing institutions had, over the past half-century, developed mechanisms to 'deal with' this diversity. The problem was that this accommodation of diversity was undemocratic, and likely repressive, as seen in the Shiite areas of the South, or the result of externally imposed factors, such as the relative autonomy of the Kurdish areas under the protective no-fly zones. The task then, will be to develop a sustainable institutional framework that responds to this diversity within a democratic environment.

Sustainability in this context can best be assured by broad-based local ownership, and not by an indefinite foreign presence. This broad-based local ownership can only come from a system that openly reflects and recognizes, constitutionally, the diversity of the population. More than simply a formal constitutional sharing of power, any new constitutional arrangement, and the process by which it is brought about, must be flexible enough to accommodate existing aspects of the socio-political make-up of the country. It is



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this flexibility that will promote a true dialogue among the many stakeholders in Iraq – the major prerequisite for an equitable, sustainable governance structure.

This is where federal countries can play an especially important role in the institutional reconstruction of Iraq. This reconstruction can be assisted in two ways – namely, supporting the political dialogue in a number of different ways and facilitating the implementation of decisions that arise from that dialogue. Canada's experience with systems of multi-level governance can provide insight into both of these aspects of reconstruction. By sharing these experiences in building decentralized, representative institutions, Canada is in a position to bring important tools to the lengthy process of rebuilding Iraq's institutions.

In terms of a potential role in Iraq, Canada's own federal experience would be complemented by its role in facilitating post-conflict institution building elsewhere in the world. In the following paragraphs we will briefly discuss instances in which Canada's specifically federal experiences have been helpful in resolving protracted conflicts around the world. The potential exists, therefore, for these combined experiences to be applied constructively in Iraq.

Post-conflict institution building in multiethnic societies, such as Iraq, requires both democratization of the state and bringing about reconciliation between ethnic groups with a history of mutual antagonisms. Most recently, Canada has been closely engaged in providing post-conflict governance assistance to Sri Lanka and the Philippines. In each of these cases Canada adopted a two-track approach. As part of the Track-I process the key interlocutors have been provided access to expertise on constitutional matters. As part of the Track-II process, Canada has contributed to public education programs, which aim both to prepare public opinion for institutional reforms and lay the groundwork for reconciliation.

Following the ceasefire agreement that ended nineteen years of fighting between the government and Tamil rebels in Sri Lanka last year, Canada has been closely involved in resourcing the peace process. As part of Track-I, Canada has provided constitutional expertise in closed-door sessions to the negotiating parties with the aim of contributing to a durable peace. Given the parties interest in a federal Sri Lanka, Canada has helped provide them with access to international expertise on the subject. They have also been provided with expertise on human rights and judicial reforms, which must precede institutional reform. This intervention has caused the parties to commit themselves to a united and federal Sri Lanka after the second round of peace talks in 2002.

Track-II engagement in Sri Lanka consists of public education activities with targeted groups (such as civil servants, LTTE leaders, journalists, minority and religious groups). The aim again is to sensitize public opinion across the country to the institutional changes that must occur in order to achieve a durable peace in Sri Lanka.



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The Philippines, which suffered from a separatist insurgency in Muslim Mindanao, is beginning to see constitutional reform, or more accurately federalism, as offering a way out of this cycle of violence. Given the heterogeneity of Filipino society, the charter change process provides an opportunity to improve governance and contributes to the on-going peace process in Mindanao. Whilst the Filipinos themselves have identified four key issues for discussion – 1) a shift from a presidential to a parliamentary system 2) economic reforms to increase foreign investment 3) a shift from a bicameral to a unicameral structure and 4) a shift from a unitary to federal model – Canada has been involved in providing intellectual resources to inform this rather comprehensive process. At the Track-I level, Canadian experts are engaged in providing members of the House of Representatives and Muslim leaders with expertise on division of responsibilities, rule of law, accommodation of minority rights and fiscal arrangements. Track-II targets civil society groups via workshops to ensure that they have the tools to participate in the charter change process.

The peace process in Sri Lanka, and the charter change process in the Philippines have not been trouble free. Despite this, government and civil society in these countries increasingly appreciate the importance of the rule of law, minority rights and multi-level government as tools for conflict management. The federal option is now very much on the table as a means of forestalling further violence in each of these countries.

Given Canada's record of providing governance assistance to post-conflict multi-ethnic states and our own history, Canada undoubtedly has the intellectual resources to help Iraq re-build its institutions in a manner that is equitable to all ethnic groups in that country. Furthermore, Canada's long-standing commitment to human security and our commitment to multilateral institutions endow us with credibility as a neutral source for expertise. However, it is important to recognize that the present situation in Iraq is fundamentally different from either Sri Lanka or the Philippines. Unlike the preceding two cases where Canada was invited to participate by the host governments, Iraq currently lacks a sovereign government capable of extending such an invitation. The US civil authority in Iraq has been slow to create a sovereign Iraqi interim administration that could begin looking at the issues of institutional reconstruction.

On July 14th 2003, the US administration in Iraq appointed a new national governing council comprised of 25 Iraqi nationals representing various political and ethnic groups. The council has 13 Shiite Muslims, 5 Sunni Muslims, 5 Kurds, 1 Christian and 1 Turkmen as its members. The council has the power to nominate and dismiss ministers, to direct policy and is also expected to help draw up a new constitution paving the way for free elections, although this last role is still uncertain.



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Critics have complained that it is drawn largely from groups that were previously based outside Iraq, and that selecting rather than electing members will compromise the council's legitimacy, though several of these groups do indeed have a large following within Iraq.

A stronger criticism of the council's legitimacy rests on the fact that the United States will continue to have the final word on any proposals emanating from the council. Therefore, even with the constitution of this council, there is still no Iraqi equivalent of the UN-led Bonn process on Afghanistan, which permitted all parties to hammer out a power sharing agreement culminating in the Loya Jirga (Grand Tribal Council) during June 2002. The appointment of this council does however pave the way for the emergence of some sort of sovereign authority in the future. Ayatollah Ali Sistani of the Supreme Council for Islamic Revolution in Iraq was initially dismissive of the council, but has now come around to the view that this might be the quickest way to get the US out of Iraq. More importantly, several countries opposed to the US invasion such as Russia, France and India, among others, have welcomed the appointment of the council and have pledged to work with it.

Given the council's lack of autonomy, any Canadian involvement with the 'government' in Iraq would have to imply collusion with the United States. The possibilities of getting involved in Track-I reconstruction efforts are therefore uncertain. Working in Iraq at the invitation of the current civil authority may run the risk of compromising Canada's commitment to multilateralism. Furthermore, US led reconstruction efforts so far have been unilateral and privatized. This, however, does not prevent Canada from influencing the process of institution building in Iraq in other ways.

Despite the absence of stability, it is already very clear who the key political players in Iraq are. The Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) in the north, the Iraqi National Congress (INC), the ex-Baathist Iraqi National Accord (INA) and the Supreme Council for Islamic Revolution in Iraq (SCIRI) in the South have already emerged as key players in the Iraqi political arena. Each of these groups expects to eventually become part of any Iraqi power structure. Consequently, for Iraq to remain united any future power structure will have to reconcile their competing claims on the system. Groups like the INC and the Kurdish parties recognize the utility of federalism in maintaining Iraqi unity, but given Iraq's history as a unitary state there exists little indigenous knowledge on how to organize such a state.

Indeed, the establishment of a stable, democratic and united Iraq presents a daunting challenge for the political leadership. In respect of this challenge, Canada could, if invited, play a contributory role. As a general approach, Canada could share its own knowledge of federalism, constitutionalism and political pluralism with the parties in Iraq. Canada could also assist in sharing other models of federalism and multi-level governance with the parties in Iraq. It is important to emphasize that no one model can be grafted on to



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Iraq. The Iraqis must eventually develop a solution that is uniquely theirs and is the outcome of a consultative process.

With respect to specific contributions in the short term, Canada could engage the various parties via a Track-II initiative that involves both closed-door consultations and public events. The objective of these activities would be to provide impartial and objective information and options for the parties in the run up to any constitutional process. As became apparent during our involvement in Sri Lanka, opinion makers in unitary states with majoritarian systems are often poorly informed about federalism. Many suspiciously view federalism as a stepping-stone to secession. Similar problems are bound to arise in the Iraqi context, with the added complexities of Iraq's geopolitical location. Engaging the Iraqi parties early on via a program of technical assistance could ensure that they enter future negotiations with a greater understanding of various aspects of federalism, allowing them to focus on substantive rather than definitional issues. Specifically, this engagement could take the form of sharing experiences with members of civil society, government, and academia, to inform Iraqi interlocutors as they develop a new constitutional framework. Based on experiences in Sri Lanka, available options would include workshops, publications, videos, and arranged study tours.

A complementary line of engagement with the parties is to engage the diaspora community, amongst whom all the parties have supporters. Information sessions and roundtables that educate the diaspora on issues related to federalism could go a long way in shaping future institutional preferences in Iraq. Ultimately, such a program should deepen understanding of the meanings and implications of some of the central issues that will have to be a part of any enduring settlement.

If Canada were to get involved with the Iraqi parties some key operating principles need to be kept in mind.

1. In the interests of maintaining Canadian credibility, our contribution should be on the provision of impartial information and options relating to forms of shared power and fashioning forms of intergovernmental relations consistent with the emerging multi-level governance structures.
2. Canadian engagement should be designed to support the process and all the participants in it. It should scrupulously avoid activity that supports, or seems to support, only one of the parties.
3. In maintaining the principal of neutrality and objectivity, Canada should draw comprehensively on experience and expertise from a wide range of federal countries, and other countries (such as the UK) that have experience with devolution and multiple government forms. For example, the Iraqi National Congress is on record saying that it is interested in certain features of the Indian federal system. In this context Canada should be seen by the parties as being responsive to their needs,



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rather than be seen as an interlocutor who is trying to foist a particular model upon Iraq.

4. Canadian involvement should serve two goals: broaden understanding of the principles of federalism and provide technical advice on specific subjects in response to requests from the parties.

In the longer term, Canada should plan on providing technical assistance for the constitutional design process by offering our services and expertise to a sovereign interim authority or constituent assembly as and when it comes into existence. It is important that such an authority enjoy both international recognition and internal legitimacy. While the governing council presently looks set to enjoy international recognition, its legitimacy in the eyes of Iraqis is far from clear. However, if Canada were to engage the parties prior to the convening of a constituent assembly, there is a greater likelihood that Canadian assistance will be requested once the negotiations begin. Furthermore, when it is safe to do so (from a security perspective), Canada should consider organizing public education programs aimed at preparing public opinion for the expected constitutional reforms. Such a program could entail a team of experts holding meetings and public events with representatives of the media, universities, the business community, political parties, or organizing study tours for journalists and other civil society activists.

Over the coming months and years, the rebuilding of Iraq's institutions will likely become the major focus of the international community's involvement there. The preceding chapters have outlined the possibilities and limitations of institutional rebuilding in Iraq. Within this context this last chapter has focused on the potential for a positive Canadian contribution. The form of any eventual engagement will, of course, depend on a number of factors and developments, both in Iraq and within the international community. In anticipation that Canada should be called upon, or may propose a roll for itself, we have an obligation to do our part in helping to rebuild a sustainable, representative system of governing institutions in Iraq.



TABLE 1: ACRONYMS

Acronym	Full Name	Description
ADM	Assyrian Democratic Movement	Assyrian Christian group in Iraq
CMM	Constitutional Monarchy Movement	Iraqi political group supporting the Democratic Principles Working Group
CPA	Coalition Provisional Authority	US-led Coalition's supreme authority in Iraq
DPWG	Democratic Principles Working Group	Group of 30 exiled Iraqi academics and activists convened by the US State Dept.
IGC	Iraq Governing Council	Established July 13, 2003 by the Coalition Provisional Authority
IIP	Iraqi Islamic Party	Iraqi (Sunni) political party
INA	Iraqi National Accord	Iraqi (Shiite) party of ex-Baathists
INC	Iraqi National Congress	Iraqi political party, led by former exile Ahmed Chalabi
KDP	Kurdistan Democratic Party	Kurdish party in Iraq; Massoud Barzani is their president
KIU	Kurdistan Islamic Union	Kurdish party in Iraq
KNA	Kurdistan National Assembly	Legislative assembly of the Kurdistan Regional Government
KRG	Kurdistan Regional Government	Set up by Kurds in Iraq in 1992
PUK	Patriotic Union of Kurdistan	Sunni Kurdish party in Iraq
SCIRI	Supreme Council for Islamic Revolution in Iraq	Iraqi (Shiite) political party
TA	Transitional Authority	Proposed successor to the CPA in Iraq



Forum of Federations

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TABLE 2: Iraqi political parties, Iraqi movements, and Authorities in Iraq

Name	Notes
Assyrian Democratic Movement (ADM)*	Assyrian Christian group in Iraq; Younadem Kana is their rep on the IGC
Baath Party	Iraqi party led by Saddam Hussein
Coalition Provisional Authority (CPA)	US-led Coalition's supreme authority in Iraq; Paul Bremer is its head.
Democratic Principles Working Group (DPWG)	Iraqi academics and activists in exile convened by the US Department of State before the fall of Saddam Hussein
<i>hawza</i>	<i>hawza</i> of Najaf; Shiite religious movement led by Grand Ayatollah Ali Sistani
<i>Hizb al Dawaa*</i>	Party of the Islamic Call ('al Dawaa' for short); Ezzedine Salim is their representative on the IGC
Iraqi Communist Party*	Founded 1934; "unofficial opposition" between the '30s and 1958; Hamid Majid Mousa is their rep on the IGC
Iraqi Governing Council (IGC)	Multi-party, multi-ethnic council set up in Iraq by the Coalition Provisional Authority
Iraqi Islamic Party (IIP)*	Iraqi political Party (Sunni); Mohsen Abdel Hamid is their representative on the IGC
Iraqi National Accord (INA)*	Iraqi Shia party established in exile in 1990, started by dissident Baath Party members; Iyad Allawi is their rep on the IGC
Iraqi National Congress (INC)*	Iraqi political party led by formerly exiled leader Ahmed Chalabi, their rep on the IGC



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Kurdistan Democratic Party (KDP)*	Kurdish party in Iraq; Massoud Barzani is their president and representative on the IGC
Kurdistan Islamic Union (KIU)*	Kurdish party in Iraq; Salaheddine Bahaae is their representative on the IGC
Kurdistan Regional Government (KRG)	Set up by the Kurds in northern Iraq, who organized multi-party elections in May 1992
National Democratic Party*	Sunni political group in Iraq; Naseer al-Chaderchi is their member on the IGC
Patriotic Union of Kurdistan (PUK)*	Sunni Kurdish party; Jalal Talabani, who formed the group after splitting from the KDP in 1975, is their representative on the IGC
peshmerga	Kurdish militia loyal to either the KDP or PUK
Sadriyyun	Extreme Iraqi religious group led by Muqtada al-Sadr
Supreme Council for Islamic Revolution in Iraq (SCIRI)*	Iraqi Shia political group; Abdel-Aziz al-Hakim is their member on the IGC

* Group that is represented on the Iraq Governing Council (IGC)