

**On Benchmarks:
Institutions and Violence in Iraq**

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Abstract

Since the invasion of Iraq in 2003, the United States has sought to encourage institutional developments in Iraq that would contribute to national reconciliation and mitigate sectarian and insurgent violence. In these reform efforts, including recent “benchmarks,” the Bush administration has drawn on power-sharing and federalist models. The purpose of these efforts is to overcome the political dilemmas associated with the relative shift in power among the Sunni, Shia and Kurdish communities, and to blunt the majoritarian features of the political system in particular. A review of the theoretical and empirical literature suggests that the record of these institutional reforms in mitigating violence and ending civil wars is not encouraging. A detailed history of institutional reform efforts in Iraq shows that proposed institutional reforms have not constituted an endogenous political equilibrium, have not been credible, or have had perverse consequences. These findings suggest the limits on institutional reform and the importance of alternative means of restraining violence.

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From the invasion of Iraq if not before, the US has sought to craft appropriate political institutions for Iraq. Quite early, US decision makers became aware of a particular political dilemma posed by the collapse of Saddam Hussein's regime. Democratization threatened not only a dramatic reversal in the relative power of the Shia and Sunni Arab communities but a permanent Shia majority.¹ Democracy also allowed the Kurdish minority to protect its de facto independence in ways that further isolated the Sunnis and other minorities. The task of institutional engineering was therefore not simply to bring democracy to Iraq, but to constrain the Shiite-Kurdish majority, expand the representation of the Sunnis and thus reduce incentives to violence.

Efforts at institutional engineering did not end with the formation of the al-Maliki government in June 2006. The idea of coupling continued U.S. support to further institutional reforms re-surfaced in late 2006 and was visible in both the Iraq Study Group report and the administration's plan for a "surge."² Lawmakers subsequently included 18 "benchmarks" in war funding legislation passed in May 2007, calling among others things for constitutional revision, a review of de-Baathification efforts, renewed efforts to rein in militias, and passage of laws on oil, revenue sharing, the formation of regions and provincial elections (see Appendix).

¹ See Vali Nasr, *The Shia Revival: How Conflicts Within Islam Will Shape the Future*, (New York: Norton, 2006), in which his chapter on Iraq is subtitled "The First Arab Shia State."

² See Zalmay Khalilzad, "Joint Press Conference with General George Casey," (October 24, 2006) at http://iraq.usembassy.gov/iraq/20061024_strategy_in_iraq.html; Walter Pincus, "Timetables? It Depends on Who's Talking," *Washington Post* (October 29, 2006), A08; James Baker and Lee H. Hamilton, *The Iraq Study Group Report: The Way Forward, a New Approach* (New York: Vintage Books, 2006), pp. 59-69, and the "Notional Political Timeline" appended to Secretary of State Condeleeza Rice letter to Senator Carl Levin, January 30, 2007.

These efforts at constitutional engineering drew on two overlapping approaches to mitigating conflict in divided societies: power-sharing agreements, and the devolution of power to subnational governments. We argue that in pursuing these reforms, the United States has faced an “engineer’s dilemma.” Although there are theoretical reasons to believe that institutional change might mitigate ethno-sectarian violence, those institutions do not necessarily constitute an endogenous political equilibrium in Iraq. Through mid-2007, no political arrangements were able to simultaneously gain acceptance of the Shia-Kurdish political majority and credibly appease Sunni fears. Moreover, efforts at political engineering often had unintended and perverse consequences, exacerbating rather than mitigating violence.

In the first section of the paper, we draw on the civil war literature to outline features of the Iraqi landscape that have made it a difficult test case for any negotiated settlement, including the fragmentation of the combatants, their weak representation in the formal political process, and the presence of extremists and the associated process of outbidding. These conditions are a reminder that civil wars last a long time, that the majority end only with decisive victory, and that negotiated settlements are relatively rare.

In the second section, we discuss the logic of power-sharing approaches to the management of conflict in divided societies. These solutions have included, among others: proportional representation, consensus decision-making arrangements, minority vetoes, and the allocation by quota of cabinet positions, bureaucratic offices and other resources. Cross-national and case study evidence for the success of power-sharing in averting or resolving conflict is surprisingly fragile. We outline the history of these

efforts in Iraq and find that they failed to overcome majoritarian features of the political system and lacked credibility.

We provide a similar overview of the literature on federalist solutions to conflict. We show that the fiscal structure of the Iraqi state, and particularly the high dependence on oil revenues, and majoritarian features of the political system made it virtually impossible to craft a credible federal arrangements. Rather, debates over federalism, the formation of regions and oil have had highly polarizing effects. Moreover, we show why partition has not constituted an endogenous political solution to these problems.

In the conclusion, we consider some alternative paths to reconciliation including reliance on counterinsurgency, the formation of alternative political coalitions, and mutual hostage strategies. We show why these, too, have been vulnerable to the engineer's dilemma. We also draw on the literature on third party enforcement in civil war settings to outline the moral hazard problems that have surrounded the "benchmark" effort and how negotiations among external actors could at least restrain the conflict.

Violence in Iraq: Fragmentation, Ethnic Geography and the Prospects for Negotiated Settlement

The United States and its allies confronted an unexpected level of resistance and insurgent violence from the very outset of the invasion. Sectarian violence was not altogether absent, but it escalated dramatically in the wake of the final transitional elections in October and December 2005. A political battle ensued over whether the situation in Iraq could be considered a civil war, but among students of conflict the issue

was never in question.³ By any definition, Iraq had descended into a complex civil war encompassing multiple axes of conflict: insurgent violence directed against Coalition troops and Iraqi government forces; ethno-sectarian violence between Sunni and Shiite militants, but increasingly engaging Kurds and other minorities; growing intra-sectarian violence against Sunni “collaborators” and among Shia factions; and a significant criminal element.

The idea that institutions might mitigate such violence can be theoretically grounded in the contemporary theory of war as the result of bargaining failure.⁴ In the shadow of armed conflict, there should always be a negotiated agreement that the parties would prefer to fighting. However, problems of incomplete information, issue divisibility, and/or credibility can block agreement, including on new institutions.

Credibility problems seem particularly germane to understanding the conflict in Iraq. Such problems have typically been invoked to explain the collective action problems associated with disarming warring parties.⁵ Yet the credibility problems in civil war settings are much more pervasive than those surrounding disarmament. Negotiated

³ Scholars typically rely upon a battle-death threshold of at most 1,000 per year, or 1,000 for the lifetime of the conflict. See for example M. Small and J.D. Singer, *Resort to Arms: International and Civil Wars, 1816-1980*, (Beverly Hills, CA.: Sage, 1982); Nicholas Sambanis, “Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature,” *World Politics*, Vol. 52, No. 4 (July 2000), pp.437-483; and James D. Fearon and David D. Laitin, “Ethnicity, Insurgency, and Civil War,” *American Political Science Review*, Vol. 97, No. 1 (February 2003), pp.75-90. Through mid-2007, Iraq typically met these thresholds in any given month. See Michael E. O’Hanlon and Jason H. Campbell, “Iraq Index,” (Washington, DC: Brookings Institution, April 2007).

⁴ James D. Fearon, “Rationalist Explanations for War,” *International Organization*, Vol. 49, No. 3 (Summer 1995), pp. 379-414; Dan Reiter, “Exploring the Bargaining Model of War,” *Perspectives on Politics*, Vol. 1, No. 1 (March 2003), pp.27-47.

⁵ Jack Snyder and Barbara F. Walter, *Civil Wars, Insecurity, and Intervention* (New York: Columbia University Press, 1999); and Barbara F. Walter, “The Critical Barrier to Civil War Settlement,” *International Organization*, Vol. 51, No. 3 (Summer 1997), pp.335-364.

settlements require agreement over political institutions. For these institutions to mitigate violence, they have to yield an allocation of decision-making powers, security and resources that, at the margin, makes it rational for those engaged in fighting to desist. Moreover, these political agreements must be credible. Parties are forward-looking; they consider the effects of these institutional bargains not only in the current period but into the future. In the absence of credible third-party enforcement, such agreements must be self-enforcing; if not, they will not generate support and fighting will resume.

Before turning to these institutional arrangements in more detail, it is important to underscore that the aggregate data on the duration of civil wars does not paint a hopeful picture for *any* negotiated settlement to the civil war in Iraq. First, civil wars typically last a long time. In 1947, the average length for civil wars was 2 years. By 1999, that number had jumped to 15 years.⁶ The evidence also suggests that few civil wars end through negotiated settlement. Some debate exists on coding, but estimates range from 40 percent to as few as 20 percent are resolved in this way.⁷ The remainder ends in decisive military victory for one side or the other.

⁶ Fearon and Laitin, "Ethnicity, Insurgency, and Civil War."

⁷ Hartzell codes negotiated settlements if "representatives from the opposing sides of a conflict met in face-to-face talks to discuss issues and conditions they believed relevant to ending the war." Caroline Hartzell, "Explaining the Stability of Negotiated Settlements to Intrastate Wars," *Journal of Conflict Resolution*, Vol. 43, No. 3 (February 1999), pp. 12. This produces 38 cases of negotiations out of 103 civil wars in her dataset between 1945-97, or 37%. See also Caroline Hartzell, Matthew Hoddie, and Donald Rothchild, "Stabilizing the Peace After Civil War: An Investigation of Some Key Variables," *International Organization*, Vol. 55, No. 1 (Winter 2001), pp.183-208. Following Roy Licklider ("The Consequences of Negotiated Settlements in Civil Wars, 1945-1993," *The American Political Science Review*, Vol. 89, No. 3 (Sept. 1995), pp. 681-690), Walter employs a more stringent definition and finds that only 20% of civil wars ended in negotiation for the 1940-90 period. Walter, "Civil War Settlement." Similarly, Fearon finds only 25 percent of 55 civil wars fought over control of the central government from

Moreover, a number of characteristics of the current violence in Iraq adversely affect the prospects for negotiated solutions. The cohesiveness or fragmentation of ethno-sectarian groups is an important problem in civil wars: the greater the fragmentation among the groups, the more difficult to reach and enforce settlements. Fragmentation exacerbates coordination problems, complicating both inter-group bargaining and the policing and enforcement of agreements.⁸ Fragmentation also reflects greater heterogeneity of preferences within groups, and a greater likelihood of extremists, spoilers, and “outbidding,” a process in which factions compete by taking more extreme and violent positions.⁹

Fragmentation is particularly evident among the Sunni combatants. The Sunni insurgency initially included redeployed or disbanded army units, former Baathists and members of Saddam’s *fedayeen*, foreign fighters, and local responses to the invasion and its immediate aftermath.¹⁰ Despite repeated efforts at consolidation, the Sunni

1955 to the present ended in negotiated settlement. James D. Fearon, “Iraq’s Civil War,” *Foreign Affairs*, Vol. 86, No. 2 (2007) pp.2-15.

⁸ Fearon and Laitin, “Interethnic Cooperation.”

⁹ Mia Bloom, *Dying to Kill: the Allure of Suicide Terror* (New York: Columbia University Press, 2007); Andrew H. Kydd and Barbara F. Walter, “The Strategies of Terrorism,” *International Security*, Vol. 31, No. 1 (Summer 2006), pp. 49-80; Pierre M. Atlas and Roy Licklider, “Conflict Among Former Allies after Civil War Settlement: Sudan, Zimbabwe, Chad, and Lebanon,” *Journal of Peace Research*, Vol. 36, No. 1, pp.35-53; and Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985). Some spoilers use violence to extract concessions and can thus be placated through inducements, a critical issue for the power-sharing approaches we discuss below. See Stephen John Stedman, “Spoiler Problems in Peace Processes,” *International Security*, Vol. 22, No. 2 (Fall 1997), pp. 5-53.

¹⁰ For overviews of the insurgency, see Zaki Chehab, *Inside the Resistance: the Iraqi Insurgency and the Future of the Middle East* (New York: Nation Books, 2005); Fawaz A. Gerges, *Journey of the Jihadist: Inside Muslim Militancy* (New York: Harcourt, Inc., 2006), pp. 246-272; Ahmed S. Hashim, *Insurgency and Counterinsurgency in Iraq* (Ithaca, NY: Cornell University Press, 2006), pp. 1-47; International Crisis Group, “In

insurgency has continued to exhibit deep ideological and organizational cleavages.¹¹ Particularly important has been the split between Salafi or Islamist organizations, including but not limited to the foreign *jihadists* who represent a relatively small share of the insurgency,¹² and “nationalist” insurgent forces. In 2006-7, these differences broke out into open warfare.

In addition to this fragmentation is the obvious presence of extremist factions. Even if the United States were to leave Iraq entirely, the demands of radical nationalists to re-establish Sunni hegemony or of *jihadists* for an Islamic “caliphate” reflect differences so profound that they would not be resolved except through further fighting. Foreign jihadists, operating with a region-wide strategic vision, are particularly unlikely to be appeased by institutional compromises.

The fragmentation of the Sunni insurgency is mirrored at the political level in the weakness of the Sunni parties and divisions between Islamist and secular-nationalist tendencies.¹³ These divisions are not all inimical to peace: certain Sunni politicians and sheiks have cooperated with the US counterinsurgency,¹⁴ and insurgents have held discussions with both US authorities and commanders and representatives of the Iraqi government; negotiations have not been altogether absent. Yet none of the Sunni political

Their Own Words: Reading the Iraqi Insurgency,” Middle East Report No. 50 (February 15, 2006).

¹¹ International Crisis Group, “In Their Own Words”; Mahan Abedin, “Mujahideen Shura Council in Iraq: Fact or Fiction?” *Terrorism Focus*, Vol. 3, No. 12, (March 28, 2006).

¹² Michael E. O’Hanlon and Jason H. Campbell, “Iraq Index,” (Washington, DC: Brookings Institution, April 2007).

¹³ The major groupings include the Iraq Accord Front (made up of the Iraqi Islamic Party, the Iraqi National Dialogue Front and the Iraqi People’s Congress), the Association of Muslim Scholars, the Witaniyun or Patriots grouping (which also includes some important tribal associations)

¹⁴ For example, Lydia Khalil, “Anbar Revenge Brigade Makes Progress in the Fight Against al-Qaeda,” *Terrorism Focus*, Vol. 3, No. 12 (March 28, 2006).

parties can speak authoritatively for the insurgency as a whole and most do not even exercise credible control over their own followers.

The major Shia parties—the Supreme Council for the Islamic Revolution in Iraq (SCIRI, later the Supreme Islamic Iraqi Council, or SIIC) and the Islamic Da’wa Party—enjoyed the advantages of a lengthy incubation in Iran and were much more coherent as a result. Moreover, these parties (and their Kurdish allies) enjoyed the advantage of their demographic majority and had high-powered incentives to maintain electoral alliances through the United Iraqi Alliance. Nonetheless, problems of fragmentation among Shia parties and combatants became more pronounced over time. The unpopularity of the al-Maliki government and sharp disagreements within the Shia community over federalism have generated increasing factional challenges within the UIA from Moqtada al-Sadr and new regionalist parties in the south. In 2006 and 2007 defections from these parties reduced the Shia-Kurdish alliance to the narrowest of legislative majorities and even threatened a collapse of the government.

Moreover, the dominant Shia parties clearly do not altogether control Shia sources of violence. From the uprising of April 2004 through mid-2007, Moqtada al-Sadr periodically mobilized the Mahdi Army not only against Coalition forces and Sunni insurgents but against the government as well.¹⁵ The Badr Brigade, nominally controlled by the SCIRI/SIIC, constituted a large and well-armed paramilitary force that has been implicated in sectarian violence and the penetration of important ministries. Smaller,

¹⁵ See Mark Etherington, *Revolt on the Tigris: the Al-Sadr Uprising and the Governing of Iraq* (Ithaca, NY: Cornell University Press, 2005); Rahimi, Babak, “A Shiite Storm Looms on the Horizon: Sadr and SIIC Relations,” *Terrorism Focus*, Vol. 5, No. 10 (May 24, 2007).

more localized Shia militias have also proliferated with devastating effect.¹⁶ Only in the Kurdish community do we see a relatively unified political leadership with meaningful control over its armed force.

In addition to the coordination problems associated with fragmented and heterogeneous groups, the ethnic geography of Iraq poses additional challenges. Ethnic separation is often suggested as a component of negotiated settlements to intractable sectarian violence, particularly when ethnic groups are highly concentrated and homogenous.¹⁷ Such conditions appear to pertain in Iraq, with a mostly Kurdish north, Sunni middle, and Shia South.

But closer inspection reveals that this stylized fact is highly misleading. Fully one-third of the country is made up of mixed areas with key cities—Baghdad, Kirkuk, Mosul—posing particular challenges.¹⁸ Pure separation would require large-scale population movements. The civil war has resulted in a dramatic reshuffling of Iraq's ethnic map; as of mid-2007 there were roughly two million internally displaced people in

¹⁶ Anthony J. Schwartz, "Iraq's Militias: the True Threat to Coalition Success in Iraq," *Parameters*, Vol. 37, No. 1 (Spring 2005), pp. 55-71 and the devastating portrait of Basra in International Crisis Group *Where Is Iraq Heading? Lessons from Basra* Middle East Report No. 67 (June 25, 2007).

¹⁷ Kaufmann, Chaim, "Possible and Impossible Solutions to Ethnic Civil Wars," *International Security*, Vol. 20, No. 4 (Spring 1996), pp. 136-175; John J. Mearsheimer and Stephen van Evera, "When Peace Means War," *The New Republic* (December 1995). Sambanis, "Partition" for a critique of these approaches.

¹⁸ Saddam Hussein attempted to "arabize" oil-rich Kirkuk, but after his fall Kurds moved back in and engaged in a process of ethnic cleansing of their own. Al-Sadr and others have threatened violence were Kirkuk to become part of Kurdistan under a proposed referendum. The status of Kirkuk also has implications for the safety of other minorities, including Turkomans and Chaldean Christians. Mosul and other cities also face these highly localized problems of major groups living in close proximity.

the country.¹⁹ Yet de jure ethnic separation in Iraq would be an extremely costly endeavor and as we will explain in more detail below does not constitute a political equilibrium within Iraq.

Theoretical and empirical findings from the civil war literature allow us to situate the Iraqi case, and the findings are sobering. Civil wars typically last a long time and usually end in decisive victory rather than negotiated settlement. Moreover, Iraq presents few of the conditions that make negotiated settlement more likely. The Sunnis and Shia exhibit fragmentation at both the political and military level, with imperfect control between politicians and fighters and an ample supply of spoilers not amenable to any plausible political settlement. Moreover, the ethnic geography of the country makes it questionable as a candidate for partition, and creates intense local “seams” of sectarian violence.

Given these nearly debilitating constraints, what institutional solutions might reduce violence? What has been tried and with what effect?

The “Engineer’s Dilemma” and the Limits of Power-Sharing in Iraq

The literature on constitutional engineering in divided societies is generally agreed on one point: majoritarian constitutional and electoral arrangements have adverse consequences.²⁰ Majoritarian institutions threaten minorities not only with exclusion and

¹⁹ Internal Displacement Monitoring Center (March 2007), at <http://www.internal-displacement.org/>.

²⁰ Alvin Rabushka and Kenneth Shepsle, *Politics in Plural Societies: A Theory Democratic Instability* (Columbus, Ohio: Charles E. Merrill Publishing, 1972); Eric Nordlinger, *Conflict Regulation in Divided Societies* (Cambridge, Mass.: Center for International Affairs, Harvard University, 1972); Arend Lijphart, *Democracy in Plural Societies* (New Haven, Conn.: Yale University Press, 1977); Horowitz, *Ethnic Groups*.

an undesirable distribution of resources in the present, but also vulnerability to predation and a skewed allocation of resources over the long-run.

Power-sharing political systems, by contrast, foster governing coalitions inclusive of most, if not all, major mobilized ethnic groups in society.²¹ The least controversial power-sharing mechanism is proportional representation, under which electoral rules generate legislative representation more closely commensurate with the popular vote and thus with the underlying demographic strength of the respective communities. A central problem with proportional electoral rules—strongly evident in Iraq—is that while they may guarantee representation in the *legislature* they do not guarantee effective representation in *government*. Lijphart’s conception of consociational democracy included other means of representing minorities, including oversized or “grand” coalitions, consensus or super-majoritarian decision-making procedures, and minority vetoes over some or all significant issues.²² “Strong” power-sharing agreements go beyond proportionality altogether and simply allocate executive posts, cabinet portfolios, bureaucratic office or even legislative seats by quota.

In addition to normative critiques of power-sharing agreements as undemocratic, the evidence on their efficacy in mitigating conflict in divided societies or managing civil conflict is mixed at best.²³ Recent work has pointed to the adverse consequences of

²¹ For a review of different definitions, see Timothy Sisk, *Power Sharing and International Mediation in Ethnic Conflicts* (Washington, D.C.: United States Institute of Peace Press, 1996).

²² Arend Lijphart, *Power-sharing in South Africa* (Berkeley: Institute of International Studies, 1985); Lijphart, *Plural Societies*; Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven, Conn.: Yale University Press, 1999).

²³ See for example Philip G. Roeder, and Donald Rothchild, *Sustainable Peace: Power and Democracy After Civil Wars* (Ithaca: Cornell University Press, 2005); Rudy B.

consociational rule even in the relatively “easy” European cases on which Lijphart’s original formulation was based and such arrangements have failed utterly in developing country settings, including Lijphart’s paradigmatic case of Lebanon.²⁴ Hartzell and Hoddie find that of 38 civil wars between 1945 and 1998 that did end in negotiated settlement (out of 103 conflicts total), all except one featured some form of power-sharing and the sole outlier, Angola, later suffered collapse.²⁵ They also find that the more institutionalized political, territorial, military and economic power-sharing arrangements, the greater the likelihood of stability. However, these hopeful findings rest on the relatively modest way “success” has been defined. Typically, scholars give the agreement five years, arguing that negotiated settlements are most likely to break down directly after negotiations and/or founding elections.²⁶ Such a coding classification defines agreements reached in Zimbabwe, Sudan, Chad, Lebanon, and Nigeria as successes, even though all of these cases eventually broke down and resulted in a resumption of mass political violence.²⁷

In sum, the evidence with respect to power-sharing is ambiguous at best. Power-sharing has generated problems even in “easy” cases, most civil conflicts do not generate power-sharing arrangements, and in those that do their success in mitigating conflict is

Andeweg, “Consociational Democracy,” *Annual Review of Political Science*, 3 (2000), pp. 509-36; and Ian Lustick, “Lijphart, Lakatos, and Consociationalism,” *World Politics*, Vol. 50, No. 1 (1997), pp.88-117.

²⁴ Andeweg, “Consociational Democracy.”

²⁵ Caroline Hartzell and Matthew Hoddie, “Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management,” *American Journal of Political Science*, Vol. 47, No. 2 (April 2003), pp. 318-332. See also Caroline Hartzell, “Explaining the Stability of Negotiated Settlements to Intrastate Wars,” *Journal of Conflict Resolution*, Vol. 43, No. 3 (February 1999), pp. 3-22.

²⁶ For example, Walter “Civil War Settlement.”

²⁷ Atlas and Licklider, “Former Allies.”

probably exaggerated. Nonetheless, it is important to remember that majoritarianism also poses challenges to democratic stability in divided societies and power-sharing may be the best among an unappealing array of institutional choices.

How have such arrangements fared in Iraq? Power-sharing ideas held appeal, but the ability of the US to impose them was limited by the political heft and majoritarian aspirations of the Shiite parties, the de facto self-government of the Kurdish region, and the absence of “appropriate” Sunni interlocutors. The representative institutions that arose during the transitional period under-represented the Sunni minority and despite proportional electoral rules Sunni parties remained under-represented following the transition as well. Power-sharing efforts since the transition, culminating in the recent “benchmarks,” have also been limited by the majoritarian features of the political system.

Through the Handover

Concerns about political representation in Iraq initially centered on the efforts of Ahmad Chalabi’s Iraqi National Congress (INC) to establish a provisional government dominated by exiles. After the Bush administration finally rejected this option in November 2002,²⁸ U.S. Special Envoy Zalmay Khalilzad pursued a power-sharing approach, but drawing only on the six main opposition groups willing to cooperate with the US: the INC, SCIRI, the two dominant Kurdish parties (the Kurdistan Democratic Party [KDP] and the Patriotic Union of Kurdistan [PUK]), Ayad Illawi’s Iraqi National

²⁸ David Phillips, *Losing Iraq: Inside the Postwar Reconstruction Fiasco*, (New York: Basic Books, 2005), pp. 89-90.

Accord (INA), and Ali bin al-Hussein's monarchist party.²⁹ Conspicuously absent at the London meeting that formalized these arrangements were Al-Da'wa—subsequently brought into the process—the Iraqi Communist Party, Arab nationalist parties and particularly parties with strong Sunni representation such as the Iraq Islamic Party. Through the handover, the so-called Six sought to monopolize Iraqi representation, empower themselves as the provisional government, and when those efforts failed, to influence constitutional arrangements to favor their incumbency.

To institutionalize consultation after the invasion, the Office of Reconstruction and Humanitarian Assistance (ORHA) under Jay Garner created a Leadership Council of seven principals.³⁰ Coalition Provisional Authority (CPA) administrator Paul Bremer subsequently negotiated an expansion of the Leadership Council into the Iraqi Governing Council (IGC) to dilute the over-representation of the exiles and address the under-representation of the Sunni.³¹ But Shiite representatives insisted on a 13-seat majority on the 25-seat council³² and quickly formed a caucus, the “Shia House,” that exercised strong influence over all IGC deliberations. The quota system was also extended to ministerial appointments and the formation of key committees, including the constitution

²⁹ On the history of cooperation among this cartel, see Ghassan Atiyyah, “Fixing It: the London Conference, Tehran deal, and beyond,” *Open Democracy* (January 9, 2003).

³⁰ Ahmad Chalabi (INC), Iyad Allawi (INA), Massoud Barzani (KDP), Jalal Talabani (PUK), Abdul-Aziz al-Hakim (SCIRI) as well as Ibrahim al-Jaafari of Da'wa and a weak Sunni Arab representative who lacked a meaningful organized base of support. Larry Diamond, *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq* (New York: Times Books, 2005), pp.40-41.

³¹ Bremer III, L. Paul, *My Year In Iraq: the Struggle to Build a Future of Hope* (New York: Threshold Editions, 2006), p. 49.

³² The remainder was allocated to five Kurds, five Arab Sunnis, one Assyrian Christian and one Assyrian Turkoman.

drafting committee.³³ The very creation of the IGC along sectarian power-sharing lines not only encouraged political elites to mobilize support on those grounds but also entrenched rather than diluted the majoritarian features of the country's religious and ethnic make-up.³⁴

Bremer's seven-point plan for the transition included the appointment of a constitution drafting committee in consultation with the IGC.³⁵ Yet on June 30, before the IGC was even formally constituted, Shia religious leader Ali al-Sistani issued a fatwa deeming a selected constitution drafting process unacceptable and requiring general and direct elections for a constitutional convention. The fatwa represented a frontal challenge both to the CPA and to the IGC cartel. Bremer's attempts to finesse al-Sistani's decree met stiff resistance both inside and outside the IGC and by November the administration had come to the conclusion that Bremer's efforts for the transition were floundering.³⁶

Following consultations in Washington in November, Bremer unveiled a revised transition plan that would yield sovereignty back to Iraq by June 2004. The new plan acceded to al-Sistani's demand for early elections for a constitutional assembly, but retained a complex caucus method for choosing the interim government that would maintain US influence. This, too, quickly met resistance from Sistani and members of the

³³ Ali A. Allawi, *The Occupation of Iraq: Winning the War, Losing the Peace* (New Haven: Yale University Press, 2007), pp. 195-196; 205-206; Bremer, *My Year in Iraq*, pp. 93-103.

³⁴ For critiques along this line, see Kanan Makiya, "A Model for Post-Saddam Iraq," *Journal of Democracy*, Vol. 14, No. 3 (July 2003), pp. 5-12; Adeed Dawisha, "Iraq: Setbacks, Advances, Prospects," *Journal of Democracy*, Vol. 15, No. 1 (January 2004), pp. 5-20.

³⁵ Bremer III, L. Paul, "Iraq's Path to Sovereignty," *Washington Post*, September 8, 2003.

³⁶ Rajiv Chandrasekaran, *Imperial Life in the Emerald City* (New York: Alfred A. Knopf, 2006), pp. 191-201; and Bob Woodward, *State of Denial: Bush at War, Part III* (New York: Simon & Schuster, 2007), pp. 260-270.

IGC and the US was forced to turn to UN envoy Lakdhar Brahimi to broker a political compromise that postponed elections, but called for the appointment of an interim government and drafting of an interim constitution (the Transition Administrative Law [TAL]). The interim government under Ayad Allawi reflected a broadly similar cross-section of organized political forces to that in the IGC and CPA cabinet, but with an effort to increase the participation of Sunnis, including former Baathists.³⁷ This renewed effort at power-sharing not only failed to halt the march of the insurgency, but quickly fell victim to the country's underlying electoral logic as we will see.

The TAL, to be produced under a tight UN-imposed deadline of February 28, also included a number of power-sharing elements. The Kurds succeeded in pressing a highly controversial rule that effectively gave them a strong veto over the permanent constitution.³⁸ The presidency council—initially three co-equals but later changed to a single President and two deputies—also had power-sharing features.³⁹

Yet Larry Diamond shows that “under pressure from the Shiite parties and the Americans, with the Kurds agreeing for tactical reasons...the effort to generate more checks on the power of the prime minister...failed.”⁴⁰ The president could dismiss the prime minister and cabinet officials only for corruption, and subject to due process (Article 41). Interestingly, both the supermajority provisions for choosing the executive

³⁷ Diamond, *Squandered Victory*, pp. 258-264; Allawi, *Occupation of Iraq*, pp. 287-290.

³⁸ The infamous Article 61c, inserted at the insistence of Kurdish leader Massoud Barzani in the late stages of the TAL negotiations, stipulated that the constitution would be defeated if it was rejected by two-thirds of the voters in three or more provinces. See Diamond, *Squandered Victory*, pp. 173-178; Allawi, *Occupation of Iraq*, pp. 222-224.

³⁹ It was to be elected as a single slate by a two-thirds majority of the legislature (Article 36a) and was to take decisions by consensus (Article 36c). The council was to appoint the Prime Minister by consensus or by a two-thirds majority of the assembly if it could not agree on a candidate (Article 38a).

⁴⁰ Diamond, *Squandered Victory*, p. 153.

and its formal powers vis-à-vis the prime minister were further weakened in the 2005 constitution.⁴¹ Under both the TAL and the final constitution, the government itself operates in a standard majoritarian fashion, requiring a simple majority of assembly support and taking votes in the cabinet by majority (Articles 41 and 42). Nor is the prime minister required to appoint a government representative of the country's major groups.

From the Handover through the Transitional Government: Elections, Drafting and Passage of the Constitution

In 2005, Iraq had three highly-consequential elections: the January 2005 election for a Transitional National Assembly that would oversee the constitution-writing process, the October referendum on the hastily-negotiated document, and the December 2005 elections for the first non-transitional government. Although Iraqi election rules were proportional in design, the Sunnis ended up weakly represented in both the Transitional National Government and the first fully sovereign government, in large part because of their underlying demographic position but also because of the violence and an electoral boycott. The US pressed the winning coalitions in both 2005 and 2006 to form oversized governments, but it was ultimately unable to enforce decision-making structures the dominant political coalition did not want. As a result, key elements of the final

⁴¹ Article 67 of the 2005 constitution maintains the two-thirds vote to select the presidency council. But “if any of the candidates does not receive the required majority vote then the two candidates who received the highest number of votes shall compete and the one who receives the highest number of votes in the second election shall be declared as President.” As Shugart concludes, “it takes two-thirds unless the majority does not want it to take two-thirds.” Matthew Shugart, “Iraq Government Formation Does NOT Require a Supermajority,” (December 16, 2005) at <http://fruitsandvotes.com/?p=373>. Moreover, Article 73 obligates the president to grant the legislative bloc with the largest share of votes the first crack at forming a cabinet, a straightforward majoritarian provision.

constitution were negotiated primarily among members of the ruling coalition of Shia and Kurdish parties.

The first electoral contest was the January 2005 election for a Transitional National Assembly. The CPA opted for a closed-list proportional representation (PR) system in a single national constituency over a provincial or district list system, mixed model, or alternative vote (AV) system in single-member districts. Provincial lists or an AV system would arguably provide strong incentives for Sunni parties to contest the elections in the areas where they had demographic majorities and thus draw them into the political process.⁴² But such systems would have required the assignment of seats across provinces or the creation of new districts in the absence of a census, a process that would have exacerbated ethnic tensions.⁴³ Moreover, the US feared the rise of more localized Islamist parties if elections were conducted using district level electoral units and provincial lists. If there was an alternative electoral strategy that might have mitigated the violence, it was probably not to hold elections so quickly at all, a position advanced by several analysts at the time but also carrying its own risks.⁴⁴

Although hailed by the United States as a triumph, the outcome of the January 2005 elections was highly troubling. The UIA managed to secure an outright majority of

⁴² David Moon, “International Snapshot: Iraq: Elections Roundup, January and December 2005,” FairVote Research Report, 2005, at <http://fairvote.org/?page=1786&articlemode=showspecific&showarticle=1312>; Aheed Dawisha, “Democratic Institutions and Performance,” *Journal of Democracy*, Vol. 16, No. 3 (July 2005), pp. 35-49.

⁴³ The alternative of an integrative approach—for example, by using open as opposed to closed lists that would fragment the dominant coalitions and encourage competition among co-partisans—does not appear to have been seriously considered but suffered from the similar problem of devising different provincial ballots.

⁴⁴ See for example Marina Ottaway and Thomas Carrothers, “The Right Road to Sovereignty in Iraq,” Policy Brief 27 (Washington D.C.: Carnegie Endowment for International Peace, October 2003).

seats (140) with the Kurdish bloc picking up an additional 75. Not only was victory claimed by an alliance of Shia parties with strong Islamist tendencies, ties to Iran and direct links to Sadrist insurgents, but Sunnis were severely under-represented. Sunnis constituted an estimated 20 percent of the overall population, but won only 17 of 275 seats (6.2 percent) and six of these had been put forward by the UIA. The most obvious reason for the disproportional electoral outcome was the Sunni electoral boycott, which began with a coalition of 47 groups in November 2004 spearheaded by the Association of Muslim Scholars and was followed by the last-minute withdrawal of the Iraqi Islamic Party in December 2004. However, the outcome also reflected the gross imbalance in the level of political cohesion. Not only were the Shia and Kurdish parties much more strongly organized in their respective communities, but they had overwhelming political incentives to maintain their pre-electoral coalitions because of the prospect of forming a government.

To offset unanticipated majoritarian biases in the first transitional election,⁴⁵ members of Iraq's Transitional National Assembly (TNA) adopted a two-tier List PR system within governorate-level constituencies, precisely the system that had been rejected by the CPA and its UN advisors in the first transitional election, coupled with

⁴⁵ There is some debate about the extent to which the electoral rules mattered to outcome of the January and December elections. We are skeptical. An analysis by Fair Vote compared the actual results of the January election to what would have transpired under provincial lists (albeit using actual vote tallies and thus under the constraint of the boycott). The dominant Sunni list would indeed have more than doubled its representation in the legislature, but from five to only 12 seats. Moreover, the UIA seat share would actually increase; the losers under such a rule would have been the Kurdish parties. Moon, "International Snapshot."

full national compensation.⁴⁶ The Sunni parties did pick up a number of seats, but that pick up was almost exactly proportional to the improvement in turnout and still left them outside the government.

Cognizant of the risks associated with the highly majoritarian election outcomes, the US once again engaged in a complex set of power-sharing negotiations. The principal beneficiaries of these negotiations were not the Sunnis, however, but the Kurds, who used their leverage over the formation of the government to extract concessions from both the US and the UIA on federalism. Although the UIA made a number of nominal concessions to Sunnis—the new government had a Sunni as deputy president, Assembly speaker and deputy prime minister, as well as six cabinet positions—the UIA insisted on tight control over all ministries.⁴⁷

The US was particularly concerned that the constitution drafting process would be dominated by the Shiite and Kurdish parties and on May 10, 2005 the interim National Assembly appointed a 55-member committee that fully vindicated these worries. The allocation of seats on the committee was proportional, but to the performance of the parties in the ruling coalition in the December elections!⁴⁸ Following direct intervention by Secretary of State Rice as well as public statements by al-Sistani, the government

⁴⁶ Under this model, most seats are awarded to winning lists in each constituency, but some are awarded at the national level to bring the results closer to “ideal” proportionality with the popular vote. But only one party won enough votes nationwide (without winning any seats in a governorate) to qualify for a compensatory seat. The remaining 44 national seats were thus awarded to the parties that had won seats in the governorates in proportion to their share of the nationwide vote.

⁴⁷ Allawi, *Occupation of Iraq*, p. 394.

⁴⁸ The UIA held an absolute majority of seats. Sunnis held two seats but one of those was from the UIA and the other from Allawi’s secular list; none of the Sunni religious parties was represented.

relented by transforming the Assembly committee into an independent commission and adding 15 Sunnis as members and another 10 as non-voting advisors.⁴⁹

The appointed Sunnis, which included a bloc of non-elected Baathists, strongly opposed a number of provisions that had already been drafted at the time of their appointment, including those on federalism. But the US wanted an agreement quickly and thus rejected any delays to accommodate the minority view. The final negotiations were essentially conducted between the leaders of the government parties, including Kurdish President Massoud Barzani (who was not even a member of the government) and SCIRI leader Abd-al-Aziz al-Hakim.⁵⁰ When the commission voted on the final version of the Constitution on August 28, all the Sunni representatives voted against it.

In a last-ditch effort to secure at least some organized Sunni support for the constitution, US Ambassador Khalilzad sought without success to convince the Kurds to weaken the constitution's provisions on federalism. Against firm Kurdish and Shiite opposition, the best he could do was negotiate the addition of language (Article 137) that would convene a panel "representative of the main components of Iraqi society" to draft amendments to the Constitution following the formation of the new government. These changes did generate some Sunni endorsements for the constitution.⁵¹ But far from

⁴⁹ Peter Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, (New York: Simon & Schuster, 2006), p.193-194; Woodward, *State of Denial*, p. 396.

⁵⁰ International Crisis Group, "Unmaking Iraq: A Constitutional Process Gone Awry," Middle East Briefing No. 19 (September 26, 2005), p. 5.

⁵¹ The Association of Muslim Scholars and the Iraqi National Dialogue Council rejected the constitution, as did all major insurgent groups, but the Iraqi Islamic Party and a handful of other politicians took the highly risky position of endorsing it.

guaranteeing that Sunni views would be represented, the power-sharing efforts of the US only underscored the majoritarian features of the decision-making process.⁵²

The al-Maliki Government, Reconciliation and Benchmarks

As we have seen, the changed rules for the December 2005 elections did not fundamentally alter the result, and the United States again faced the dilemma of a democratically-elected government that threatened to exclude the Sunni minority. Once again, the US undertook a vigorous diplomatic campaign to influence the shape of the new government, vetoing the nomination of the incumbent Ibrahim al-Jafaari to the prime ministership and forcing a “national unity” government on the UIA-Kurdish coalition. Yet the factions of the newly-reconfigured UIA coalition were less content than they had been under the Jaafari government to defer to the executive and the government thus had to accommodate not only the Kurdish parties—which proved critical for the negotiations on federalism we take up in the next section—but anti-quietist Islamist factions on the “right” and nationalists such as al-Sadr on the “left.”⁵³ As under the previous government, the allocation of cabinet posts to the Sunnis by no means guaranteed effective influence in decision-making.

In June 2006, the al-Maliki government announced a 24-point reconciliation plan that was a precursor to the subsequent elaboration of “benchmarks” but with predictable

⁵² The amendment process included in the final draft would pass through a committee that, while nominally “representative of the main components of Iraqi society,” would be appointed by the government. Its proposals would require approval—but only by a simple majority of the National Assembly—and have to pass in a referendum under the same rules governing the October Constitutional referendum.

⁵³ The components of the “second” UIA were SCIRI, the Badr Organization, the Da’wa Party, the Sadrists, the Fadhila Party and a group of independents. See Allawi, *Occupation of Iraq*, pp. 437-440.

differences in emphasis. First, while power-sharing approaches create formal checks on majority rule, the reconciliation plan was ad hoc and purely consultative in form. For example, the plan called for the formation of a National Council for the Reconciliation and National Dialogue Plan that would include wide societal representation. Yet the purpose of this body remained unclear, the first meeting was postponed until December 2006, and its very composition became a source of recrimination.⁵⁴

Second, it quickly became clear that the plan did not enjoy the support of the ruling coalition, and no sooner had it been unveiled than pressures from within UIA coalition forced backtracking on key provisions.⁵⁵ The revised version of the plan eliminated a distinction between "national resistance" forces and "terrorists" that would have expanded the scope for direct negotiations with the insurgents. Through mid-2007, no efforts had been taken to consider amnesty for insurgent activities or to institutionalize negotiations.⁵⁶

Two components of the reconciliation plan that related directly to power-sharing and the provision of assurances to minorities were the reversal of de-Baathification and addressing the problem of militias. The pledges to address de-Baathification were initially stripped out of the reconciliation plan following consultation within the UIA alliance. Under strong American pressure in the run-up to the mid-term elections in November, however, the government did finally announce the intention to forward a

⁵⁴ Sumedha Senanayake, "Iraq: Reconciliation Conference Fails To Deliver," Radio Free Europe/Radio Liberty (Wednesday, December 20, 2006), at <http://www.rferl.org/featuresarticle/2006/12/56190B66-CDEF-4B7A-AAA2-BE8D95433D93.html>.

⁵⁵ Rod Norland, "Olive Branch," *Newsweek*, June 26, 2006, at <http://www.msnbc.msn.com/id/13558539/site/newsweek/>.

⁵⁶ Lydia Khalil, "Divisions Within the Iraqi Insurgency," *Terrorism Monitor*, Vol. 5, No. 7 (April 12, 2007).

Reconciliation and Accountability Law to the legislature. The bill would reform the de-Baathification process by opening civil service jobs to a wider range of former Baathists, address the crucial financial issue of pensions for dismissed civil servants, and place a statute of limitations on lawsuits against former Baath party members.⁵⁷ In December, at the first reconciliation conference, the prime minister opened the door for former members of the military to join the new Iraqi army as well (albeit subject to military needs).

The political backlash against these efforts from Shia and Kurdish politicians proved swift and the head of the de-Baathification Commission, Ahmad Chalabi, mobilized Ayatollah Sistani against the effort as well.⁵⁸ At the time of the first review of the benchmarks in mid-2007, the Bush administration was forced to admit that little progress had been made in handling former Baathists and that none was likely in the medium-run. In any case, it is doubtful that the central government would be able to enforce the new law if passed because of the power UIA factions held over appointments at particular ministries and at the provincial and lower levels of government.

The problem of demobilizing militias in civil war settings is a classic collective action problem: parties to a conflict are unlikely to give up their arms unless there is a credible expectation that others will do so as well.⁵⁹ Yet the problem of militias in Iraq is particularly complicated because of charges that the Iraqi security forces cooperate with

⁵⁷ Sumedha Senanayake, "Iraq: Reinstating Ba'athists Expected to Help Reconciliation," Radio Free Europe/Radio Liberty (Friday, November 10, 2006), at <http://www.rferl.org/featuresarticle/2006/11/7A12B23A-35B8-46B7-9BEA-43BBE627AB17.html>.

⁵⁸ Damien Cave, "Iraqis Are Failing to Meet Benchmarks Set by U.S.," *New York Times*, Late Edition, East Coast (June 13, 2007), p. A1.

⁵⁹ Walter, "Civil War Settlement."

Shia militias directly or that militias have penetrated the security forces, police and other government paramilitary entities such as the Facilities Protection Services.⁶⁰ Promises to demobilize militias were among the provisions of the initial reconciliation plan that were quickly dropped following consultation with the UIA. Under pressure from the United States prior to the November 2006 elections, the al-Maliki government did take actions against certain units charged with particularly egregious abuses. However, American military commanders complained repeatedly that their ability to pursue militias was hamstrung by the government. Moreover, although the Council of Representatives allocated funds for a Disarmament, Demobilization and Reintegration program, and even solicited a UN team to advise on the process, the Bush administration's own July 2007 assessment concluded that the legislature "has not moved toward passage of legislation to establish a disarmament program, nor are senior Iraqi officials or political-party leaders focused on passing such a law".⁶¹ The reasons were fairly obvious: the al-Maliki government was dependent not only on SCIRI but on the Sadrists as well. Efforts to go after these groups risked defection, a threat the Sadrists carried out twice over the course of 2006-7 with devastating impact on the capacity to govern.

In sum, although the elections of December 2005 achieved the objective of a transition to democratic rule, they also put in place a coalition of Shiite and Kurdish parties that showed surprisingly little inclination to make concessions to the Sunni community. Despite efforts to forge power-sharing arrangements, decision-making

⁶⁰ Solomon Moore, "Police Abuses in Iraq Detailed," *Los Angeles Times* (July 9, 2006), p. A1.

⁶¹ "Initial Benchmark Assessment," July 12, 2007, p. 14.

processes in the cabinet, legislature and bodies such as the constitution drafting committee reflected majoritarian principles.

Federalism

Federalism, decentralization, devolution, grants of autonomy, agreements on revenue-sharing and even partition constitute an alternative, yet potentially complementary set of institutions for managing conflict in divided societies. Devolution and federalism permit groups that constitute minorities at the national level to nonetheless enjoy the benefits of majority rule in their locale, although subject to some constraints. As with power-sharing arrangements, these constraints vary in the extent to which they accommodate minority concerns. Some forms of decentralization are accompanied by strong checks on sub-national powers and ongoing central government control over resources. More decentralized federations, by contrast, grant substantial powers and revenues to sub-national jurisdictions.⁶²

What success have such arrangements had in managing conflict in divided societies? The literature on the stability of federal arrangements is decidedly mixed. Bermeo and Amoretti and Bermeo claim that federal states are more stable and less likely to experience rebellion.⁶³ There is also some empirical evidence that provisions for

⁶² These mechanisms include revenue-sharing arrangements that are locked in through super-majority provisions or that require provincial acquiescence. Federalism is also typically associated with bicameralism which can introduce further checks on majority rule while guaranteeing representation for provinces. It is noteworthy that the Iraqi constitution calls for a second house, but the provisions establishing the body were not actually included in the constitution and were to be worked out subsequently by the rival chamber. Through mid-2007, the upper house had not been established.

⁶³ Nancy Bermeo, "The Import of Institutions," *Journal of Democracy*, Vol. 13, No. 12

autonomy help to stabilize civil war settlements.⁶⁴ Using a hazard model, Hartzell, Hoddie, and Rothchild find that the presence of an autonomy provision in an agreement reduces the hazard of failure by 96 percent.⁶⁵ As a result, federalism and autonomy have appeared as an institutional component of negotiated settlements to insurgency violence and civil war in a number of countries, including Ethiopia, Sudan, and the Philippines.

On the other hand, there is also evidence of the fragility of federal arrangements in the developing and post-socialist world.⁶⁶ Once an ethnic group gains self-governance through federal arrangements, the federal bargain may no longer prove self-sustaining. Lake and Rothchild, for example, argue that attempts at “territorial decentralization” work in the short-run but break down when majority parties gain power at the center, once again making secession an attractive option.⁶⁷ Aleman and Treisman find that fiscal decentralization does not ameliorate these problems, pointing to the persistence of secessionist violence in India, Pakistan, Nigeria, and the former Yugoslavia.⁶⁸ As with

(April 2002), pp.96-110; and Ugo M. Amoretti and Nancy Bermeo, *Federalism and Territorial Cleavages*, (Baltimore, MD: Johns Hopkins University Press, 2004).

⁶⁴ Sisk, *Power Sharing*; and John Coakley, “Introduction: The Territorial Management of Ethnic Conflict,” in *The Territorial Management of Ethnic Conflict*, ed. John Coakley (London: Frank Cass, 1993).

⁶⁵ Caroline Hartzell, Matthew Hoddie, and Donald Rothchild, “Stabilizing the Peace After Civil War: An Investigation of Some Key Variables,” *International Organization*, Vol. 55, No. 1 (Winter 2001), pp.183-208.

⁶⁶ Valerie Bunce and Stephen Watts, “Managing Diversity and Sustaining Democracy in the Postcommunist World,” in Roeder and Rothchild; and Valerie Bunce, *Subversive Institutions: the Design and the Destruction of Socialism and the State* (New York: Cambridge University Press, 1999).

⁶⁷ David A. Lake and Donald Rothchild, “Territorial Decentralization and Civil War Settlements,” in Roeder and Rothchild, *Sustainable Peace*.

⁶⁸ Eduardo Alemán and Daniel Treisman, “Fiscal Politics in ‘Ethnically Mined,’ Developing, Federal States: Central Strategies and Secessionist Violence,” in Roeder and Rothchild, *Sustainable Peace*.

power-sharing arrangements, grants of autonomy in the supposed success cases such as Ethiopia, Sudan, and the Philippines have also proven fragile.

The debate over federalism and conflict is framed by the assumption that threatened minorities favor decentralization; the question is how to design federal arrangements that credibly protect minority interests while limiting incentives for secession. Yet in Iraq, the problem is quite different. Because of the fiscal structure of the Iraqi state and the geographical distribution of current oil production and known reserves, it is the Sunni who have opposed federalist arrangements. It is important to understand why.

The Iraqi economy has long been dependent on oil: 92.5 percent of total government revenues were generated by oil in 2005.⁶⁹ Provinces and lower levels of government are therefore ultimately dependent on oil revenues controlled by the central government and passed down in the form of direct spending or inter-governmental fiscal transfers. At the same time, however, both current production and reserves are geographically distributed in ways that would favor the Shiite and Kurdish regions of the country were they to gain direct control over them.⁷⁰

This combination of fiscal structure and the location of known reserves create a fundamental dilemma for the Sunnis. In a centralized system, they face the problems of majoritarianism that we outlined in the previous section: their permanent minority status

⁶⁹ International Monetary Fund, "Iraq: First and Second Reviews Under the Stand-By Arrangement," IMF Country Report No. 06/301 (Washington, DC: International Monetary Fund, 2006), p.15.

⁷⁰ Kamil al-Meheidi, "Geographical Distribution of Iraqi Oil Fields and its Relation with the New Constitution," Revenue Watch Institute, 2006 provides an excellent introduction to production and reserves. Any discovery of reserves, such as the discovery of oil in the Sunni-dominated province of Anbar, would affect the preferences of the major parties with respect to federalism.

makes it difficult to assure that revenues, spending and intergovernmental fiscal transfers will be allocated fairly. But if the system becomes more decentralized, production from new fields could fall under the control of provincial or regional governments with no obligation to share revenues with the rest of the country at all. Rather than equalizing revenue and spending, federal arrangements could produce growing inequalities across provinces and communities over time.

Conflicts over federalism would be difficult enough if they engaged only the Sunni and Shia communities. However, they have been severely complicated by the de facto independence enjoyed by the Kurds in the decade prior to the American invasion.⁷¹ With a high degree of autonomy as their reversion point—and with a strong preference for de jure as well as de facto independence—the Kurdish leadership has been able to exercise a powerful influence over all constitutional negotiations relating to federalism. However, the results have increased the anxiety of the Sunnis; many “benchmarks” were designed to mitigate these concerns about Iraqi federalism.

We begin with the effective assertion of Kurdish independence, early debates over Iraqi federalism, and the relevant provisions of the TAL and the 2005 constitution. We then turn to the stalled efforts to clarify these provisions through crucial “benchmarks” on regions, provincial elections and the oil and revenue-sharing law, concluding briefly with why partition is unlikely to constitute an alternative.

⁷¹ On the history of the Kurds and the Kurdish issue from different perspectives, see David McDowall, *A Modern History of the Kurds*, Third Edition (New York: I.B. Tauris, 2004); Faleh A. Jabar and Hosham Dawod, eds., *The Kurds: Nationalism and Politics* (London: Saqi, 2006); Kevin McKiernan, *The Kurds: A People in Search of their Homeland* (New York: St. Martins Press); and particularly Galbraith, *End of Iraq*, and Brendan O’Leary, John McGarry and Khaled Salih, eds, *The Future of Kurdistan in Iraq*, (Philadelphia: University of Pennsylvania Press, 2005); Galbraith, *End of Iraq*.

Prehistory: Early Debates on Federalism through the Constitution

Federalism figured as a prominent point of discussion among the exile opposition from the very first pre-war planning meetings in the fall of 2002.⁷² Although these discussions reflected a common aversion to the centralization of power, federal preoccupations had particular salience for the Kurds. The humanitarian response to the refugee crisis that followed the First Gulf War created an effective safe haven in the Kurdish regions, buttressed by the imposition of a military exclusion and no-fly zone north of the 36th parallel. Although the Kurds faced their own internecine conflicts and problems of power-sharing between the two dominant parties, Saddam never fully reasserted authority over the region.

Quickly aligning with the US invasion, the Kurds moved with alacrity to expand their autonomy. Iraqi intellectuals and the CPA expressed concerns that Kurdish demands threatened wider inter-communal conflicts, tensions with Turkey and Iran and even the break-up of the country.⁷³ In papers circulated in December 2003 and January 2004 in advance of the final negotiations over the TAL, Bremer proposed a non-ethnic conception of federalism based on the existing 18 Iraqi governorates. As O’Leary and Saligh note, the unstated implication was that Kurdistan “should accept its dissolution into the pre-existing governorates and bits of governorates that its territory encompassed.”⁷⁴ Such an arrangement not only failed to recognize Kurdistan as an entity

⁷² Phillips, *Losing Iraq*, pp. 51-54, 84-85.

⁷³ Makiya, Kanan, “A Model for Post-Saddam Iraq”; Bremer, *My Year in Iraq*, p. 269.

⁷⁴ O’Leary, Brendan and Khaled Salih, “The Denial, Resurrection, and Affirmation of Kurdistan,” in O’Leary, McGarry and Salih, *Future of Kurdistan in Iraq*, p. 30.

but was based on governorate boundaries that did not correspond to the territory then under the de facto control of the Kurdistan government.

The Kurds subsequently backed down from maximalist demands that would have granted them virtual independence under the TAL. But Article 53a of the TAL achieved a core objective from which other powers subsequently flowed: the Kurdistan Regional Government was recognized as the official government of the territories that it administered on 19 March 2003, and not only in the governorates of Dohuk, Arbil, and Sulaimaniya; but in Kirkuk, Diyala and Neneveh as well.

These Kurdish precedents not only directly influenced the subsequent constitution, but shaped the demands of the major Shia parties as well. Diamond notes how Kurdish autonomy influenced SCIRI proposals for a provision in the TAL (Article 53c) allowing the creation of new regions, which subsequently became a feature of the permanent constitution as well.⁷⁵ The TAL (and 2005 constitution) also recognized Kurdistan's right to control the police and internal security, severely complicating efforts to disband militias.

As Galbraith notes bluntly, "the Kurds never implemented the provisions of the TAL they did not like," and when it came to writing the final constitution they devised a strategy that would maximize their autonomy.⁷⁶ The Kurdish position was bolstered not only by the strong agenda-setting effects of existing regional institutions and the TAL but by a January referendum in which the region had voted overwhelmingly for outright independence. As Galbraith summarizes the grand bargain, "the Kurds got what they wanted with respect to federalism and the Shiites would get some of what they wanted on

⁷⁵ Diamond, *Squandered Victory*, p. 167.

⁷⁶ Galbraith, *End of Iraq*, p. 168.

Islam, women's issues and the role of the clergy, provided these provisions did not apply in Kurdistan."⁷⁷ US efforts to extract concessions to Sunni concerns were negotiated virtually up to the eve of the referendum,⁷⁸ but the draft on which Iraqis voted did not touch on the core provisions governing federal arrangements. Revisions or rectification of the unsettling aspects of the constitution were pushed off into a political future that would be shaped by the same political forces that produced the constitution in the first place.

The Constitution: Understanding Iraqi Federalism

As might be expected in the wake of such a tyrannical and centralized system under Saddam, both the CPA and the members of the constitution drafting committee were intent on limiting the power of the central government. The list of powers allocated exclusively to the federal level include most prominently foreign and national security policy, "formulating" fiscal, monetary and trade policy, drafting the general and investment budget and enforcing the common market (Article 110). A second class of responsibilities is shared between the federal and provincial or regional levels (Article 110): public services such as electric power, public health, education, and water. Rather than delineating the powers of the provinces and regions specifically, all powers not in the exclusive domain of the federal government are delegated; the governorates and prospective regions were the "residual claimants" of the new constitutional order.

Yet virtually all federal powers were potentially subject to provincial or regional veto, generating substantial uncertainty about the delineation of real authority in the

⁷⁷ Galbraith, *End of Iraq*, p. 198.

⁷⁸ For example, the constitution made the symbolic concession of noting explicitly that Iraq was a founding member of the Arab league and committed to its covenant (Article 3).

country. Article 111 specifically states that in cases of disputes between the center and provinces over shared powers, the priority goes to regional law. Article 117 permits sub-national governments the right to amend the application of national legislation within their regions in the case of conflicts.⁷⁹

As a concession to the existence of the Kurdish *peshmerga*, the constitution does not even establish the central government's monopoly on force. Although the Constitution stipulates that militias "outside the framework of the armed services" are forbidden, the regions are granted the power to maintain not only police but "security forces and guards of the region."

By far the most confusing elements of the Iraqi constitution have to do with the provisions governing inter-governmental fiscal relations. To begin with the revenue side of the ledger, there is some dispute over whether the central government even has the power to tax without provincial or regional consent. Brown argues that the power to tax is implied by any meaningful definition of "fiscal policy," which is allocated exclusively to the federal level.⁸⁰ But Galbraith reports with authority that this interpretation was not shared by the Kurdish leadership, which believed that since the power to tax is not explicitly mentioned it requires the assent of the regions.⁸¹

Given the reliance of the government on oil revenues, the provisions governing control over those revenues are pivotal in defining the fiscal structure of the new Iraq state. The confusion begins with Article 108, which states that "oil and gas are the

⁷⁹ Articles 118-119 outline, albeit in less detail, the independence of those governorates not incorporated into regions.

⁸⁰ Nathan Brown, "The Final Draft of the Iraqi Constitution: Analysis and Commentary," (Washington, DC: Carnegie Endowment for International Peace, 2005).

⁸¹ Galbraith, *End of Iraq*, p. 199

ownership of all the people of Iraq in all the regions and provinces.” This language could be read as asserting an underlying federal claim but might also justify regional ones. Regional claims are given further weight by Article 109, which requires sub-national units to coordinate with the central government regarding both old and new and old fields, but only requires that the revenues generated from existing fields be distributed nationally and the principles for doing so are vague. By implication, new fields are not constrained by these provisions and thus might be developed independently by the regions, which the Kurds quickly moved to do.

Provisions governing oil and revenue-sharing are further complicated by a provision of the Constitution that establishes independent commissions, including one that is granted authority over the distribution of revenues (Article 103). To be established by law, this commission would be comprised of “experts and representatives” from both the federal and regional level. Article 103 suggests that some share of revenues will be allocated to the regions “in accordance with fixed percentages,” implying a revenue sharing scheme. However, these constitutional arrangements do not fix revenue-sharing directly nor do they enshrine regional or communal representation or consensus decision-making procedures. The distribution of revenues is thus ultimately controlled by the majority bloc at the center.

In sum, the constitutional provisions concerning federalism in Iraq generated a high level of uncertainty. On the one hand, the constitution granted provinces and proposed regions extensive powers, including with respect to oil. On the other hand, central government mechanisms designed to check centrifugal tendencies in the system

and oversee revenue-sharing were ambiguous in their design and mandate and vulnerable to the same majoritarian tendencies visible in the political system as a whole.

Not surprisingly, the benchmarks articulated in the fall of 2006 included legislation designed to rectify these ambiguities, including through a general constitutional revision. By far the most significant of these benchmarks related to the formation of regions, the related question of the laws governing provincial elections, and the oil laws.

Rebalancing the Constitution: The Region and Oil Laws and Provincial Elections

As we saw in the previous section, constitutional revision was promised in 2005 to induce Sunni support for the Constitution and included as a component of the reconciliation plan offered by the al-Maliki government in July 2006. In November, the Council of Representatives agreed to create the 27-person committee, which held out the promise of providing a forum for negotiating Sunni concerns with respect to federalism. But the committee was dominated by the ruling parties and it was not clear what incentives they had to introduce major constitutional changes to a document they had just crafted and passed. Predictably, the committee missed deadlines, leaving major decisions regarding the future of Iraqi federalism to more discrete legislative initiatives.

The extreme uncertainty at the heart of Iraqi federalism is exemplified by the fact that the constitution allowed for the creation of new regional governments but did not provide clear guidance on how they would be formed; these details required implementing legislation in the form of a regions law.⁸² From the writing of the TAL, the

⁸² Reider Visser, “The Draft Law for the Formation of Regions: A Recipe for

SCIRI/SIIC fueled Sunni concerns over further decentralization, first by forcing through the constitutional provisions that allowed regions to form in the first place and then by outlining in more detail in August 2005 a proposal for the creation of a “super-region” that would combine nine Southern governorates. The new region would not only include oil-rich areas such as Basra and Maysan but would pose significant religious issues given the presence of Sunni minorities.

In the fall of 2006, Parliament approved legislation that outlined how regions could be formed, requiring that the new entities only garner support either from a third of the governing council in each province or one-tenth of voters in a referendum in order to be placed on the ballot. The region law postponed conflict over the issue by stipulating that no regional referenda can be entertained until 2008. Moreover, a coalition of support in favor of this sort of soft partition is by no means assured. For purely tactical reasons, the Kurds acceded to the legislation because it effectively endorsed their own autonomy ambitions.⁸³ But both Moqtada al-Sadr and factions within the Da’wa party drew substantial support from the oil-scarce regions around Baghdad and elsewhere in the South that might be excluded from the new region depending on precisely how it is defined. These intra-coalitional checks on SCIRI/SIIC ambitions could ultimately block the formation of a new Shia-dominated region, but through mid-2007 the law only shifted the threat of conflict over the issue into the future.⁸⁴

Permanent Instability in Iraq?” 2006, at <http://historiae.org/Aqalim.asp>.

⁸³ A law on regions also opens the Pandora’s Box of what to do with oil-rich Kirkuk, which may or may not become a part of Kurdistan if a constitutional referendum is brought to fruition by the end of 2007. We have already suggested the large potential for violence over the fate of Kirkuk.

⁸⁴ Visser, “Draft Law.”

A closely-related problem has to do with the provisions governing provincial and local political structures and processes. American policy toward local democracy was clearly divided.⁸⁵ Some democracy advocates argued strongly that these efforts were equally if not more important than rushing toward elections at the national level and US aid efforts had a strong local governance component as a result.⁸⁶ Nonetheless, the military and CPA explicitly vetoed a general policy of staging local elections in June 2003, largely because of fears that these bodies would be captured by interests inimical to the occupation.⁸⁷

The lack of a coherent strategy in political structures outside Baghdad and the extraordinarily thin administrative capabilities of the CPA resulted in a highly uneven and ad hoc process of provincial and local political development about which we still know surprisingly little.⁸⁸ Military and CPA authorities engaged in local power-sharing efforts, permitting elections in some areas but for the most part relying on appointed councils. With highly imperfect knowledge of local power structures, the same problems noted with national power-sharing were replayed at the local level. In some cases, military authorities inadvertently appointed former Baathists; in all cases, they necessarily favored some local factions over others. Those excluded from decision-

⁸⁵ International Crisis Group, *Iraq: Can Local Governance Save Central Government?* IGC Middle East Report No. 33, October 27, 2003; Eric Herring and Glen Rangwala, *Iraq in Fragments: the Occupation and its Legacy* (Ithaca, NY: Cornell University Press, 2006), pp.96-127; Diamond, *Squandered Victory*, pp. 115-117.

⁸⁶ Diamond, *Squandered Victory*, pp. 115-117, 198.

⁸⁷ . William Booth and Rajiv Chandrasekaran, "Occupation Forces Halt Elections Throughout Iraq," *Washington Post*, June 28, 2003, A20.

⁸⁸ Herring and Rangwala, *Iraq in Fragments* provide an excellent overview, but the best insights are local accounts such as Rory Stewart, *The Prince of the Marshes: and Other Occupational Hazards of a Year in Iraq*, (Orlando, Fla.: Harcourt, 2006) and Etherington, *Revolt on the Tigris*.

making (and the flow of grant money passing through provincial and district councils) increasingly viewed CPA-created structures as undemocratic and illegitimate.

Prior to the handover, the CPA issued an important order (CPA Order 71) that locked incumbent governorate and local structures into place until elections could be held.⁸⁹ When elections were held for provincial councils concurrently with the January 2005 elections, the Sunni boycott resulted in a replication of the problems of under-representation visible at the national level. For example, Sunnis did not control the governorate of Ninevah, in which they enjoyed a demographic majority, and did not even gain representation in some mixed provinces such as Diyala.⁹⁰ Rectifying these anomalies would seem of obvious importance for staunching the violence. Yet despite a promise by the al-Maliki government to hold provincial elections by the end of 2007, the government proved incapable or unwilling to pass new legislation to clarify provincial election procedures. In the interim, government structures in a number of locales effectively disintegrated, even in cities such as Basra in which sectarian violence did not represent the main cleavage.⁹¹

Uncertainty concerning intergovernmental fiscal relations paralleled uncertainty over regions and local political structures, of which the distribution of oil revenues constituted the central part. As the debate over revenue-sharing heated up in 2006, the Kurdistan Regional Government once again sought to lock in its autonomy by passing its own hydrocarbon law in late October, pre-empting legislation from Baghdad scheduled

⁸⁹ CPA Order 71 also granted substantial powers to the provinces to structure local politics as they deemed appropriate; the Constitutional provisions governing these questions were extraordinarily thin (Articles 118 and 121).

⁹⁰ Peter Galbraith, "Iraq: the Way to Go," *New York Review of Books*, August 16, 2007, p. 4.

⁹¹ International Crisis Group, "Where is Iraq Heading?"

for completion by December. The Kurdish law stipulated that revenues from future exploration would be distributed to the Kurdish region only, exactly the type of provision feared by oil-scarce portions of the country.⁹² The law also allowed for the signing of contracts with foreign firms, a process that was strongly opposed by nationalist politicians regardless of communal affiliation.

In February 2007, the Cabinet passed a general outline of a draft oil law that generated opposition from all sides. The draft contained provisions that mirrored some basic principles of power-sharing. It proposed a revenue law that tasked the Council of Ministers and Treasury with “fair and just” distribution of oil revenues, and the creation of an independent committee—the Federal Oil and Gas Council—to over-see the formation and maintenance of contracts.⁹³ However, the implications of the oil law are contingent on the ultimate shape that regions take. Moreover, the draft law allowed regional oil companies to develop in parallel to the national one, again a concession to facts on the ground in Kurdistan. Furthermore, while the Constitution stipulates that extant oil exploration is subject to at least some form of redistribution, disagreement continues over how revenues from future exploration will be parsed out. At the behest of the Kurds, the law allows regions to develop and sign their own contracts with foreign

⁹² Sumedha Senanayake, “Iraq: Kurdish Oil Law Poses Problem for Baghdad,” Radio Free Europe/Radio Liberty (New York: November 8, 2006), at <http://www.rferl.org/featuresarticle/2006/11/2c572f6a-4ab1-4986-9832-eabb726f3652.html>.

⁹³ The law also restructured the Iraqi National Oil Company, tasked with operating existing oil fields, although any oil company at the national level would be subject to appointment and oversight by the central government, making it subject to the same power-sharing dilemmas described above.

investors.⁹⁴ But the draft appeared to give the central government veto power over regional decisions, setting up future conflicts over the respective powers of the center and regions.

As predicted, Sunni politicians rejected the proposed legislation. Anti-federalist Shiites also strongly opposed the legislation, opening the possibility of a political coalition that could brake the trend toward more substantial devolution and thus appease Sunni concerns. But the Kurds began to express reservations following a proposed amendment that would cede greater control to the Iraqi National Oil company regarding oversight and control of fields, setting up the prospect of a constitutional showdown over federal powers as the Kurds pursued their own interests. As with other components of the federal bargain, it is hard to imagine any oil law that could simultaneously resolve the conflict between pro-federal Shiites like SCIRI/SIIC and anti-federal Shiites such as al-Sadr, appease Sunni concerns about exclusion, and grant the Kurdish regional government the level of autonomy that it not only desires but has already achieved. And even if such a bargain could be struck, it would be highly vulnerable to the credibility problems raised in the previous section.

As Peter Galbraith has argued most forcefully, Iraq is already effectively divided if not partitioned and it is time to recognize this fact; the Biden-Gelb plan and others have jumped on this bandwagon by calling for “soft partition.”⁹⁵ This approach includes ceding governance and security to three ethno-geographic regions, with Sunni and Shiite areas

⁹⁴ James Glanz,, “Draft Law Keeps Central Control over Oil in Iraq,” *New York Times* Late Edition (East Coast), January 20, 2006, pg. A 1.

⁹⁵ Edward P. Joseph and Michael E. O’Hanlon, “The Case for Soft Partition in Iraq,” Saban Center for Middle East Policy Analysis No. 12, (Washington, DC: Brookings, 2007).

following the model of the Kurds. Yet this proposed solution also suffers from the “engineer’s dilemma.” It is far from clear how these arrangements would arise in the absence of massive outside involvement, pressure and commitment. Soft partition would still require the parties to agree on borders, oil revenue sharing and a massive resettlement as well. Partition may appear an attractive end state, but as with other institutional fixes it does not enjoy majority support in the country outside of the Kurdish community and explicit consideration of it could easily intensify rather than reduce conflict.

Conclusion

Iraq is obviously a hard case, posing a number of challenges to any negotiated settlement. The barbarism in the country still had ample fuel in mid-2007, and it may simply require a prolonged period of fighting before fatigue sets in and the parties are induced to negotiate. Some sources of violence are only likely to be quelled through an effective counterinsurgency strategy. Radical *jihadists*, those committed to ethnic cleansing, criminal gangs and opportunists are not likely to change their behavior as a result of institutional fine-tuning negotiated among weak party leaders in Baghdad.

The hope for institutional solutions to the conflict in Iraq is not without theoretical foundation, however, and we have used the literature on power-sharing and federalism to frame our discussion. But institutions themselves are endogenous to the underlying distribution of capabilities and as a result reflected the interests of the dominant Kurdish-Shiite coalition. Even if institutional agreements included concessions to the Sunni community, they would not be credible in the absence of increased trust or a fundamental

change in political culture. Moreover, we have shown that constitutional engineering has had a number of unintended consequences in Iraq, for example, strengthening rather than weakening sectarian attachments.

If institutional solutions have proven disappointing, what options are available for quelling violence? It goes beyond our purpose—or abilities—to outline alternatives but in the remainder of the conclusion we can show how our consideration of institutions relates to other approaches.

One strategy, reflected in the Bush administration’s early 2007 surge, is to tackle the violence primarily through military means: to focus on the counterinsurgency in the hope that a reduction of the violence might provide the “breathing space” in which politicians could craft more enduring compromises. Through mid-2007, we found no evidence that such a strategy was working and in any case it cut against the core lessons of a vast literature on counterinsurgency showing that military efforts were unlikely to succeed in the absence of simultaneous progress on the political front.

A second possibility hinted in our discussion of federalism is that the problems we have identified are not immutable features of the Iraqi political landscape, but reflect the weakness—or stubbornness—of a particular political coalition. Violence could possibly be alleviated through a change in government. An alternative coalition might align the Kurds and moderate Shiites and Sunnis against the extremes. Again, however, such hopes for a “third way” suffer from the engineer’s dilemma we have highlighted throughout: there has to date been little evidence that such a coalition lies in waiting, nor is it clear how it might be built by outsiders.

A third possibility that takes the existing political line-up as given is to look for non- or extra-institutional means for reaching self-enforcing agreements. The South African case provides interesting parallels in this regard. Like Iraq, a democratic South Africa implied a completely reversal of the political order; blacks make up roughly 85 percent of the population and were unlikely to settle for political arrangements that did not reflect their dominant position. Whites had similar fears to those in the Sunni community. Not only did they face permanent exclusion from formal political decision-making, but their previous crimes under apartheid made them a target of retribution. Their significant property also constituted an appealing target for predation. But while blacks had the numbers, whites were well-armed and had assets that were important for the functioning of the South African economy. As a result, the black majority had incentives to allow whites to maintain many of the assets and economic assurances they enjoyed under apartheid. A “mutual hostages” bargain ensued under which both sides could credibly threaten costly defection and punishment were the other to do so.

The problem in Iraq is that the Sunni do not enjoy the economic assets of the whites in South Africa that would provide them leverage over Shia behavior. However, they are armed. In contrast to other civil war settings in which the disarming of the parties is a crucial objective, allowing some Sunni militias to remain armed may prove a risky, but necessary concession.

However, we are doubtful that any internal settlement in Iraq is likely to be self-enforcing; external actors will have to provide assurances.⁹⁶ This suspicion finds support

⁹⁶ Kaufmann, “Ethnic Civil Wars”; Walter “Civil War Settlement”; and Barbara F. Walter, *Committing to Peace: the Successful Settlement of Civil Wars*, (Princeton: Princeton Univ. Press, 2002).

in the civil war literature. Walter (1997) finds that in every case where a third party entered to serve as a guarantor of a treaty after warring parties settled, stability was maintained for at least a five year period.⁹⁷ Similarly, Hartzell finds that the probability that a negotiated settlement will prove stable increases by 21.8 percent with third party enforcement.⁹⁸

Who will provide such assurances? We are skeptical the United States can play this role in Iraq. The US is not viewed as an honest broker by any party and has faced--or created--difficulties when it has intervened to fine-tune the domestic political balance. At various points, the US has acquiesced in the exclusion of substantial portions of the Sunni community—both Baathist and Islamist—and then reversed itself by pressing for their inclusion. Moreover, the US does not have an infinite time horizon in which it can stake a commitment. By mid-2007 the majority in both public opinion and within Congress was in favor of de-escalation, redeployment, and/or outright withdrawal. These domestic political facts, along with the Administration's reluctance to make continued support conditional on political progress, created severe moral hazard problems with the al-Maliki government. As numerous critics pointed out, the administration's commitment to "stay the course" reduced US leverage over the implementation of the very benchmarks it deemed necessary for a stable political outcome.

The UN has proven successful at managing peace settlements in a number of cases,⁹⁹ but they are highly unlikely to play any more than a marginal role in a conflict of this magnitude. There is a role for multilateral diplomacy in restraining the conflict,

⁹⁷ Walter, "Civil War Settlement."

⁹⁸ Hartzell, "Negotiated Settlements."

⁹⁹ Michael W. Doyle and Nicolas Sambanis, *Making War and Building Peace: United Nations Peace Operation*, (Princeton, Princeton Univ. Press, 2006).

although it is different than that theorized by those arguing for third party enforcement of negotiated settlements. In internationalized civil wars, the credible commitment problems are not limited to the combatants but include the actions of competing outsiders.

Following the Baker-Hamilton recommendations, the necessary although not sufficient conditions for a settlement may lie in negotiating a “regime of restraint” on the part of Iraq’s neighbors—Syria, Iran, Turkey and Saudi Arabia—and on the part of the United States.¹⁰⁰ Such a “regime of restraint” takes us far beyond institutions and benchmarks. But as we have suggested throughout, its success would still depend on domestic political developments over which outside engineers have exerted surprisingly little direct control.

¹⁰⁰ Baker and Hamilton, *Iraq Study Group Report*.

Appendix Benchmarks Included in HR 2206

Following is the list of benchmarks included in HR 2206, Section 1314b (“Conditioning of Future United States Strategy in Iraq on the Iraqi Government's Record of Performance on Its Benchmarks.”). The legislation required reports on progress with respect to the benchmarks on July 15 and September 15, 2007. The legislation also required progress on each benchmark in order to expend economic support funds, but with a explicit waiver authority.

- (i) Forming a Constitutional Review Committee and then completing the constitutional review.
- (ii) Enacting and implementing legislation on de-Baathification.
- (iii) Enacting and implementing legislation to ensure the equitable distribution of hydrocarbon resources of the people of Iraq without regard to the sect or ethnicity of recipients, and enacting and implementing legislation to ensure that the energy resources of Iraq benefit Sunni Arabs, Shia Arabs, Kurds, and other Iraqi citizens in an equitable manner.
- (iv) Enacting and implementing legislation on procedures to form semi-autonomous regions.
- (v) Enacting and implementing legislation establishing an Independent High Electoral Commission, provincial elections law, provincial council authorities, and a date for provincial elections.
- (vi) Enacting and implementing legislation addressing amnesty.
- (vii) Enacting and implementing legislation establishing a strong militia disarmament program to ensure that such security forces are accountable only to the central government and loyal to the Constitution of Iraq.
- (viii) Establishing supporting political, media, economic, and services committees in support of the Baghdad Security Plan.
- (ix) Providing three trained and ready Iraqi brigades to support Baghdad operations.
- (x) Providing Iraqi commanders with all authorities to execute this plan and to make tactical and operational decisions, in consultation with U.S. commanders, without political intervention, to include the authority to pursue all extremists, including Sunni insurgents and Shiite militias.

- (xi) Ensuring that the Iraqi Security Forces are providing even handed enforcement of the law.
- (xii) Ensuring that, according to President Bush, Prime Minister Maliki said 'the Baghdad security plan will not provide a safe haven for any outlaws, regardless of [their] sectarian or political affiliation'.
- (xiii) Reducing the level of sectarian violence in Iraq and eliminating militia control of local security.
- (xiv) Establishing all of the planned joint security stations in neighborhoods across Baghdad.
- (xv) Increasing the number of Iraqi security forces units capable of operating independently.
- (xvi) Ensuring that the rights of minority political parties in the Iraqi legislature are protected.
- (xvii) Allocating and spending \$10 billion in Iraqi revenues for reconstruction projects, including delivery of essential services, on an equitable basis.
- (xviii) Ensuring that Iraq's political authorities are not undermining or making false accusations against members of the Iraqi Security Forces.