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Is Political Consensus Possible in Iraq?

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The U.S. project of political reconstruction in Iraq now relies on two elements. First, it seeks to build a national political consensus that attracts the support—or at least acquiescence—of all major Iraqi political forces. Second, the United States is working to build Iraqi security forces that are capable of assuming the task of defeating the insurgency. In short, the project aims to attract support for the political system in a way that deprives insurgents a constituency and renders them sufficiently isolated and weakened so an Iraqi government can manage the struggle against them.¹

The approval of the Iraqi constitution in the October 15 referendum² leaves a clumsy set of tools to help realize these political goals. They are wielded not directly by the United States but by a set of Iraqi political actors who have a different set of priorities. Most major political actors (although not all) very much wish to see the insurgency defeated. There are few principled objections to a consensual political process, but forging consensus is not as high a priority for most Iraqis as it is for the United States. The centerpiece of U.S. efforts to promote consensual politics—drafting a permanent constitution—may have aggravated the situation. Not only did the draft reflect the will of some parties at the expense of others, giving the winners a vested interest in resisting further change, but it also exposed the depth of the rifts through the lopsided (and almost exclusively ethnic and sectarian) voting trends in which Shii and Kurdish areas almost unanimously approved the draft while Sunni areas rejected it by overwhelming margins.

The problem is not the leaders themselves—indeed, in many cases they are far more conciliatory in their approach than are their constituencies. Kurdish leaders have pushed independence and self-determination far too gently for many residents of Iraqi Kurdistan; most Shii religious leaders have worked to calm their followers who feel victimized by the insurgency's brutal tactics; and even some Sunni leaders have tried to coax their constituency into a political process that offers them vague promises but no guarantees.

The divisions among Iraq's major communities are not based on petty rivalries but on deep divisions, legitimate grievances, and understandable concerns. Such divisions are hardly timeless—they have been years and decades, not centuries, in the making—but they are proving increasingly difficult to surmount. Indeed, a disinterested but sympathetic observer would have no trouble understanding not only the goals of the various parties but also the

reasons why these goals provoke mistrust among other Iraqis. Kurdish leaders wish to preserve autonomy because of a history of increasingly brutal repression by the central government; those who have resisted Kurdish autonomy have been demonstrably correct in the fear that it could lead to the unraveling of the Iraqi nation-state. Shii religious parties, long prevented from pursuing their goals by brutal repression, can now claim the legitimacy that comes from representing a large portion (close to a majority) of the Iraqi population. On the other hand, their opponents can fairly describe them as sectarian in outlook, enthusiastic in the use of patronage to staff ministries, and uninspired in performance in office. Arab Sunni political leaders complain that their followers have borne the brunt of de-Baathification and harsh anti-insurgency measures; they also can pose as the surest defenders of the unity of the Iraqi state. Although it is difficult to dispute these claims, it is also true that many of these same leaders have been slow and cagey in distancing themselves both from the Baath legacy and an insurgency given to grotesque and violent forms of resistance.

Given such deep divisions, it will be difficult to build a central government capable of defending itself through a consensual process. Iraq's new constitution provides four political fields for contesting—or agreeing on—the country's political structure: elections, constitutional revision, parliamentary legislation, and implementation of federalism. Each field presents a slim but real opportunity for more consensual politics to emerge. By providing fairly clear (and sometimes quick) indications of the direction of Iraqi politics, each field also can serve as a benchmark for determining the success of the search for consensus in Iraq.

Elections

Upcoming elections—and the immediate aftermath of those elections as a governing coalition is formed—will provide the first indication of whether a consensual approach is emerging.

Iraq's voters will return to the polls for the third time this year to elect a new parliament in December. The procedures for the elections have been designed by the current parliament, with implementation entrusted to the standing electoral commission.³ There will be some important procedural differences from the first parliamentary elections in January 2005. First, while the January elections treated the entire country as a single electoral district, the December elections will treat each province as a district. Two hundred-thirty parliamentary seats will be divided up among the provinces in accordance with their share of the national total of registered voters; these will be awarded to each party in accordance with its share of the provincial vote. Forty-five additional seats will be allocated at the national level. Second, because they cannot be viewed as residents of a specific province, the votes of overseas Iraqis will be counted for the national seats only.

These changes in the electoral rules will likely have modest effects on electoral outcomes—although with the current parliament characterized by the slimmest of majorities for a single coalition, such modest effects might be significant. The major difference will be that provinces whose voters turn out at higher rates will no longer be rewarded. Thus, the chief beneficiaries of the new rules will be the Sunni-dominated provinces of the center that produced few voters in January.

But the configuration of parties entering the December elections is probably a more significant indicator than any legal changes. Here the signs are mildly worrying: Iraqi voters will be faced with choices that are primarily sectarian and ethnic in nature. The three most significant coalitions have been slightly reshaped for the December elections. The majority

United Iraqi Alliance will likely still be based on its core alliance between two Shia religious parties (SCIRI and al-Da'wa). It will lose some smaller partners but gain a very significant one: the Sadrist movement, a loosely organized but potentially significant addition (some Sadrists did participate in the January 2005 elections, but the movement did not attempt to act as a unified whole). The decision to join the coalition has already provoked some controversy within the movement, and it is not yet clear whether it will be an effective participant. The second largest coalition in parliament, an alliance between the two major Kurdish political parties, will also return largely intact. The Iraqi List—a gathering of largely secular and nationalist forces—has augmented its membership, although this may be more than offset by the loss of the advantage of incumbency and the very serious corruption charges lodged against some leading members. These three groupings may be joined by some new participants. Many of the Sunni parties that boycotted the January elections now seek to participate. Indeed, some Sunni leaders always regarded the coming parliamentary elections as far more important than a constitutional referendum they were resigned to losing. They will present a far less coherent front than the Shia and Kurdish parties, and their ability to turn supporters out at the polls is largely unknown.

The new electoral alliances could lead to many possible outcomes, but it seems quite likely that the Shia religious list will be able to mobilize most of its supporters again and return to the position of the largest bloc in parliament. Its poor policy performance since its election triumph in January 2005 might lead some of its followers to turn away and others to stay home—perhaps depriving it of its absolute majority—but most of its support is based on sectarian affiliation and thus may be quite forgiving. The Kurdish alliance—despite a history of strong rivalry between the two major parties—has now proven its ability to draw its supporters to the polls both in the January parliamentary elections and the constitutional referendum.

The constitution grants the first opportunity to form a cabinet to the candidate of the largest parliamentary bloc. Should the United Iraqi Alliance return to that position, it will have to designate its candidate for the position of prime minister; that leader will then have to work to form a governing coalition. This will be the first opportunity for more consensual politics, and it may be persuaded (perhaps by the United States government) to cast the net as widely as possible in searching for partners. Forming such an inclusive coalition will have some costs: it will likely take time (and the constitution allows only thirty days before a new candidate must be given the opportunity to form a cabinet) and, if successful, it may make for an unwieldy cabinet and a docile parliament without a viable opposition. Furthermore, a broad-based cabinet is hardly a guarantee of consensual politics; it may simply replicate the divisions in the broader society without resolving them. But if a narrower coalition is preferred, the goal of assuring various parties that they all have a role in the emerging Iraqi political order may be undermined.

Constitutional Revision

Constitutional revision may provide the second opportunity to reconstruct Iraq in a less conflictual manner. As part of a last-minute package of concessions, Arab Sunnis were promised the formation of a commission to suggest a package of constitutional amendments.

Although this will give an opportunity for tinkering with the constitutional text, it is very hard to imagine that the political forces behind the constitution will agree to significant revisions. Indeed, the revision process was crafted to ensure that most major parties will have a veto over any changes. The revisions are to be drafted by a commission consisting

solely of parliamentarians, so that only those who participate in the December parliamentary elections will earn a seat at the table. An absolute majority of parliamentarians must then endorse the changes as a package; the amendments will then be submitted to a national referendum that will operate according to the same rules as the constitutional referendum (with the possibility of veto by three provinces).

Any constitutional revision will thus require an agreement among all political forces. It is difficult to see why political actors anxious to use the privileges granted to them by the newly approved constitution will surrender any of them. The committee might be able to tweak some of the wording on the constitution in order to assuage some of the symbolic concerns of the constitution's opponents, but it is unlikely to achieve far-reaching structural changes.

Parliamentary Legislation

The new parliament will provide a similar opportunity for more consensual politics, although the experience of the current parliament suggests that any efforts at forging a common understanding of how to construct Iraqi political institutions will be reached outside of parliament and presented to the legislative body only for ratification.

The Iraqi constitution awards the parliament a tremendous amount of latent authority. This is obviously true in the sense that it establishes a parliamentary system in which most executive authority is entrusted to a cabinet that is politically responsible to the parliament. The constitution also allows the parliament significant leeway in another respect: many of its provisions are hollow, establishing only the vaguest principles and structures and leaving all the details to legislation. Although it is not unusual for a constitutional document to concentrate on general principles, the Iraqi document is extreme in allowing the parliament to determine the shape even of fundamental governmental structures (the Supreme Federal Court, independent commissions, the parliament's own upper house) with little guidance. The same is true with most rights and freedoms. The meaning of the constitution will not become clear until the relevant legislation is written.

The country's new leadership will therefore face the same difficult choice regarding fundamental legislation as it will with formation of the cabinet: will a narrow parliamentary majority suffice to approve basic laws, or will there be an attempt to write and enact legislation in a more consensual manner? With few exceptions (such as the law establishing the country's Supreme Federal Court), an ordinary majority is sufficient for writing laws, meaning that a narrow coalition could force through a wide variety of laws that would determine how the fundamental structures are built.

On many issues, the parliament can proceed slowly (and probably will). There are existing laws that—however much they may need to be reviewed and revised—can govern most areas on an extended provisional basis. But in one area the parliament may face an immediate test: security. UN Security Council Resolution 1546 authorizes the presence of the multinational forces only until the transitional process is completed. When the new parliament meets and approves a cabinet, therefore, the international legal basis for the U.S. and British presence in Iraq will end.⁴ It is also legally arguable (if not politically realistic) to claim that U.S. and British forces will have to operate within the bounds of Iraqi law and courts (which they are currently able to avoid⁵) until some exemption is negotiated by the new Iraqi government. Although short-term legal artifices will undoubtedly be found to justify the continued presence of foreign troops (as well as their authority to ignore Iraqi legal and constitutional safeguards, such as those limiting search and seizure), it will be far more difficult to arrange a permanent agreement. Indeed, the one time the existing Iraqi

parliament showed some backbone was precisely over the issue of the extension of the authorization of foreign forces—a move taken by the Iraqi government without consulting the parliament (deputies discovered the action by reading news accounts of a speech given by the Iraqi foreign minister to the UN Security Council). Protesting that only the parliament could authorize an international agreement, some parliamentarians forced an angry debate over the issue before allowing themselves to be mollified by the appointment of a committee that would explore ways to end the dependence on foreign forces. Any post-election Iraqi government is likely to realize how thoroughly its own security depends on the presence of foreign forces, but it may also come under pressure if Sadrists and Arab Sunni parties take a serious role in parliamentary debates on the issue.

The path for negotiating a security agreement is clear but tortuous. First, Article 60 of the constitution requires that the parliament approve a law governing the ratification of international treaties. Second (or perhaps concurrently), an agreement—presumably a “Status of Force Agreement” governing the legal status of U.S. troops in Iraq—must be negotiated with the government.⁶ Third, that agreement has to be submitted to the parliamentary-approved ratification procedures. Even an obedient parliament may not be a speedy one, and there is a considerable likelihood that the process could drag out for many months.

Implementation of Federalism

The Iraqi constitution creates a loose federal structure that verges on a confederation (in which constituent elements retain more attributes of sovereignty) and it has the potential to be pushed even further in a confederal direction. But if it is clear that the emerging Iraqi political order will be far less centralized than in the past, far less apparent is the extent of decentralization and—more important—the amount of conflict generated by the process of forming strong regional governments.

There is every reason to believe that Iraqi Kurdistan will move quickly to use any constitutional tools it has to establish as much autonomy as possible. And there is also significant support for a strong and large southern region. Resentment on the part of predominantly Shii southerners that they have been neglected, political chaos at the center, and the strength of some Shii religious movements have led to an increasing interest in a southern region over the past year and a half. The public enthusiasm of national political leaders—even those representing Shii religious parties—for the idea was contained until late in the constitutional drafting process when some leaders (most notably the head of SCIRI, Abd al-Aziz al-Hakim) endorsed the project in an ambitious form. It suddenly became clear that the southern region would potentially include half the country and perhaps be almost as anxious to assert its autonomy as Iraqi Kurdistan. The balance among Shii religious parties will determine how and when a southern region is pursued. The parties are divided at present with SCIRI supporting regionalism and the Sadrists (who may or may not take a leading role) being far more protective of the central government. Thus a southern region seems likely, although even if it is formed, its borders and the extent of autonomy it desires still need to be determined.

As with security, defining federalism will force in itself on the political agenda quickly—not only because some parties may push the issue, but also because Article 117 of the constitution promises parliamentary legislation that specifies procedures for forming new regions within six months of the first session. But it is hardly the parliament that will determine the extent and nature of decentralization. Under the new constitution, most of the initiative for forming regions lies with the people and governments of the various

provinces—and in January 2005, southern provinces elected many leaders who are very interested in a strong and large southern region. Whatever the shape of the parliament elected in December 2005, it is very likely that it will face provincial leaders who are interested in pursuing autonomy fairly soon.

But if the decentralizing tendencies are strong, the extent of conflict they will cause is less apparent. Most conflicts over federalism pit a central government against the constituent units. In the Iraqi case, it is not yet clear how jealously the center will protect its prerogatives. Should a coalition of decentralizing Shi'ite and Kurdish leaders dominate the cabinet and parliamentary leadership, Iraq's government might see its task as facilitating decentralization rather than resisting it. But if the central government does indeed seek to rein in decentralizing tendencies, the potential for conflict is quite real. Although the jurisdiction of the central government under the new constitution is limited, existing Iraqi laws and institutions, to the extent that they survive, are highly centralized (outside of Iraqi Kurdistan).

In addition, moves toward autonomy in both the north and the south have separate but quite threatening potential for generation of conflict. In the north, the existence of the Kurdish region is accepted by most political actors but its borders are not. The Transitional Administrative Law promised that some mechanisms would be developed to redress population movements forced by the deposed Baathist regime and offered the possibility of redrawing provincial boundaries. Those mechanisms remained unused, leaving the new constitution to reaffirm them and promise their implementation by the end of 2007. It is not clear if these untested procedures can resolve disputes over borders (and population movements) without significant conflict.

In the south, the formation of a southern region might be conflictual in a different sense: an attempt to pursue a strong and large southern region might be taken by many Arab Sunnis, as well as some secularists and nationalists, as a step toward effective partition of the country. In some respects, such a move might be seen as an effect of a bloody insurgency that has heightened sectarian tensions and made the prospect of exercising authority from Baghdad less attractive. Formation of a southern region might not only be an effect but a cause of conflict: it could lead to more entrenched insurgency fighting not only to end occupation but also to reverse the dissolution of the country.

In both the north and the south, Arab Sunnis will likely regard each step toward decentralization as a move toward dissolution (although resistance to Kurdish autonomy has diminished) and will likely resist with all tools at their disposal. Few of those tools are legal and constitutional in nature.

Thus, using the design of Iraqi federalism as an opportunity for building national consensus will be difficult, but not impossible. If the enthusiasts of a southern region can be induced to move slowly and perhaps restrict their geographic scope, if the parliament writes laws governing the formation of regions and the division of oil revenues that preserve some prerogatives of the central government, and if the procedures for demarcating the Kurdish region and settling the dispute over Kirkuk can be carefully negotiated and implemented, then full-fledged intercommunal warfare may be avoided.

Consensus or Conflict?

Elections, constitutional revision, parliamentary legislation, and implementation of federalism thus present as many opportunities for conflict as they do for cooperation. In other circumstances, these struggles might be regarded as healthy political competition, and

even in Iraq the possibility of open jockeying over such weighty issues can still seem a welcome contrast to the extraordinarily oppressive political system of Baathist Iraq. But the messiness of freedom presents special challenges for the U.S. strategy. By seeking to extricate itself through a combination of political reconstruction and military pacification, the United States has found itself striving to promote consensus far more than structured competition.

The promulgation of the new constitution is unlikely to make it any easier to foster consensual politics. The October 15 referendum granted the constitution legitimacy in the minds of its authors but will hardly silence its opponents. Constitutions often gain legitimacy when their tools are wrested from the hands of those who forged them. When Socialists triumphed in fifth-republic France, the Wafd won elections under Egypt's 1923 constitution, and anti-Federalists came to power in the early American Republic, the critics of those countries' constitutional systems came to appreciate the documents' virtues. There is little chance that the opponents of Iraq's 2005 constitution will find themselves in a similar position, at least in the foreseeable future. The constitution will likely remain primarily the instrument of those who wrote it.

Although the constitution itself does little to support the U.S. effort to forge consensus, by establishing the foundation for elections, amendments, legislation, and federalism, it sets out a clear agenda for future work toward that end. The United States is not completely alone in its efforts. Iraq's Shii religious leadership has slowed the rhetorical escalation of many political leaders; they have been joined by some other politicians who have presented their positions in terms less likely to alienate opponents.

In recent days, the United States has been assisted by more than good manners: a surprising external actor has entered who will work to pursue national reconciliation. Arab League Secretary-General Amr Moussa traveled to Iraq to gain support for his organization's national reconciliation conference. The Arab League is an unlikely actor for such a task. A mere two months ago, the draft constitution led to talk of suspending Iraq from the Arab League, and Moussa himself was hardly welcomed by all Iraqi political forces. An advance team came under murderous assault (and two of its escorts were killed), and some Iraqis objected very strenuously to his visit, especially after rumors spread that he would be meeting with deposed president Saddam Hussein. When Moussa arrived, he followed a less pugnacious itinerary, meeting with Grand Ayatollah Ali al-Sistani and addressing the Kurdish parliament (offering its delegates vague but very reassuring words about accepting the "new Iraq").

Although international support might aid the U.S. effort, no external actor—including, of course, the U.S. government itself—can enter the Iraqi political scene without being encumbered by very weighty historical baggage. It is difficult to predict success for the U.S. project of building a national consensus. Each field will present easily identifiable benchmarks of progress (or regression) far more indicative of real change than the artificial deadlines regarding elections and constitution drafting so frequently touted by U.S. officials:

- **Elections.** Just as important as turnout—the indicator most frequently cited for electoral success—is the nature of coalition building afterward.⁷ A narrow coalition will necessarily exclude many; what it would likely gain in efficiency might easily be lost in its likely pursuit of a more particularistic agenda. A broad coalition might facilitate the sort of bargaining among elites that the United States has come to depend upon.

- **Constitutional revision.** It is unrealistic to expect fundamental changes in the constitution, but a process in which dissidents are offered some symbolic concessions and perhaps even some real ones (most significantly, limiting the size of regions or postponing their formation) will determine whether the constitutional revision process will be seen as a genuine attempt to meet Arab Sunni objections.
- **Legislation.** If the many gaps in the constitutional text are filled through negotiation among all factions rather than pushed through by a narrow parliamentary majority, the opportunity for consensual drafting that was lost in the constitutional process might be recovered.
- **Federalism.** If leaders of a potential southern region react favorably to counsels of patience, and national and local leaders work cooperatively on Kirkuk and provincial boundaries in the north, a clear consensual process will have been achieved.

This set of benchmarks is in one sense modest—it rests on bending but not arresting political trends already very much in evidence. Achieving these goals will not be easy in practice. Ultimately the United States will be forced to rely on a group of Iraqi political leaders who may be far more interested in pursuing their long suppressed agendas rather than forging a cumbersome—and, in the eyes of some, chimerical—national consensus. ■

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¹ This set of goals scales back earlier ambitions. Rather than build a full-fledged democratic system, the United States now endorses a modest pact among political elites (perhaps a facilitating condition for democracy—and certainly a sensible step—but hardly sufficient to realize liberal democracy in itself). The U.S. seeks not military victory but only—according to Secretary of State Condoleezza Rice’s October 19 Senate testimony—to “break the back of the insurgency so that Iraqis can finish it off without large-scale U.S. military help.” This stated goal might inspire cynicism not only because of its vagueness but also because it comes one year after the commander of the U.S. Marine force in Iraq stated that “we feel right now that we have broken the back of the insurgency.”

² The succession of “final” and even “final, final” constitutional drafts produced between August and October led to considerable confusion over the precise content of the document that voters approved. Indeed, the version circulated to Iraqi voters by the United Nations Assistance Mission in Iraq as well as those posted by the *New York Times* and the Iraqi Electoral Commission were in fact not the “ultimate” draft—that is, the version that will go into effect. An Arabic version of ultimate draft is available at www.niqash.org/intern/getBin.php?id=259. I am not aware of any publicly available English

translation of this document currently posed on any website, but those interested in a comprehensive account of changes between the final, final draft and the ultimate draft can find them at www.almendhar.com/english_23/specialnews.aspx.

³ An English translation of the electoral law is available at www.ieciraq.org/final%20cand/Elections%20Law%20-%20English.pdf.

⁴ The post-election parliament may be granted a little breathing room if the UN Security Council authorizes an extension of the presence of coalition forces before the end of the transition process. Indeed, on October 31, 2005, the Iraqi prime minister did submit a request. The action attracted virtually no attention in Iraq, but international news accounts suggested that the Iraqi government requested an extension through 2006 (revocable by the Iraqi government at any time). This would grant the postelection parliament and cabinet a year to decide how to handle the issue.

⁵ Under an order issued by Paul Bremer, who claimed legislative powers as head of the Coalition Provisional Authority (CPA), coalition forces and contractors are not subject to the Iraqi legal process in carrying out their official duties (see CPA Order 17, www.iraqcoalition.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_w_ith_Annex_A.pdf). U.S. and British forces have made full use of this exemption, searching and detaining Iraqis without court orders. The Transitional Administrative Law—the country’s interim constitution—affirmed the continuing validity of CPA Orders. But the permanent constitution repeals almost all provisions of the interim constitution. One could thus argue that CPA Orders lose legal effectiveness when the constitution comes into force. However, it seems far more likely that such Orders will be treated as valid until specifically repealed, since this would avoid both a legal vacuum and some politically embarrassing situations.

⁶ I discussed some of the religious and political sensitivities regarding such an agreement in “Debating Islam in Post-Baathist Iraq,” Carnegie Endowment Policy Outlook, March 2005, available at www.carnegieendowment.org/files/PO13.Brown.FINAL2.pdf.

⁷ The U.S. emphasis on turnout—especially among the Arab Sunni population is understandable but a little odd in light of the frequency that U.S. officials so often reach for very strained comparisons with their own constitutional history. High turnout in southern states in the presidential election in 1860 hardly prevented the U.S. Civil War.