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# **The Iraqi Federation: Origin, Operation and Significance**

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PhD thesis in International Relations

School of Politics and International Relations  
University of Kent

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2014

## Abstract

The study is about federalism in Iraq. It examines Iraq as a federation not just as a post-conflict state, as much of the existing literature does. The thesis investigates the origin and formation of the Iraqi federation, as one of the new federal models, and analyses how the process of formation impacts on the operation of the Iraqi federal system. It argues that both the process of formation of the federal state and its operation are of crucial theoretical and empirical significance. The originality of this thesis lies in the fact that it is the first study to link this new federal model to classic federal theory as regards the origins and formation of federations, focusing on the new approach in the formation of federations and the deficiency of classic federal theory in general to explain the origins and formation of the new federal models of which Iraq is the most recent. This thesis considers the different approaches that have been taken by various theorists in the past and in particular bargain theory as put forward by William H. Riker. I argue that although in some respects Riker's bargain theory can be applied to the formation of the Iraqi federation, in others it is deficient to explain it completely. New literature designed to expose the need to revise the classic federal theory, and the bargain theory in light of formation of the new federal models has only just begun to emerge. Therefore, this thesis contributes to the scholarship by updating and refining classic federal theory in general and the bargain theory in particular. Moreover, by drawing on elite interviews with contemporary political players in Iraq this thesis adds to our understanding of how one of the newest federal states operates in a practical sense. It concludes by looking at the empirical significance of the Iraqi federal model in the context of some comparative perspectives.

## **Acknowledgments**

As an Iraqi citizen anxious about how to find a better future for Iraqi children and how I can assist in healing the wounds of my homeland, my concerns have focused mainly on political science as the most important approach that could find answers to my questions. From this standpoint, the creation of a federal system in Iraq in 2005 raised many questions for me about this new political system and its long-term survival. Federalism is a new beginning for Iraq; it is a deviation from its past, which has been characterised by authoritarian government, brutality and war, therefore, there is a need to utilize this form of new political experiment. Bearing these ideas in mind, I started to examine this new political experiment.

As a child of war, a teenager of war and a youth and a mother of war, my concern was how to live peacefully and how to build a stable and prosperous Iraq. Therefore, I have spent the last twenty years focusing on studying politics with the aim of finding answers to Iraq's problem. In 2005, when Iraq became officially federal, my earlier concerns led me to explore federalism because of the hope that it would build a stable prosperous Iraq. If there is any other purpose beyond a concern about politics and Iraq that drives this thesis, it is to demonstrate to myself and Iraqis that our grave miseries should not prevent us from dreaming of a better future. Life continues and it is up to us how it continues.

I owe a special debt to my mother who decided to change her life in order to support me in my study. Special appreciation and thanks are due to my first supervisor Professor Michael Burgess with whom I have discovered federalism and recognised its uniqueness. I have learned so much with him and it has been an honour for me to be his student. I would like also to thank my second supervisor Dr. Ersun Kurtulus for his perceptive insights and suggestions as to how to enrich this thesis. Among the other people that I would like to thank for their great support and help are Dr. Louise Askew and her husband Dr. Russell Whiting who were the first people knocking on my door and welcoming me in Southwick and who did a lot in supporting me in finishing this thesis. Deep gratitude also goes to Professor Mustafa Al-Hiti and my

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This thesis is dedicated to my own children and all Iraqi children in the hope that they will live in a stable democratic Iraq and in better circumstances than my generation has.

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## **Introduction to the Thesis**

### **The Thesis**

This thesis is about why and how Iraq became a federal state. The process of the establishment of a federal Iraq must be understood in the context of its unique history and cultural specificity, as well as in the context of the new federal models that have appeared since the end of the Cold War. These new federations include Belgium, the Russian Federation, Ethiopia, Bosnia and Herzegovina and Nigeria. Each federation emerges from a unique set of internal and external circumstances and consequently needs a specific approach to understanding the preconditions that contributed to their formation. It is important to study Iraq because it is the most recent in the last wave of federations and also has a geo-strategic significance in one of the most important regions, the Middle East. It is therefore crucial to investigate this unprecedented experiment in this region. This thesis is about Iraq in the context of classic federal theory.

The main objective of the work is to investigate the origin, operation and significance of the Iraqi federation from the standpoint of classic federal theory and practice. It seeks to explore why and how Iraq became federal in the light of the classic explanation. The thesis is, therefore, designed to explain the historical context in which the federal idea emerged and the justification for formally adopting a federation in 2005 before moving on to examine its constitutional and institutional architecture, its practical operation and its contemporary significance. In recent years the introduction of liberal democratic processes has witnessed parliamentary elections that have been free and fair, according to a secret ballot, based upon distinct political choice via a competitive party system deemed consistent with Western norms and practices and designed to work as effectively as possible in extremely difficult domestic circumstances.

These first steps in building effective constitutional and political processes and procedures to establish a viable state and political system have occurred in a

complex contemporary context. The thesis addresses this context and locates the origins and examines the formation of the Iraqi federation by linking classic federal theory to the socio-economic, political and military realities of twenty-first century Iraq. By examining the classic federal theory factors of the origin and formation of federations, the thesis posits that these factors or preconditions are both flawed and outdated and consequently there is a need to update classic federal theory in the light of new international development in order to explain the new federal models. Building on this foundation, the thesis goes on to examine what is “new” in the new federal models by examining the novel factors of the Iraqi federation as preconditions arising out of and specific to Iraq’s post-conflict circumstances. Without any doubt, these novel preconditions have theoretical implications for the formation of the new federal models identified above and for future experiments in federal state building. Investigating the origins and formation of the Iraqi federation indicates that the formation of the Iraqi federation was the result of a political bargain among the Kurds and the Shiaa on one side and the Americans on the other. This verifies William Riker’s theory of the formation of federations but at the same time demonstrates its weakness which is also the weakness of classic federal theory. In fact, the title of this thesis derives from William Riker’s classic book titled “*Federalism: Origin, Operation, Significance*” published in 1964 because on the one hand it corresponds with the aim of this thesis and on the other, it relates to the main argument that this thesis intends to develop about the novelty of the Iraqi federation and the deficiency of classic federal theory to explain it. Following Riker, this thesis covers the three subjects of the origin, operation and significance of the Iraqi federation. His construction of the “federal bargain theory” and how it is embedded in Iraq’s new political process is examined through the reconstruction process and the constitutional and institutional architecture of the Iraqi federation. To conclude there will be an overall assessment of Iraq’s evolution as a federation and some reflections on its theoretical and empirical significance.

The theoretical framework for this research is provided by the current classic federal theory which is considered in the first part of this study. An analysis of the standard explanations for the construction of the classic federations, such as the United States, Canada and Australia, exposes its various strengths and weaknesses in explaining the “formation” of the new federations. However, classic federal theory

cannot be totally disregarded when trying to explain the “origins” of the Iraqi federation; rather this study seeks to build upon it in order to add to our understanding of the origins of contemporary federations. Consequently, through an investigation of the novel origins and operation of the Iraqi federation and its subsequent significance, the thesis develops a new theoretical framework of how we should understand federalism.

Given that, the originality of this research can be defined in theoretical terms, as well as in its empirical focus. In theoretical terms, it is the first doctoral study that underlines the inadequacy of classic federal theory to explain the new federal models that arose after the end of the Cold War and the need to update it. Crucially, the Iraqi case study highlights the existence of novel factors which contributed to the creation of a federal state and which can form the basis for the construction of a new theoretical framework. Furthermore, in empirical terms, this research is the first study that examines the Iraqi federation as a federation and not just as a post-conflict state, as much of the existing literature does, and links it to current federal theory. There is little in the literature that explains the Iraqi federation and there is no literature at all that investigates it in the light of federal theory.

## **Methodology**

We have noted already the main objective of the thesis and the argument that this research is intended to develop. Consequently, this section will address some methodological concerns that surround it. In the first place we can see that it is a research project based upon a single case study of federal state formation and its subsequent operation. This predisposes us toward an investigation that is both theoretical and empirical in nature and content. Consequently, the first part of this research that deals with the “origins and formation” of the federation in Iraq is both historical and theoretical being driven by the principal aim to explain, justify and understand why federalism was adopted. However, it also explains how federalism emerged in Iraq from factors that were mainly specific to this country and therefore cannot be adequately explained by classic federal theory. Consequently, conceptual

and theoretical analysis is fused with historical interpretation to produce what is essentially a qualitative detailed analytical and investigative survey.

The second part of the thesis that deals with the “operation” of the Iraqi federation by investigating the constitutional and institutional architecture of the Iraqi state involves a qualitative methodology, but it will be enriched by empirical evidence based mainly upon selected elite interviews and official documentation in Arabic. This means that the federal political system in practice in Iraq (as well as its normative basis) will be the object of the thesis. But it also raises the question of how far the case study of Iraq can help us to understand similar phenomena in other countries like Bosnia – Herzegovina, for example. We have already referred to Iraq above as one example of the new federal models and it will therefore be necessary to incorporate some relevant comparative observations and reflections in the survey. Indeed, the case of Bosnia – Herzegovina is probably the closest match to Iraq in terms of the role of the international community, especially the US, in establishing a federal political system. This research will be a combination of methodological approaches, including historical contextual interpretation, conceptual and theoretical analysis, elite interviews and constitutional and political analysis. Despite my own upbringing in Iraq combined with the practical experience of living in the UK, I did my best to be objective in my analysis and in the interviews that I arranged in Jordan and Baghdad in July and August 2012 with Iraqi politicians from the different Iraqi groups. The interviewees provided me with crucial information about the federal bargain and the formation of the federation and its operation and also gave me their assessment of the whole federal experience. The interviews effectively provide valuable empirical evidence that supports my assertions and understanding in putting the thesis in its final form. Consequently, sources for this research range from the existing literature on federalism and Iraq, official documents in Arabic to the elite interviews.

Turning to the choice of Iraq as one of the new federal models, we have already identified it as having a distinctive set of origins that determined its formation in terms of the impact of the international community and effectively distanced it from the classic federations. But its choice has also been determined by the relative paucity to date of published material on the subject of federalism in the country. Much of the existing literature is devoted to post-violence conflict management and has not

focused primarily upon the origins, formation and practices of the states as a federation.

In terms of my thesis, I support my arguments, analyses and interpretations with established social science scholarship and I use my interviews in a cautious way that is sensitive to particular interests and is fully cognisant of the dangers of bias, selectivity and omission. Where originality is claimed, I tread very carefully in the way that I structure my reasoning and construct my conclusions, giving the reader ample opportunity to decide the basis on which to accept or reject an argument or opinion.

### **Structure of the Thesis**

The thesis addresses in Chapter One the state-building and national integration processes of the modern state of Iraq in 1921 which were based on flawed pillars that complicated the state and contributed to its instability. These pillars became the historical context that paved the way for the ultimate adoption of federalism in Iraq. Chapter Two develops the main argument about the novelty of the Iraqi federation and the inadequacy of the classic factors of the origin and formation of federations to explain how and why Iraq became a federation. The main extant literature on the origins and formation of federations (Maddox 1942, Wheare 1946, Riker 1964, Watts 1966) is examined to demonstrate its deficiency in providing a comprehensive explanation of how the Iraqi federation was formed. The factors or the pre-conditions that the classic literature has indicated are limited to particular case studies and to the circumstances of the international system at a given time. Consequently, there is a need to revise current federal theory in the light of new federal models of which Iraq is the most recent among them.

Chapter Three identifies in its first part the current socio-economic and political realities of twenty-first century Iraq and those objective observable conditions specific to Iraq which can be found in classic federal theory. The second part of the chapter is devoted to the novel conditions in the formation of the Iraqi federation. Together, the first three chapters explain why federalism was introduced in Iraq and also

demonstrate the novelty of a specifically Iraqi federalism for an Iraqi federation. Within the same subject, Chapter Four provides an explanation for the second part of the research question of “how” Iraq became a federal state by investigating the embedding of Riker’s federal bargain in the new political process, which developed into a federal bargain. The reconstruction process and its actors, pressures and challenges are investigated for that purpose. The end of the fourth chapter marks the end of the first part of the thesis dealing with the origin of the Iraqi federation.

Chapters Five and Six examine the second part of the thesis which is the “operation” of the Iraqi federation by investigating the constitutional and institutional structures of the federation. Both chapters confirm the fact that the Iraq federation is a bargain. Moreover, they demonstrate to what extent Iraq is really federal and the complex and slow operation of the Iraqi federal system in a situation where the conditions of success are absent. Finally, Chapter Seven explains the multi-dimensional “significance” of the Iraqi federal experiment and its theoretical and practical implications. These implications are important because they enable us to have some sort of benchmark to assess success and failure in federations and help us to understand the recent revival of federalism in the new federal models. The Iraqi case study is therefore important in its own right but it also encourages us to think comparatively about the future of such models elsewhere in the Middle East and in the World.

## Chapter One

### Iraq: Imperial and Historical Legacies

#### Introduction

In order to analyse the Iraqi federal experiment, its origin, operation and significance, it is necessary to start with a brief historical introduction to the modern history of Iraq for the purpose of understanding the historical context in which the Iraqi federation was created.

Political instability has characterised the modern history of Iraq which after 2003 has proven to be a complex state to govern. In an endeavour to interpret its current complexities and complications, some observers have focused on the legacies of the previous regime, others have focused on the US policies in Iraq; while still others have argued that Iraq is an artificial state of British making and therefore it lacks the bonds and factors that bind the state together and society. No one can deny the impacts of these issues on the complexity of the Iraqi situation, but I argue that the state – building process has embedded serious problems that have undermined both the social integration and political stability of Iraq and negatively impacted on national integration. These problems are the context in which federalism was introduced in Iraq.

To explain that and to verify our argument, this historical introduction traces the state - building process initiated by the British in 1921 and its problems. The first section briefly examines Ottoman rule of Iraq and its impact on Iraqi society in order to understand its British legacy and how they dealt with it. The second section examines the British role in creating the modern state of Iraq and its impact on the causes and their consequences in terms of political, territorial, social, ideological and economic aspects of Iraqi society at that time and later extending to contemporary Iraq. For Iraq, external powers (international or regional) have been and continue to be extremely influential; they have been seen in terms such as colonialism, imperialism, bilateral relations, terrorism and maintaining international peace, while the internal forces can be considered in terms of religion, tribes, oil and diversity. For this reason,

in Iraq, as in all Middle Eastern states, there is a strong desire to blame their intricate situations on the role of external powers.

### **1.1 Iraq and Ottoman Rule**

The Ottoman Empire governed Iraq between 1534 -1914 after the defeat of the Safavids in Persia. Before that Iraq was governed in rotation between the Ottomans and the Safavids during the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> centuries. These three centuries were characterised by political instability because of the political rivalry between these two powers to control Iraq. This rivalry, in fact, had another face which was the religious rivalry between the Sunni Ottomans and the Shiaa Safavids which revived religious politics in Iraq. However, we could say that the struggle between the two empires did not develop at any time into a civil war between the Iraqi parts of the population. In 1639, the boundary between Mesopotamia and Persia was drawn according to a peace treaty among the Safavids and the Ottomans, which exists to this day (Hunt, 2005, p. 53). Part of Iraq's border was thus drawn consistent with regional interests and not with Iraqi national interests. This has caused boundary problems, for example during the 1970s between Iraq and Iran.

For administrative purposes, Iraq (Mesopotamia) during Ottoman rule encompassed three main provinces (Mosul, Baghdad, and Basra) which were geographically and socially significantly different from each other. The boundaries of these provinces were greater than British Iraq, for example, Basra extended to include Kuwait and Al-Hassa in Saudi Arabia while there was no definite boundary for Mosul. These three provinces reflected the geographical, linguistic and religious divisions in Iraq under Ottoman rule (www.iraqnaa.com, 2010). The question here is how could the Ottomans control Iraq for nearly 300 years which is a relatively long period of time compared to the later British period? To answer this question we need to know first what their concerns were in Iraq, in order to understand how they worked to implement them. Gareth Stansfield, in his book "*Iraq: People, History, Politics*" contends that the Ottomans were concerned about two principal issues. The first was economic to ensure flowing taxes and subsidies from Baghdad to Istanbul; the second was geopolitical to continue blocking Safavid penetration into the south-

eastern parts of the empire (Stansfield, 2007, pp. 24-25). The Ottomans, to achieve their aims and to prevent the emergence of separate centres of power, governed Iraq and other regions of the empire indirectly by devolving authority to the local elites, implementing a shifting system of appointments to restrict the influence of ambitious regional governors and stimulating rivalry between groups such as tribes and ethnic actors (Stansfield, 2007, p. 25, Batatu, 2003, p. 100). This decentralised system was generally accepted by Iraqi communities because it allowed them to maintain and express their distinctive and unique characteristics, leading to the preservation of their diverse society. However, the Sunni Ottomans barely tolerated the Iraqi Shiaa who were generally treated with neglect by the state. Consequently, the Iraqi Shiaa kept to a minimum their contact with state institutions. They did not join schools or the army and they developed their own laws based on religious and tribal concepts (Dawisha, 2013, p. 31, Batatu, 2003, p. 36, Marr, 2004, p.14).

The decline of the Ottoman Empire, which started with the loss of some of its European territories, like Greece, Serbia, Romania and several Balkan states and the loss of control over the Black Sea in 1878, and the discovery of oil in Iraq encouraged other powers to control Iraq such as Britain and Germany. The resentment of the Iraqi, mainly the Shiaa and most of the tribes, and the spread of modernization and western ideas as a result of the industrial revolution during the 18<sup>th</sup> century forced the Ottomans to introduce reforms in their governing system. They opened governmental schools, health centres and supported the press movement. Moreover, they linked Iraq to the world of capital and a market economy which facilitated the introduction of British goods and companies and steam navigation. These reforms also required the Ottomans to turn to direct rule in order to maintain their heavy hand over Iraq. All these reforms contributed to the formation of a new social power *the Iraqi intelligentsia* which was, according to Batatu, a growing loyalty to nationalism and a weakening of the tribal system. However, the Iraqi intelligentsia did not remove the sectarian and tribal loyalties but coexisted with them (Batatu, 2003, pp. 40-42). The Ottoman reforms and their direct rule did not extend to include rural areas because of the conservative nature of the tribes and their rejection and resistance to any kind of authority. Therefore, the tribal spirit or the “nomadic tide”, as Ali Wardi described it, was constantly pressuring on Iraqi society which sometimes became weak or strong depending on the governments’ strength (Wardi,

1966, p. 13). As a result, Iraq entered the twentieth century beset by a complex web of social conflicts, no coherent political mobilisation and poor economic infrastructure, which all seriously impeded the process of building a modern state. After nearly 300 years under Ottoman rule, Iraq was ill-prepared to form a nation-state.

## **1.2 Iraq and British Rule**

British troops entered Iraq in 1914 to protect Britain's economic and strategic interests. They joined with Arab tribes to defeat the Ottomans, in exchange for the tribes' independence. A promise was also given to the Kurds for the formation of their own independent state in exchange for their support to defeat the Ottomans. According to Phebe Marr, at the outbreak of the First World War "the British had no intention of occupying the Tigris and Euphrates Valleys. However, when it became apparent in late 1914 that Turkey, Britain's traditional ally, would enter the war on the side of the Central Powers and was mobilizing at the head of the Gulf, Britain decided to occupy Faw and Basra to protect their strategic interests and communication and its oil fields at the head of the Gulf" (Marr, 2004, p. 22). Moreover, in 1917, the Balfour Declaration was issued promising to create a Jewish state in Palestine. Consequently, to achieve these promises they agreed secretly with the French in 1916 to divide up the Ottoman territories after the end of the war so that Syria, Lebanon and Mosul would be under French control, while Baghdad, Basra and the Palestinian ports would be under British control. This was known as the Sykes-Picot Agreement. All these contradictory promises and new international obligations in the light of US President Woodrow Wilson's self-determination principle compelled the British to build a sovereign state in Iraq.

From that date until 1920, the project of building a state in Iraq was discussed by the British officials until the arrival of Sir Percy Cox, the High Commissioner of Iraq, who implemented the plan of building the modern Iraqi state. The plan that was advocated included indirect rule after the failure of the direct rule implemented after the end of the First World War which led to the 1920 revolution in Iraq. This meant in practice building a social order through direct institutional links of the state with individuals and not through tribal organisations and their sheikhs (tribal leaders) (Dodge, 2003,

p. 2). This plan, in fact, was a consequence of the new international system exemplified by Woodrow Wilson's fourteen principles of a people's right to self-determination and the rise of the US as the main international power. Moreover, the negative impacts of the First World War on Britain and loss of its economic position in favour of the US compelled Britain to move from building strong direct rule to constructing indirect rule through the mandate system. However, Britain sought to keep control of Iraq in order to maintain its economic and strategic interests. Furthermore, the rise of the national movements that aimed to build a sovereign independent state also impacted on the British plan for building an Iraqi state. All these developments affected the plan and the process of building the Iraqi state in which the British sought to reconcile all these developments. Consequently, there were five main pillars of the state which together embedded a serious crisis and constraints that impacted on the future of Iraq.

One of the main pillars was the political elites that would carry out the project of state-building. The British decided that the state would depend on the Sharifians of Mecca and the ex-Ottoman administrative elites to carry out the British vision of building a constitutional monarchy in Iraq (Tripp, 2007, pp. 30-31). The Sharifians were not from the social and cultural groups that inhabited Iraq and both the Sharifians and the ex-Ottomans were Sunni. Through this selection of the political elites the British sought not only to reconcile international and internal developments and protect their economic and strategic interests but also to control the new state. Therefore, they chose Prince Faysal, who had been expelled as the monarch in Syria by the French, to be the king of Iraq. This choice was to fulfil the promise to the Arab leaders who supported Britain against the Ottomans during the Great Arab Revolution in 1916. Moreover, because of Faysal's expulsion from Syria, the British thought that they would be able easily to control him. However, Faysal did not enjoy Iraqi support mainly among the Shiaa and the Kurds. For example, in Basra province, the people had their own candidate and wanted autonomy. And when the British sought to legitimise the rule of the new king through a caucus system, the provinces of Kirkuk and Sulaymaniya voted against the new king (Dawisha, 2013, p. 15). The Shiaa generally and their clerics in particular were also not enthusiastic about a "Sunni" king ruling Iraq who might neglect them as the Ottomans did and as Cox did when forming

the first council of ministers which did not have a single Shiaa member (Dawisha, 2013, p. 31).

According to Tripp, the process of allocating authority to the Sunnis in Iraq was not “a promising basis for the national integration that was in theory intended to accompany the construction of the modern state” (Tripp, 2007, p. 31). On the other hand, the Kurds, who sought to build their own independent state, which the British had promised to create, were not interested in who would rule Iraq. At the same time, the Iraqi national movements that had just started to crystallise at that time also refused the mandate and the appointed king. Consequently, the Sunni ruling elites of the modern state of Iraq lacked relative legitimacy and popular credibility but despite this they were determined to continue to hold authority and not keen to share power with the other groups in Iraq.

In fact, the selection of the political elites created problems for both Britain and the selected political elites themselves because it contradicted the commitment to build a democratic sovereign state in Iraq. Britain abolished that commitment with that selection and with its intervention to control the elites to protect its own interests. The political elites appeared to act like Britain’s agents which undermined their credibility among the Iraqis. Therefore, some of them, for example the king, sought to challenge the British administration in Iraq on particular occasions in order to enhance their credibility.

The second pillar in the state-building process was the 1925 Constitution. This was drafted and ratified in order for the king and the new political elites to enjoy the powers that would enable them to sustain British interests. This pillar, which continued until 1958, also lacked popular credibility and it failed to take root because it was regarded as an instrument of foreign manipulation and control (Marr, 2004, p. 28). For example, one of the main issues in the Constitution that generated disagreement in the government was the powers of the king. Despite the lack of public support for the appointed king, constitutionally the king was offered great powers that were at variance with the bases of the parliamentary system. For example, the king had the right to appoint members of the Senate which had wide powers (Art.26 no.7). Moreover, the king had the right to dissolve the parliament

(Art.26 no.2) and to select and dismiss the prime-minister (Art.26 no.5&6). Such powers contributed to empowering the king in favour of the cabinet and the parliament and to create a complicated relationship among the three main state institutions. This was particularly problematic when the cabinet and the parliament were headed by strong and charismatic personalities. Therefore, the parliamentary system in Iraq deviated from the basis of a parliamentary system because of the king's domination of the state's institutions (Assad, 2005, pp. 11-15). This added to the credibility and legitimacy problem that the king suffered from. Later on, this kind of competitive politics and contradictory powers was not confined to the three main state institutions but gradually extended to the other governmental institutions; and this continued to characterise Iraq's politics during republican rule until the authoritarian rule of Saddam. Recently, this competitive politics has characterised the operation of current institutions, as we will explain later on in this thesis.

The third pillar in the state-building process was the empowering and incorporation of the tribal system and the tribal leaders in the state's institutions. More than one third of the members of the constituent assembly were tribal leaders many of whom were illiterate (Dawisha, 2013, p. 57). This contradicted the British plan of building a modern state in Iraq that was to depend on governmental institutions to manage the social order but the British had their own reasons for such an arrangement such as the maintenance of law and order, the raising of revenue and tying the tribal leaders to the British administration (Marr, 2004, p. 23). In fact, this approach was a way to control the tribes and to change their structural and functional design to fit British wishes.

More importantly, the British aim was to control the king who occasionally sought to challenge British rule. Because King Faysal gave power to some tribal leaders known for their hostility to the British in order to legitimise his rule, strengthen his position in the state and to balance those who were allies with the British, the British decided to support the tribes that were not backed by the king as a way to control the activities of the king and all other anti-British powers, including the religious leaders and nationalists (Dawisha, 2013, p. 22). Therefore, the British insisted upon the tribal leaders' representation in the Parliament and they succeeded in this despite the nationalists' opposition. Consequently, the tribal leaders' rights to land and a

guarantee that their disputes would be settled according to tribal custom was enshrined in a separate code which gave Iraq two parallel legal systems (Dawisha, 2013, p. 34, Marr, 2004, pp. 32-33). This not only weakened the parliament as a governmental institution but also weakened the state itself by giving more power to the tribal legal system.

By supporting the tribal leaders mainly in the south of Iraq both the king and the British succeeded in reducing Shiaa anti-British resentment and the alienation of the tribes from the Shiaa religious leaders some of whom opposed the king's policies. For the purpose of legitimising his rule, the king also pushed for more Shiaa involvement in state institutions. However, because of the Shiaa religious leaders attitude to the new state, and the paucity of educated and trained Shiaa to hold government positions together with the Sunni elites' reluctance to allow the Shiaa's right to participate in ruling the state, the process of including the Shiaa was "slow and clearly disappointing to those Shiaa who wanted to take part in the affairs of the state" (Dawisha, 2013, pp. 31-32). The representation and the participation of the Shiaa in the state continued to be slow and disappointing throughout the modern history of Iraq even when the Shiaa had overcome the problem of education and training because of Sunni control of the state institutions.

The fourth pillar of the state-building process was the incorporation of the Kurds in the modern state of Iraq. The Kurds, who were divided between four countries Turkey, Iran and Syria, frequently revolted against Iraqi governments, rejecting the whole homogenising state-building process that incorporated them into Iraq, and demanded their own independent state or at least internal autonomy. The Kurds were promised in the Treaty of Sevres in 1920 their own autonomous Kurdish state in exchange for their support against the Ottomans. However, because of the discovery of oil in the Mosul province of Iraq and because of Turkey's efforts to incorporate Mosul, this promise was denied and the British, and the Iraqi governments throughout Iraq's history, rejected any kind of cultural or political autonomy for the Kurds. The fear that the Kurds might secede resulted in a failure to integrate them into the new Iraqi state, thereby making them a factor of instability in the state. Consequently, the state-building process and the nation-building processes did not work effectively to solve the Kurdish question that was a constant problem during

both the monarchy and republican system. Given that, sub-nationalism and religion coincided with the formation of the modern state of Iraq.

The fifth pillar in the state-building process was its administrative system. The formation of the modern state of Iraq was founded on the Ottoman administrative structure that was based on the three provinces (Baghdad, Basra and Mosul) which were populated by different cultural, religious and ethnic groups. Basra was inhabited mainly by the Shiaa while Baghdad and the central part of Iraq were inhabited by the Sunni. Mosul province was populated by the Kurds and the Turkmen. The British political officers treated these provinces as a single administrative unit in an effort to extend their direct rule and they abolished institutions such as the Ottoman elected municipal councils that were replaced by the political officers who worked directly through local notables on whom the British relied to provide order (Tripp, 2007, pp. 36,38). This administrative system, which is still operative today, increased the Shiaa and the Kurds' desire to limit state authority because it preserved the communal division among the Iraqi population. It was used by successive Iraqi governments to maintain control of the Shiaa and the Kurds and obstruct social and political integration.

Realistically, some of these pillars were a natural consequence of Iraq's social and economic circumstances at that time. Iraq in 1921 lacked the prerequisites for initiating constitutional representative rule. Economically, socially and educationally, Iraq was hollow. For example, the pillar of empowering and incorporating the tribal leaders was part of Iraq's social reality that could not be ignored. Moreover, the king's constitutional powers also reflected the weakness of the political elites and educated class at that time to balance or modify the king's constitutional powers. This laid the foundation for centralisation and authoritarian rule in Iraq which depended on the Sunnis to carry out the project of state-building. Furthermore, the Sunnis' domination of the state influenced general ideological trends in Iraq. During the last decades of Ottoman rule the ideological trend was towards nationalism and it moved towards both nationalism and Islamism with British control. However, the British and the Sunni elites worked to change this towards secularism for the purpose of legitimising the new system and consequently consolidating their own power and limiting both the role of nationalism and religion as the main opposition powers to the new political

system. According to Halliday, secularism was above all a policy intended to strengthen states: it stemmed from the desire of these states to reduce, or break, any alternative centres of power (Halliday, 2010, p. 88). In that context, the Shiaa reaction was to preserve their religious ideological beliefs as a way to oppose the ruling system and later on to oppose universal ideologies like Communism and Baathism which had started to attract the Shiaa youth. Consequently, they appeared more religious than the Sunni and the Kurds while in fact they are not. This resulted in more pressure on Iraqi society from below, from the main social groups and communities which was compounded by pressure from the state above. This effectively contributed to the rise of religion as a power in Iraqi political life that was suppressed during the 1970s - 1990s. Therefore, Iraqi national identity had not been strengthened despite the state building process to homogenize for example, the Arabic language considered the formal language in schools and administrative institutions even in the Kurdish areas.

These main pillars of the state-building process should also be understood in relation to drawing of the territorial borders and construction of the national economy both of which also institutionalised instability in the new state. Through the San Remo Agreement in 1920, the British decided the new borders of Iraq but with little consideration for the traditional frontiers and local realities. For example, Kuwait was taken away from Basra province which extended to Alhasaa in Saudi Arabia, as a new state. This reduced Iraq's coastline on the Gulf. For 300 years, during Ottoman rule, Kuwait was part of Iraq and for this reason many Iraqis did not accept the new arrangements and frequently called for it to be returned to Iraq. This happened after the 1958 revolution during Qassim's rule and also during Saddam's rule. Furthermore, the British created a diamond-shaped neutral zone between Iraq and Saudi Arabia which contributed to complications over who would control the oil reserves located in it. Iraq also had border problems with Iran which contributed to the complicated relationship between the two states and was a factor in the Iran – Iraq war.

Economically, oil was, and still is, the only source of revenue of the new state that is distributed unequally among the Iraqi provinces. The British and the Iraqi governments needed to construct a centralised ruling system that would keep and

ensure resources for the state. Before the discovery of oil the three Ottoman provinces had an agricultural character. This was another factor in supporting the formation of a centralised state because the system of irrigation depended on several long canals which suffered from problems of silting and this needed government resources to maintain and renew these canals. The centralised governing system that was moving to an authoritarian regime limited the prospects of building an effective national economy that would contribute to building a developed and stable state with rising national revenue and increasing prosperity for the Iraqi population. Moreover, competition and corruption among the state's elites were also at the heart of Iraq's underdevelopment. This triggered the 1958 revolution that overthrew the monarchy. The economic deterioration continued even after the nationalisation of Iraqi oil in 1972 that contributed to Iraq's economic and social development for a short period until 1980 and the outbreak of war with Iran. Because of Baath control over national revenue and the wars and hard economic sanctions that lasted from 1991-2003, the Iraqi economy was severely damaged.

In essence, the impact of these pillars of the state-building process left a historical legacy which still influences the political struggle currently taking place in Iraq. According to Dodge, when Iraq won its independence in 1932 it was a quasi-state inhabited by a diverse and divided population and run by a small local elite of mainly Sunni politicians who could not control the country without the help of the British (Dodge, 2003, p. 31). The British pillars were however not reliable elements of the process to build a stable state in Iraq. These pillars - the dependence on the Sunni political elites and the marginalisation of the Shiaa and Kurds – were used to preserve Baath party control and laid the foundation for an undemocratic centralised system of governance and administration which contributed to the rise of a form of authoritarian sectarian nationalism and a fractured society.

## **Conclusion**

This brief historical introduction provides a picture of the historical legacies left by the state-building and national-integration processes in the creation of the modern state of Iraq. It explains the main pillars of British policy which left contradictory legacies, ending in the emergence of a complex and unstable state. The original bargain of the

state formation lacked national consensus and failed to accommodate the diversity of the Iraqi society in order to build a legitimate national governing system. Instead, the original bargain contributed to the political salience of religion and ethnicity in opposition to the state through Sunni domination over the Shiaa and the Kurds. Consequently, the state deviated from a democratic and parliamentary vision towards a highly centralised and authoritarian state that constantly used coercive force against its people to ensure its continuity. Moreover, this highly centralised state was institutionally contradictory and conflicted producing a kind of competitive politics among its political elites. This political conflict developed in a way that took the shape of ideological and sectarian struggles within Iraqi society. Given this, although most of the components of the Iraqi society are linked together through social and economic relations, a national identity did not develop as a foundation stone for the Iraqi state. As a consequence, ethnic and religious identities constantly undermined the legitimacy of Iraqi governments and increased the political instability.

It was within this historical context that the idea of the adoption of a federal solution was developed. It became impossible for Iraq to continue as a unified state without the adoption of federation or some federal type arrangement in order to rebuild the state on the basis of legitimacy and democracy. The five pillars that Iraq was built on needed to be restructured on liberal democratic bases that would preserve and accommodate the diverse character of the state and satisfy the political demands of its political groups. We of course cannot say that the historical legacies identified above were the main or the only conditions behind the adoption of federalism. However, the historical context paved the way for federation that became a necessary and logical consequence of the pathologies embedded in the building process of the modern state of Iraq. Consequently, the factors that contributed to the formation of the Iraqi federation were developed within this specific historical context, as we will demonstrate in Chapter Three of this thesis. But before investigating these factors, it is crucial to examine how classic federal theory explains the origin and formation of federations in order to highlight the main argument of this thesis that classic federal theory is inadequate to explain the origin and formation of the new federal models of which the Iraqi federation is one of the latest.

## **Chapter Two**

### **The Origins of Federations**

#### **Introduction**

In the first chapter of this study, we explained the historical legacies of the state-building process of the modern state of Iraq which paved the way for the formation of the Iraqi federation. And as we explained in the Introduction to this thesis, the main feature of this research is the novelty of our case study, the Iraqi federation, which must be distinguished from the classical federations in its origin and formation. In order to verify this argument it is crucial to investigate current federal theory that deals specifically with the origin and formation of federations for the purpose of underlining this novelty and to indicate the theory's inadequacy for providing a complete understanding of the origin and formation of contemporary federations like Iraq. By examining the classical factors of federal state formation, I will argue that these factors need to be updated in light of the new international system in order to provide a comprehensive explanation of the origin and formation of the new federal models. Indeed, although understanding federal theory in this specific aspect is important, it will not assist us to predict precisely how the Iraqi federation and other new federations will function and develop. However, it will help us to understand the motivations behind the creation of federations and the revival of federalism which could provide clues to their failure or success.

Drawing on some of the recent work by Michael Burgess, this chapter provides a historical investigation of the contributions of four scholars of federalism: William P. Maddox, Kenneth C. Wheare, Ronald L. Watts and William H. Riker. The justification for choosing these scholars is because they are still the only scholars who have made significant contributions to federal theory in regard to the subject of the origin and formation of federations. Therefore, the structure of this chapter includes four sections to examine the contribution of each scholar. At the end of the chapter, I will apply these classical factors to the Iraqi federation in order to assess whether they adequately explain the origin of the federal state.

## **2.1 William P. Maddox**

In 1941, Maddox wrote a brief essay in the American Political Science Review titled “*The Political Basis of Federalism*” which mainly focused on two subjects: the motives setting up a federation and the conditions for an effective federation. Indeed, this essay was part of the literature of the post-war settlement and the plans for world order which he and many other theorists believed could be achieved through an effective international federation.

Maddox considered the federal idea as representative of all the properties deemed necessary as a ready-made formula that should be fully exploited for the purpose of enhancing international collaboration. According to him, the federal idea was “a response of mind to the political problems of the one and the many – of the need for achieving both unity and diversity, order and liberty, centralisation and autonomy- in the composing of human affairs” (Maddox, 1941, p. 1120). From this understanding of the federal idea we can see that federalism was, first of all, an organising principle for the purpose of solving internal state problems which would then develop to encourage world order and stability.

Maddox examined the common elements of the political structures of some federations that existed at that time, such as the United States, Canada, Australia, Switzerland, South Africa, and the Germany of Bismarck and of the Weimar Republic. Maddox realised that common political factors among them were extremely elusive because of the ambiguity of the concept of a federation (Maddox, 1941, p.1120). Therefore, to clarify this concept Maddox indicated the need to examine federations as a political concept, the circumstances out of which federations have arisen and can arise and the conditions for their effective operation.

For Maddox, a federation was “a perfect balance or compromise between the extremes: a form of political organisation which represents a compounding of separate units in such a manner that a central authority prevails in the sphere of common concern, and the several autonomous authorities in the sphere of partial concern” (Maddox, 1941, p.1121). Building on this understanding, Maddox identified the essential features of federations which were “the existence of two focal areas of

political will - the central one which controls the aggregate of individuals in their entirety, and the several local ones which govern autonomously in their respective territorial sub-division. Behind both must exist a constitutional understanding defining the spheres of authority". However, how could this political organisation and perfect balance system be established?

In an attempt to identify the circumstances out of which federations have arisen, Maddox argued that federations may form either from centrifugal political motives, which were the breaking down of a unitary form of government, or from centripetal political motives, which were the building up of parts into a new entity (Maddox, 1941, p. 1121). Maddox considered the centrifugal motives as of no value in the quest for light on international relations and it was the centripetal motives that must be examined. Then he asked what were the main motives that created the centripetal action that led to the formation of a federation (Maddox, 1941, p.1122). In answering this question Maddox argued that there were three main motives responsible for the formation of any federation which were:

- Fear
- A calculated expectation of advantage.
- A response to some unifying ideal or myth (Maddox, 1941, p. 1122).

The first factor, fear, according to Maddox, was the most important motivation for the formation of a federation and it could be developed by two methods: either from direct attempts at intimidation or from a sustained feeling of insecurity. Maddox argued that intimidation indicated the existence of a strong entity which seeks to expand its territory towards weaker entities under a nominal federal union. This would compel the weaker entity to join the federal union, for example the German federation under Bismarck (Maddox, 1941, p. 1122). Such a method of intimidation of the weak by the strong, from Maddox's perspective and his understanding of federalism, was not recommended for the formation of a federation and it did not reflect the meaning of the federal idea. In fact, Preston King, nearly 40 years later, identified a similar attitude when he argued that the threat of an external attack is not part of the meaning of a federation when it was conceived as a contractual arrangement

between independent entities (King, 1982, pp. 82-83). However, Maddox explained that in extreme cases intimidation might be the only possible alternative if federal union was deemed a supreme necessity.

The second method was a sustained sense of insecurity. Maddox realised that this method could develop from either political or economic fears. Political anxieties included the fear of invasion, rebellion and war, while the economic threats included the fear of starvation, disasters and economic collapse (Maddox, 1941, p. 1122). This method, according to Maddox, was the most effective agent for social and political integration leading on to the formation of an international federation. He argued that the impact of a concrete and external danger on the federating groups is far greater in generating integrational power than if the danger was imagined and abstract. Similarly, the prospects of economic collapse may prove an effective incentive for union (Maddox, 1941, p.1122)

The second main factor that contributed to the formation of a federation was the rational expectation of economic advantage. Maddox emphasised that the worries about an economic collapse was an influential factor in generating the desire for federal union. However, Maddox explained that these worries were not similar to economic insecurity because they arose from the aspiration of increasing and developing economic resources and capacities and not from the fear of economic collapse.

The last factor that was identified by Maddox was the response to a unifying ideal, symbol or myth. However, Maddox admitted that since the disappearance of the unity of Christendom, no universal myth appeared sufficient in power to unite humanity (Maddox, 1941, p. 1123). For him the last two main motives were of secondary importance compared to the first factor in the formation of a federation.

As regards the effective operation of a federation, Maddox asked what were the conditions in which an effective federation could be maintained. Maddox argued that the similarity among the parts of a federation in size, culture, the level of political and economic development, geographical contiguity, unifying forces of spiritual, emotional or ideological character and the central government possession of powers of decision

and action independent of the will of separate governments, were all important conditions for an effective federation (Maddox, 1941, pp. 1123-1124).

These three motives indicate how Maddox was influenced by the state of insecurity, whether it was political or economic which prevailed after 1940. Maddox's three factors were a reflection of the war time atmosphere and the need to create a strong government able to defend the state and its people on the one hand and able to admit the diversity of culture, religion and different ways of life on the other. These two functions would prevent the state from moving to a unitary state or to make it fall into chaos.

## **2.2 Kenneth C. Wheare**

Wheare was considered a pioneer in the comparative study of federations, as Ronald Watts described him (Watts, 2006, p. 201). His principal focus was on the constitutional structure and division of powers as an essential feature of federations, and he was famous for his use of the "federal principle" as his main theoretical contribution.

In 1943 Wheare wrote a paper titled "*What Federal Government Is*" which was an introduction to a more detailed work that appeared later in 1946. This paper was mainly written to explain how the British had no clear vision about what federalism is by examining the governmental system of the United Kingdom (UK). Partly, this was because of the same meaning that was given for federalism and confederation that had prevailed during the eighteenth and early nineteenth century (Karmis and Norman, 2005, p. 6). Wheare explained that the constitutional superiority of the Parliament of Westminster over the Parliament at Belfast demonstrated that there was no federal system in the United Kingdom but only implemented devolution (Wheare, 1990, pp. 17-38). He emphasised that federal government existed when co-ordinated relations existed between the federal authority and the state governments. According to Wheare, this system existed only when the constituent governments had the "desire" to regulate certain matters with each other for the sake of uniformity and effective management, but at the same time to remain separated

and supreme in other matters which touch the daily lives of their people. This condition, the desire, was the only condition that Wheare submitted in his paper. However, more conditions were considered by him in his later work.

In his book *Federal Government* which was written during the War and was first published in 1946, Wheare provided definitions for the concepts of the federal principle and federal government. He stated that the federal principle was “the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent” (Wheare, 1963, p.11). While, the federal government exists when:

“The powers of the government for a community are divided substantially according to the principle that there is a single independent authority for the whole area in respect of some matters and that there are independent regional authorities for other matters, each set of authorities being co-ordinate with and not subordinate to the others within its own prescribed sphere” (Wheare, 1963, p. 35).

Wheare admitted that this form of government was not always and everywhere appropriate but it was a means to good government, not a good in itself (Wheare, 1963, p.33). Moreover, Wheare realised that federal government was by its nature conservative and legalistic because any attempts to grant the federal or the state governments more powers would need to rest on the process of amendment of the written constitution. However, he accepted some modifications to this conservative nature of federal government, which he described as a strict federalism, if good government was to be achieved (Wheare, 1963, p.34). Moreover, he distinguished between a federal constitution and the actual operation of federal government because the government might have a federal constitution but in practice it might not act in a federal way or it might have no federal constitution but in practice it might act as if it did. Therefore, Wheare introduced the terms of “quasi-federal constitutions” and “quasi-federal governments” for those constitutions and governments where the federal principle is not predominant but is important (Wheare, 1963, p.33).

Having clarified these concepts, Wheare re-answered what he described as most difficult and the most important question which was: in what circumstances is it appropriate to adopt a system of federal government? Indeed, the answer that Wheare provided this time was more detailed. He argued that federal government

would need the existence of particular factors or what he called “prerequisites” that would make its construction both feasible and justifiable. Wheare’s factors can be classified into two categories: the first included theoretical factors based on his definition of federal government and the federal principle. The second were the practical factors based on the aims and circumstances behind adopting this special kind of government.

The theoretical factors were a reflection of the federal principle. They included the “desire” to be united under one single independent government for some purposes and the “desire” to be organised under an independent regional government for other purposes. In other words, the states must desire to be united but not unitary (Wheare, 1963, p. 36). Indeed, the federal principle was based on the existence of these desires which were the incentives in the formation of this distinct kind of government. Clearly, this principle provided a balance between the centrifugal and the centripetal powers which constituted the essence of federations. These two desires were, according to Wheare, essential for the establishment of a federal government and he argued that the existence of one desire was not enough to establish the federal government; the two desires must exist together. Alongside these desires, Wheare emphasised that the communities concerned must have the “capacity” to operate the system they desire. Without the “desire” and the “capacity” there could be no federal government (Wheare, 1963, p.36).

In fact, what Wheare meant by the theoretical factors was a true belief in and consideration of the federal idea whose importance overrode political, social and economic interests for the sake of effective operation. This meaning was exactly what Thomas M. Frank emphasised as the main ideological reason for the success and failure of federal states (Frank, 1968, p. 182). If such a central commitment to the federal idea was absent then there would be no federation, even though the practical factors still existed; it could be anything other than a federation such as an association, a confederation, or a league of states.

The practical factors, according to Wheare, were the factors of union and separation that need to exist before the theoretical conditions could come into play. The practical conditions were the incentives for the existence of the theoretical conditions which

were the aims and circumstances responsible for generating the aspiration for union and separation in a federation. Wheare identified that some of these factors were associated with generating the desire for “unity” while others with the desire for “separation”. Moreover, Wheare classified these factors as essential and non-essential according to their impact on the origin and formation of a federation. The essential factors of “union” were:

- The sense of military insecurity and the need for common defence (also Maddox).
- The desire to be independent from foreign powers and a realisation that a union could achieve it.
- A hope of economic advantage (also Maddox).
- The existence of some previous political association of the communities concerned prior to their federal union.
- The geographical neighbourhood.
- The similarity of political institutions.

Wheare argued that these essential practical factors of union must all exist, as in the United States, Switzerland, Canada and Australia, or most of them must exist, as in Italian States between 1856 and 1864 and South Africa in 1909, to stimulate states’ desires for establishing a federal union (Wheare, 1963, p. 36). On the other hand, the non-essential factors for generating the desire for union were:

- Language
- Religion
- Race
- Nationality
- Similarity of social institutions

These five factors, from Wheare’s perspective, were less important than the previous “essential” factors in generating the desire for union and the striking examples of this were Canada and Switzerland, which despite the linguistic, religious and national differences within them, were able to introduce the desire for union and construct

effective federations. Moreover, Wheare pointed out that only the Australian Colonies provided for the factor of similarity of social institutions within his comparative study of the classical federal experiments.

The practical factors of “separation” within the union were:

- Previous history as independent states.
- Divergence of economic interests.
- Geographical size and the sense of isolation.
- Divergence of nationality.
- Dissimilarity of social institutions.

In spite of this number of factors for union and separation, both essential and non-essential, Wheare found difficulty in trying to identify a single definite factor or a group of factors as general for all other federations and as crucial for the formation of a federation. In this respect, Wheare was the very opposite of Riker, as we will see later on in this chapter. Moreover, Wheare asserted that the mere existence of the theoretical and practical propositions would not be sufficient to create a federation because their investment would also depend effectively on the role of political leadership.

It is obvious that Wheare, in line with Maddox, elaborated the circumstances that contributed to the origin and formation of federations. In his book, which was a comparative constitutional study, he produced a detailed and comprehensive picture of the internal factors that determined the origin of federations through his investigation of the classical federal models. However, Wheare was criticised because of his rigid constitutional approach which ignored the operative process and the social factor of federalism. Therefore, this approach was not useful to apply to many of the federations that were established after the Second World War, such as Malaysia and India (Birch, 1966, pp. 15-33).

### **2.3 Ronald L. Watts**

To continue our investigation of the factors which contribute to the origin and formation of a federation, we will turn to Ronald Watts' intellectual contribution in this subject. In his book titled *New Federations: Experiments in the Commonwealth* first published in 1966, Watts examined the new federations that appeared in Asia, Africa and the Caribbean after 1945 because, according to him, not much scholarly attention had been paid to these federations compared to the classical or mature federal experiments.

Watts defined the federal principle as “an organisation whereby a compromise is achieved between the concurrent demands for union and for territorial diversity within a society, by the establishment of a single political system, within which, general and regional governments are assigned coordinate authority, such that neither level of government is legally or politically subordinate to the other” (Watts, 1966, p. 13). Later on, in his book “*Comparing Federal Systems*”, he considered federalism as a normative term, which refers to the advocacy of multi-tiered government combining elements of shared rule and regional rule. It is based on the presumed value and validity of combining unity and diversity (Watts, 2008, p. 8).

In *New Federations: Experiments in the Commonwealth*, Watts speculated about six new federal experiments - India, Pakistan, Nigeria, Rhodesia, Malaya and Malaysia. He concluded that the social systems in these countries, which were distinguished by the existence of different ethnic groups, influenced the formation of their political institutions and led to the adoption of federalism. The tension among these ethnic groups resulted in two different and compound desires which were the desire for unity and the desire for regional independence. He added that “the tensions between these concurrent desires arose because colonial boundaries, established in the scramble for empire, or based on administrative convenience, usually did not coincide with the grouping of the traditional cultural and social communities” (Watts, 1966, p. 42). Given that, to solve the social tensions and to create a balance between these two desires which were also affected by a deteriorated economic situation, cultural, religious and linguistic differences, and limited democratic experience, a federal system was established. However, Watts did not believe that

federal political systems are a panacea for humanity's political ills (Watts, 2008, p.191). He devotes a whole chapter to the pathologies of a federation in his book *Comparing Federal Systems*. However, according to Simeon, the idea of federalism as a device to reconcile unity and diversity has continued to distinguish Watts' work (Simeon, 2007, pp. 1-30). Indeed, this was the basis of Watts' federal theory, a theory of "relative balance" to explain the origin and process of federal systems. Davis described this theory as "a pretty, tidy, symmetrical mechanism and simple theory" (Davis, 1978, p. 138).

As regards the origin and formation of a federation, Watts emphasised that the social factors involved in the development of the desire for unity in the new federations were "many and complex" and their importance "varied with each federation" (Watts, 1966, p. 65). Therefore, he did not classify these factors as essential or non-essential as Wheare did. These factors were:

- Desire for political independence. (also Wheare)
- Hope of economic advantage. (also Maddox and Wheare)
- Administrative efficiency.
- Conduct of external relations- both for military defence and diplomatic influence there would be benefits to be gained from union.(also Maddox and Wheare)
- Ethnic and cultural community. (also Wheare)
- Geographical contiguity. (also Wheare)
- Historical political association. (also Wheare)
- Similarity of political and social institutions. (also Wheare)
- Political leadership. (also Wheare)
- Successful models of federations.
- British policy.

While the factors that stimulate states for regional autonomy were:

- Levels of diversity
- The prospect of independence

- Regional economic interests
- Administrative convenience
- Conflicting external relations
- Ethnic and cultural diversities
- Geographical dispersion
- Historical identity
- Dissimilarity of political and social institutions
- Regional political leadership
- Models of regional autonomy
- British policy

A first glance at the factors involved in the desire for unity gives the impression that they are compatible with Wheare's conditions. However, Watts dismissed that and emphasised that the factors related to the new federations had a different character from the motivating factors in the classical federations. To support his opinion, Watts gave the example of the desire for economic advantage. In the classical federations "the hope for economic advantage applied to the private sector of the economy while in the new federations the hope for economic advantage was related to the role of governmental activity in promoting rapid economic development" (Watts, 1966, p. 66). Watts' opinion is very important in understanding the novel character of the Iraqi federation. The Iraqi federation and other new federal models have their own particular factors which stemmed from their own needs and circumstances. It is these new factors which will evolve federal theory.

Among the new factors that Watts submits were the successful models of federation and the British policy. In these new federations, Watts argued that there was a kind of attraction and excitement over the adoption of the federal idea because of what had been achieved by federalism in these states. Their economic prosperity, political stability and democratic rule inspired these developing states to follow the same experiment. It was believed that through a federal solution, they could create suitable circumstances for development and stability.

The second new factor was the impact of British policy. Watts emphasised that the British government played a major role in constitution-making in these new federations, (except in India and Pakistan after 1947) (Watts, 1966, p. 62). The British administrators supported the formation of federations as a useful device to solve these states' difficulties. They were reluctant to apply constitutions "off the rack" and they preferred constitutions that fit the specific needs of these states in order to create politically and economically self-sufficient nations (Watts, 1966, pp.63, 65).

Watts concluded that most of the motives for federal union of the new federations were "present to some degree in each federation, but the relative importance of the different factors has varied with each federation" (Watts, 1966, p. 65).

#### **2.4 William H. Riker**

Riker was the pioneer in introducing a scientific approach and rational choice approach in the study of political science (Kleinerman, 2009, p.413, Filippov, 2004, p.2, Volden, 2004, p.89, Burgess, 2012, p.90). Moreover, Riker introduced game theory and social choice theory in political science. His federal theory appeared in his well-known work *Federalism: Origin, Operation, Significance* first published in 1964.

In his book, Riker produced a historical investigation of all the federal experiments that existed from 1786 until 1964, and with special attention paid to the American federal model, for the purpose of providing an analysis of the main features of the origin of all federations which he believed could also serve as an historical introduction to the development of the federal bargain (Riker, 1964, p.10). He argued that federalism was a bargain between prospective national leaders and officials of constituent governments for the purpose of aggregating territory, the better to impose taxes and raise an army (Riker, 1964, p. 11). This definition also appeared clearly in the *Handbook of Political Science*, which came out in 1975. In that publication federalism was defined as "a political organisation in which the activities of the government are divided between regional government and a central government in such a way that each kind of government has some activities on which it makes final decisions" (Riker, 1975, p. 101). From this definition, it is clear that Riker understood

federalism as a political phenomenon created by politicians who rationally decided to form this kind of political system. He claimed that there was no relationship between federalism and the prevailing social and economic circumstances, and freedoms and liberty, and any attempts to link federalism to those circumstances would be ideological and reductionist fallacies because they would neglect the political dimension of federalism and the act of bargaining itself (Riker, 1964, pp. 13-15). Consequently, he considered freedom, democracy and social and economic welfare as the outcomes of the federal bargain not the incentives for it.

For Riker the essential institutions of federations were two sets of governments, the government of the federation and a set of governments of the member units in which both kinds of governments rule over the same territory and people and each has authority to make some decisions independently of the other. This kind of relationship between the federal and member governments must be arranged and guaranteed by a constitution (Riker, 1964, p.5).

The question is now, if Riker refused the social, economic and democratic conditions of the origin of federation what were his factors to explain the origin of federation? Riker argued that there were “only” two necessary factors, or what he called “predispositions”, behind the origin of a federal bargain:

- The desire for territorial expansion.
- The desire for military defence (also Maddox, Wheare and Watts).

According to Riker, the first factor reflects the politicians’ desires to expand the territory of the state. He stated that:

“The politicians who offer the bargain desire to expand their territorial control, usually either to meet an external military or diplomatic threat or to prepare for military or diplomatic aggression and aggrandizement. But, though they desire to expand, they are not able to do so by conquest, because of either military incapacity or ideological distaste. Hence, if they are to satisfy the desire to expand, they must offer concessions to the rulers of constituents units, which is the essence of the federal bargain. The predisposition for those who offer the bargain is, then, that federalism is the only feasible means to accomplish a desired expansion without the use of force”. (Riker, 1964, p.12)

And for the second factor, he stated:

“The politicians, who accept the bargain, giving up some independence for the sake of union, are willing to do so because of some external military-diplomatic threat or opportunity. Either they desire protection from external threat or they desire to participate in the potential aggression of the federation. And furthermore the desire for either protection or participation outweighs any desire they may have for independence. The predisposition is the cognizance of the pressing need for the military strength or diplomatic manoeuvrability that comes with a larger and presumably stronger government. (It is not, of course, necessary that their assessment of the military-diplomatic circumstances be objectively correct.)” (Riker, 1964, p. 12)

Riker asserted that these two factors were “always” present in the federal bargain and each was a necessary condition for the creation of federations (Riker, 1964, p.13). With this assertion, Riker dismissed all the other factors that had been emphasised by other federal scholars discussed earlier in this chapter. For example, at the time that he asserted the existence of the two factors in the Nigerian federation, Watts verified that “the necessity of common defence has been significant only in the Asian federations” (Watts, 1966, p.66). Indeed, no one could deny the importance of these factors, but Riker was the only scholar who emphasised the necessity of *only* these two factors for the creation of a federation. Moreover, Riker went even further when he ascribed the cause of the failure of some federations to the absence of these two factors or to their temporary existence only. He stated that “for those federalisms that have survived, I am able to show that the two conditions existed at the origin; and, for those which failed, I am able to show that either the conditions never existed or they existed only momentarily” (Riker, 1964, p. 13).

Another important feature of Riker’s bargain theory is the voluntary will of the political leaders. He argued that politicians “offer” the bargain to achieve their desires in territorial expansion “usually either to meet an external military threat or diplomatic threat or to prepare for military or diplomatic aggression and aggrandizement” (Riker, 1964, p.12). He added that the desire for territorial expansion cannot be achieved by conquest because of either military incapacity or ideological distaste. Therefore, politicians must offer concessions to the rulers of the constituent governments, which was the essence of the federal bargain. While, the politicians who “accept” the bargain give up some independence for the sake of union because they desire

protection from an external threat or they desire to participate in the potential aggression of the federation (Riker, 1964, p.12).

Eventually, Riker argued, at the end of his book that federalism was not worth keeping because it is a system of minority decision-making that imposes high external costs on everybody other than the minority (Riker, 1964, p. 155).

## **Conclusion**

From this brief historical survey of federal theory as regards the origin and formation of federations, it can be seen that there is a wide range of factors that contributes to the creation of a federation. However, there is a relative consensus among the federal scholars about why federations emerge. At the time that Maddox and Riker emphasised only a few factors, Wheare and Watts went further to highlight the importance of a range of factors in the formation of a federation. The factors were varied because they reflected the internal and external circumstances of the case studies as well as each scholar's individual understanding of the subject. For instance, writing in the 1940s, Maddox's and Wheare's factors were part of the scholarship concerned with the war and post-war reconstruction and both examined federations from a political and constitutional viewpoint. This leads us to investigate if the classical factors which existed in the earlier federations that emerged between 1789 and 1950 are similar to the motives for new federations which appeared after 1990, notably Bosnia and our case study – the Iraqi federation.

To answer this question, Watts' factors regarding the origin and formation of federations will be my criteria in testing the capacity of the classical factors to explain the origin and formation of the Iraqi federation. Watts' factors have been chosen because they incorporated Maddox, Wheare and Riker's factors. Therefore, the test is organised under two categories:

- The essential factors for unity and regionalism.
- The non-essential or non-existent factors.

One of the essential classical factors that contributed to the generation of the desire for unity and the desire for regionalism in the origin of the Iraqi federation was the social and cultural diversity of the state. Iraq is a multi-ethnic, multi-religious and multi-lingual state. The Iraqi social groups developed their own common bonds and they always lived peacefully. This strengthened the desire for unity among them. Despite their peaceful living, there was a strong desire for self-rule and independence among the Iraqi Kurds which contributed to the development of the desire for regionalism. Therefore, there was an important need to meet the demands and aspiration of the Kurds for self-government which had become stronger after years of discrimination by the previous regimes and their 12 year self-rule experiment. Therefore, the factors of social and cultural diversity and the prospect of independence existed in the Iraqi federation.

The second classical factor that contributed to the development of the desire for union and regionalism and existed in the origin of the Iraqi federation was the hope for economic advantage. Indeed, the unequal distribution of Iraq's natural resources was an important factor of unity and regionalism in Iraq. This was enhanced by the need to achieve economic welfare after years of war and economic sanctions, all of which created a massive need for economic reform and reconstruction. Moreover, the classical factor of the role of the political leadership also existed in the origin of the Iraqi federation. The Iraqi political groups contributed to the development of the desire for unity and regionalism. The Shiaa and the Sunni political leadership showed their willingness and enthusiasm to maintain the unity of Iraq while the Kurds were compelled to stay within the state of Iraq rather than move forward on the road to independence because of regional and external pressures. Finally, other classical factors that existed in the Iraqi federation were the territorial contiguity and historical association.

The second category is the non-essential classical factors. Indeed, other factors like the motive for administrative efficiency, similarity of political and social institutions, the desire for independence, British policy and the successful federal models were ineffective in encouraging a desire for unity or for separation and consequently in the formation of the Iraqi federation. Moreover, the main common factor among the

federal scholars of a sense of military insecurity did not exist in the origin of the Iraqi federation.

Consequently, from 11 factors of union and 12 of regionalism identified by Watts, only five factors for union and only four factors of regionalism existed in Iraq. However, is the picture of the origin and formation of the Iraqi federation clear now? Did the classical factors that existed in Iraq explain comprehensively why Iraq became a federal state? The answer is no. The classical factors that existed in the origin and formation of the Iraqi federation were insufficient to provide a comprehensive and precise explanation of the origin of the Iraqi federation. They assist to provide a partial explanation only. In fact, there were other factors specific to Iraq and which were essential factors in the formation of the Iraqi federation which did not exist in the classical and Commonwealth federations. The new factors, which I will explain in the next chapter, sprang from circumstances related to Iraq and both indicated a new trend in the desire for federalism which might be common with other contemporary federations. Consequently, viewing the new federations through the prism of classical factors is likely to be misleading. Given that, the current federal theory proves its inadequacy to provide a precise explanation of the origin and formation of the Iraqi federation and a new federal theory is needed or the current one at least modified, in order to accommodate the modern circumstances and aims of the states and the international system. In fact, federal theory was and will continue to be an ongoing theory because each federal experiment is unique and has its distinctive set of origins that determined its formation. Therefore, classic federal theory is unable to give a comprehensive explanation of the origin of any of the new federations.

The question now is what are these new factors that contributed to the formation of the Iraqi federation? The answer to this question with a comprehensive explanation of the classic factors in the origin and formation of the Iraqi federation will be given in the next chapter.

## **Chapter Three**

### **Justification for the Adoption of Federalism in Iraq**

#### **Introduction**

In Chapter Two, we provided a historical investigation of the factors relevant to the origin and formation of the classic federations. And we proved the inadequacy of the classic federal factors to explain comprehensively the formation of the Iraqi federation because there are specific and novel factors responsible for the existence of federalism in Iraq and these need a detailed explanation.

With the end of the Cold War, when the Berlin Wall collapsed in 1989, the international system changed and international relations developed to a point that makes the military factor and other classic factors unreliable in explaining the establishment of the new generation of federations. Consequently, we need to reappraise why federations are formed in order to distinguish between the classic case studies and the new federal models. In other words, classic federal theory must be amended in order to accommodate these novel developments. There might be more sophisticated factors which contribute to the establishment of new federations. Viewing the formation of federations solely through the prism of the classic motivations for them is likely to be dangerously misleading in trying to understand the new generation of federations. The modern federal experiments, like Bosnia and Herzegovina, Ethiopia, and Iraq, are related more to international influence and events concerning political instability. Consequently, underlining these circumstances means understanding the bases of these federations that are related to their future stability.

This chapter will build on the previous one by focusing on the factors and circumstances specific to Iraq that contributed to the adoption of a federal solution. These factors, which I will classify as classic and novel, are a reflection of the internal and external pressures which shape and place constraints on the operation of the federation. Some of these factors are derived from the historical legacies that

contributed to the complex and unstable political, economic and social structures that distinguished Iraq. Other factors are derived directly from the policies of the previous political system and changes in the international system. In aggregate, a consideration of these factors will assist in identifying the initial purpose of the construction of the Iraqi federation. Moreover, this chapter argues that the Iraqi federation was a political bargain but not because of the military or the territorial expansion factors, as Riker identified, or even other conventional factors identified by classic federal theory. This compromise had a novel character that arose from specific Iraqi circumstances and particular circumstances in the international system.

The first section of this chapter examines the classic factors relevant to the formation of the Iraqi federation which will include the practical factors essential for union and regionalism underlined in the previous chapter: social and cultural diversity, the hope of economic advantage, the prospect of independence, historical and territorial factors and the role of the political leadership. These factors were crucial in the formation of the Iraqi federation and for understanding the evolution and challenges facing it. The second section examines the novel factors specific to Iraq and it will include two factors: the democratic factor and the role of the United States (US). Both factors were very influential in the foundation of the Iraqi federation and reflected the specific circumstances of Iraq in the contemporary international system.

### **3.1 The Classic Factors**

This group of factors is based on conditions identified in classic federal theory to explaining the origins and formation of federations. As we underlined in Chapter Two, the essential practical factors are the motives and circumstances which stimulated the desire for union and the desire for separation. Therefore, in order to explain why a federation was established in Iraq rather than any other governmental system, we need to examine the factors that practically contributed to the formation of the federation and which existed essentially inside the Iraqi society and were utilized by the Iraqi politicians and by foreign powers to achieve their aims.

### **3.1.1 Social and Cultural Diversity**

As Chapter Two demonstrates, both Wheare and Watts asserted the importance of this factor in the process of the formation of federations. Iraqi society is a mosaic. Its social fabric is deep and complex. It consists of different national, religious and linguistic groups, held together through cross-sectarian and cross-nationality marriages and economic relations, as well as, through state coercion. This diversity contributed to the desire for regional autonomy that generated the formation of the Iraqi federation. Will Kymlicka asserts that countries that form through a union of “peoples” naturally will need some form of federation (Kymlicka, 2001, p. 96). However, as Watts asserts, social diversity does not necessarily require regional autonomy but might require more power-sharing to prevent another tyranny (Watts, 1966, p.66). This explains the desire of the Shiaa majority who, in contrast to the Kurds, were not interested in autonomy to maintain Iraq’s territorial integrity.

The different groups in Iraq have no history of civil war or violent conflict among themselves. They have developed a type of common bond but not a national identity because of the formation of ethnic and religious identities that coincided, as Chapter One explains, with state and nation - building processes. Therefore, the communal forms of identity along ethnic and religious lines override national Iraqi identity. However, these ethnic and religious identities could not override the regional identity that Iraqis have developed based on the village or the town or the province that they lived in. All Iraqis from the different groups would introduce themselves using their regional identity. According to Visser, regionalism is a part of Iraq’s realities that overrides ethnic and religious identities (Visser, 2008, p.1-4). This social fabric was torn apart following the collapse of the Iraqi state and its institutions in 2003. Many elements contributed to Iraq’s social fracturing but before discussing them, it is necessary to clarify the composition of Iraqi society to understand its diversity and complexity.

The Iraqi population numbers nearly 30 million. The main national groups are the Arabs, the Kurds, the Turkomens, the Assyrians and the Armenians. The Arabs make up a majority with nearly 75% of the population. The other major national group is the Kurds at 20% of the population. The other nationalities make up nearly 5% of the

Iraqi population. In terms of religion, an estimated 95% of the population follow Islam while the remaining 5% are Christians, Jews and other religions like the Yezidis, the Sabaa and the Shabek. The number of Iraqi Christians has declined from 8%-10% to 3% because of the violence that has compelled them, like other Iraqi components, to leave Iraq. The Iraqi Muslims are divided between Shiaas and Sunnis. The majority of Iraqi Muslims are Shiaa, with 65% of the population, while the Sunnis account for only 35%. Most of the Shiaas are Arabs but there is also a small proportion of Shiaa Kurds and Shiaa Turkomens. Most Iraqi Sunnis are Arab, however, the majority of the Kurds and Turkomens are Sunni as well. For the Iraqi Christian people most of them are adherents of the Chaldean Catholic Church, the Syrian Orthodox and the Assyrians Church of the East (along with the Armenians). Linguistically, the Shiaa and the Sunni Arabs speak Arabic. The Kurds speak Kurdish with four different dialects and the Turkomens speak Turkish. Most of the Iraqi Christians speak the language of their particular nationality. Despite this linguistic diversity, the Arabic language was the official language in schools and governmental institutions. Territorially, these different Iraqi groups are not evenly distributed. The Shiaa are concentrated in the southern and central provinces of Iraq, with a few in the north. The Kurds are concentrated in the northern provinces with nearly a million Kurds in Baghdad while the Sunnis are in the western and central parts with about a million in the south (see map number 1).

To make that more complex, Iraqi society is also divided along tribal and urban features. According to Noorbaksh, "at least three quarters of Iraq's population belong to its tribal structure. Iraq is home to about 2000 clans which constitute the foundation of its 150 tribes" (Noorbaksh, 2010, p. 2). Different Arabic and Kurdish tribes inhabit different regions of the country. The embedding of the tribes in the state institutions, as we explained in Chapter One, dates back to the early years of the modern state of Iraq. Since then, a multi-power base has been created inside Iraqi society which complicates the opportunities for consensus or harmony. However, the Iraqi tribes have throughout Iraq's history been a factor of national integration and after 2006, the Sunni Arab tribes succeeded in developing a bargain between the Shiaa dominated parties in Baghdad and the Sunni Arabs over the future shape of the country which ended with the amalgamation of many Sunni Arabs into the Iraqi security forces and the political process. This resulted, to some extent, in moderating

sectarian violence after 2008 and opened the door for power - sharing among the Iraqi Arabs.

In fact, national integration and inter-communal relations were developed as a result of the influential role of the Iraqi middle class that emerged in the middle of the 20<sup>th</sup> century. Characterised by a higher level of education and secularism, these Iraqis espoused national identity and provided the basis for a civil society which unfortunately was hollowed out by over a decade of sanctions and two decades of turmoil under Saddam's dictatorship (Dobbins, et al, 2003, p. 169). This class, that gathered together all sections of Iraqi society and put aside its sub-identities in favour of national identity, needs to be re-built to moderate the contemporary sectarian tension.

Despite the cross-cutting social cleavages and the prominent role of the tribes and the middle class in moderating social differences, Iraq's social and complex fabric was torn apart. The pressure of Iraq's religious, ethnic and linguistic differences came to the fore before the formation of the Iraqi federation in 2005. After 2003, this pressure was felt in the struggle to hold power among the Shiaa and the Sunni and in the Kurds' quest for independence. Therefore, the constitutional process and 2005 Constitution could not ignore the forces of religion, ethnicity and language. Different factors contributed to reinforce the pressure of these forces. Alongside the flawed pillars of the state-building process and the authoritarian military political regimes that governed Iraq, both the existence of the American troops and the role of the regional states were decisive elements in the chaos that erupted in violence in the country.

Regionally, all of Iraq's neighbouring states have concerns about the new political democratic process initiated in Iraq. Moreover, some of them have concerns about the American presence near to their borders (Iran and Syria), the possible construction of an independent Kurdish state (Turkey) and the Shiaa rule (the Gulf States). As a consequence, these states have a negative influence on the federalisation and democratisation in Iraq. Moreover, the existence of the US military

force attracts al-Qaeda followers; Iraq has become a magnet for terrorists<sup>1</sup> and the place where terrorists have killed more people than anywhere else on the planet (O'Leary, 2009, p. 11). Al-Qaeda exploits the American presence in Iraq and also exploits the dissatisfaction felt by most Iraqi Arab Sunnis at losing the power which they had used since the formation of the Iraqi state to carry out criminal activities. Consequently, Al-Qaeda, the neighbouring states and some Iraqi Sunni relied on violence to complicate the new political structure of Iraq.

The other cause of violence, and the most important, is the political conflict among the Iraqi politicians to control authority. In fact, the struggle between the main political groups and the absence of trust among them has deepened the differences in Iraqi society and brought the country to the brink of civil war. Iraqi politicians exploit their ethnic and religious identities to achieve their narrow political interests. Accordingly, the results of the 2005 and 2010 elections proved their success in that virtually every Iraqi voted according to their ethnic or religious affiliation. Consequently, political projects contribute to the current violence affecting Iraq. As one Sunni leader stated, to “deafening applause”, “the Americans are not the problem; we are living under an occupation of the Kurds and the Shiaas...it is the time to fight back” (Anderson & Stansfield, 2005, p. 246). Therefore, it can be said that, the geostrategic targets of the external powers, the presence of Al-Qaeda, the struggle between the Iraqi politicians over the state authority and violent memories are the main causes of sectarian and ethnic divisions and violence in Iraq today. These causes magnify Iraqi internal multi-ethnic and multi-religious differences; therefore, the conflict has become internalised between Iraqis themselves as the polarisation of sectarian identities has reached ever deeper into Iraqi society. This has resulted in over a million Iraqis dying violently since 2003<sup>2</sup>.

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<sup>1</sup> For example, the number of militants of foreign nationalities in Iraq at September 2005: Algeria, 600 (20%), Syria, 550 (18%), Yemen, 500 (17%), Sudan, 450 (15%), Egypt, 400 (13%), Saudi Arabia, 350 (12%), Other Countries, 150 (5%). For more information see [Brookings.edu/saban/Iraq/index.aspx](http://Brookings.edu/saban/Iraq/index.aspx). Reuven Paz cites that Saudi Arabia as contributing the highest number of jihadists killed (94) from November to March, 2005, followed by Syria (16) and Kuwait (11). For more information see Reuven Paz, *Arab Volunteers Killed in Iraq: An Analysis*, Global Centre for International Affairs (GLORIA), Occasional Papers, Volume 3, Number 1, March 2005.

<sup>2</sup>For example, in 2006 and 2007 the number of Iraqi casualties was the highest, 654,965 and 1,033,000, compared with numbers for 2008, 2009 and 2010 (86,661, 85,694 and 95,888-104595 respectively) according to Lancet survey and Iraq Body Count.

Out of these ethnic, religious, linguistic and cultural pressures and the recent violence the desire for regional autonomy and unity has developed and contributed to the formation of the Iraqi federation. To a certain extent, the purpose of forming a federation was to manage Iraq's diversity and to sustain its integrity. It cannot be said that the Iraqi federation will, in the short term, end the internal struggle which has in fact intensified since the formation of the federation but we can argue that the structuring of a power-sharing system is a good beginning to manage and regulate Iraqi diversity and will create legal habits and procedures which is intended to promote the state's stability and help to restore a national identity. According to O'Leary, federalism could be an influential tool to re-organise the Iraqi social fabric and to re-create a balance among its components that has been damaged because a federation, if it is carefully designed, could bring together people who seek the advantages of membership of a common political union, but differ markedly in descent, language and culture (O'Leary, 2002, p. 162).

Despite Iraq's deep diversity, the Iraqi federation is based on a territorial dimension for two reasons. First, many Iraqis consider federalism in general, and a multi-ethnic federation in particular, as just a step on the road to Iraq's fragmentation. This is partly because most Iraqis did not have a clear and accurate understanding of what federalism means. A territorial federation was considered and was seen as an assertion of Iraq's integrity because it can be used as an instrument to prevent local majoritarianism with its attendant risks of local tyrannies of the majority or of secessionist incentives (McGarry and O'Leary, 2009, p. 8). Most Iraqis refused to divide their country along multi-ethnic and multi religious lines and insisted on maintaining Iraq's integrity by sustaining its administrative structure, according to which the country is divided into 18 provinces. Second, the overlapping cross-cutting cleavage structure distinguishing Iraq and the haphazard spread of its diverse groups, made division along national and religious lines hard to achieve or would not satisfy all Iraqi components because of the unequal distribution of Iraqi natural resources. Therefore, the formation of the Iraqi federation represented, as Michael Burgess demonstrates, a rational attempt or experiment designed to create and foster a sense of belonging to what, at least initially, is an artificial political community (Burgess, 2006, p. 110).

(Map Number One)

The Social and Cultural Diversity of Iraq



**3.1.2. The Hope for Economic Advantage**

Economic motives have played a prominent part in the desire for unity and regional autonomy. Because oil is the main source of national revenue, any future economic integration promises advantages to all Iraqis who hope for economic and social welfare. The total economic destruction and devastation after the wars and economic sanctions that Iraq faced in the last 30 years due to the actions of the al-Baath regime and its irresponsible policies led to widespread poverty and deprivation. Basically, this regime was based on the “democracy of bread” which means a tacit social contract in which the regime provides social and economic welfare in return for the population’s political loyalty (Dobbins, et al, 2003, p. 186). This did not however provide any kind of prosperity for the Iraqis or contribute to the state’s economic

development. A great part of Iraqi national revenue was taken by members of the ruling regime and its followers and was used for the military budget. A number of fundamental problems characterised the Iraqi economy after 1991 because of the international sanctions. Economic activity plummeted and people were more likely to suffer hunger and disease despite the UN's Oil-for-Food Programme<sup>3</sup>. Because of these factors Iraq's economy has been described as a police state economy in the 1970s, a war economy in the 1980s and a sanction economy in the 1990s (Baker and Hamilton, 2006, p. 22). Because of this past experience and the economic inter-relations that bond the diverse groups of Iraq, as we indicated in Chapter One, Iraqis in general have the desire for economic integration if it would overhaul the national economy and ensure prosperity and an equal distribution of revenues.

In fact, even if economic integration is achieved and economic welfare is developed we cannot assume that it would accommodate every specific economic interest of each of the Iraqi groups and the producing provinces. This is because oil resources are unequally distributed. Oil fields are located mainly in the south and north provinces such as Maysan, Basra, Dhi Qar, Kirkuk and Mosul. This explains the recent calls of the producing provinces, notably in Basra, to control the production and revenue of the oil extracted from the province because it is one of the poorest cities and towns in the world. Simultaneously, these provinces deserve a greater share of the oil revenue because they incur various economic and environmental costs in producing the oil. This is exactly what happened in Nigeria and in response the Nigerian government allocated 13% more of the country's oil revenue to its oil-producing regions (Brancati, 2004, p. 15). This contributes however to the development of economic regionalism and the desire for regional autonomy. This unequal distribution of oil among the Iraqi provinces is a critical issue of the Iraqi federation because its distribution and benefits impact on Iraq's national integrity (Marr, 2006, p. 71). The importance of this subject is also indicated by Watts who argues that one of the most controversial issues in a federation is the unequal distribution of natural resources because the concentration of resources in some

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<sup>3</sup> A programme set up by the UN after the second Gulf War which allowed the Iraqi government to export \$2 billion worth of petroleum over a six month period with \$200-300 million allocated to the Kurdish region.

regions can lead to enormous disparities in the wealth of the constituent units (Watts, 2008, p. 97).

The importance of the unequal distribution of oil resources and its impact on maintaining the territorial integrity of Iraq arises also from its close correspondence with the political map of Iraq and this, according to Watts, would increase economic regionalism, (Watts, 1966, p. 74). The southern producing provinces are mainly inhabited by the Shiaa while the northern producing province, Kirkuk, is inhabited mainly by the Kurds and Turkomens and Arabs. If the oil rich provinces have the right to control their natural resources, which is the Kurds' desire and this is their interpretation of the Iraqi Constitution, they might secede from Iraq. Moreover, any unequal distribution of oil revenues might leave the Sunni provinces without sufficient revenue compared with the Shiaa provinces and the Kurdistan region, if Kirkuk is included in it. This will not just cause inequality among the provinces but it will also provide them with an incentive to rebel against the new political experiment. In order to control economic regionalism, the federal government has given the producing provinces an additional share of national revenue, an additional one dollar for each barrel produced. With this procedure, the desire for unity and maintaining central management of the oil sector would be consolidated. Therefore, oil revenue should accrue to the central government, especially in the current period, to ensure territorial integrity and political stability and until the entire democratic federal process has been secured.

Because of the desire for economic integration mainly among the Sunnis, and economic regionalism mainly among the Kurds and some Shiaa, the 2005 Constitution deliberately leaves ambiguous where the control of oil should lie. However, it affirms that Iraq's oil and gas belong to all the Iraqi people. The Iraqi political elites must consider the importance of these two desires for the future development of the Iraqi federation.

### **3.1.3 The Prospect of Independence (The Kurdish Issue)**

The Kurds' desire for independence contributes to the development of a desire for regional autonomy. The Kurdish issue has always been one of the main challenges

for the Iraqi state and its integrity and is closely related to the social and economic factors discussed before. The Kurds' incorporation in the modern state of Iraq despite their unwillingness, their territorial concentration in the north of Iraq and their cultural and language differences from the Arabic part of Iraq contribute to reinforce their ethnic identity and weaken their bonds with the state. Indeed, the Kurds desire for independence was one of the main driving forces behind the formation of the Iraqi federation as a new political experiment in Iraq's political history. Initially, the idea of composing two regions, one for the Arabs and a second for the Kurds, became the main basis of the federation.

The roots of the Kurdish issue, as described earlier in the historical introduction, date back to the end of World War I and the collapse of the Ottoman Empire. At that time, Allies and Axis Powers signed the Sèvres Treaty in 1920 which gave the Kurds the right to establish their own independent state (Jawad, 2004, p. 1). However, the project of establishing a Kurdish state was abandoned for three reasons. According to Anderson and Stansfield, the British decided to incorporate Mosul into Iraq because of the discovery of large reserves of oil. Mosul included a significant population of the Kurds and consisted of the northern part of Iraq. Moreover, the rise of the national movement in Turkey resulted in Turkish control over the Kurdish area in the south-eastern part of Turkey. This led Turkey to claim Mosul as Turkish territory. The British rejection of that claim resulted in what was known as the Mosul Problem that was settled by the League of Nations in 1925 which ended the Turkish claims (Anderson and Stansfield, 2007, pp.15-16). Furthermore, according to Hassan Al-Alawi, King Faysal asked the British to incorporate Mosul, which contained a majority of Sunni population, into Iraq in order to prevent the Shiaa from dominating the state (Al-Alawi, 2010). Therefore, the Kurdish issue came to the fore with the re-amalgamation of the Mosul province into Iraq. Consequently, the Sèvres Treaty was abolished when the Lausanne Treaty was signed in 1923 which drew the region borders and ended Kurdish territorial aspirations by dividing the Kurds between four states: Turkey, Iraq, Iran and Syria.

After the inclusion of Mosul into Iraq, the British divided Mosul into four provinces (Erbil, Sulaymaniyya, Kirkuk and Mosul) and in 1970 Dohuk was added as another Kurdish province by the Iraqi government (see map number 2). Erbil, Sulaymaniyya

and Dohuk include a majority of Kurds, while Mosul and Kirkuk include different Iraqi groups, Arabs, Kurds, Turkmens, and Assyrian (Jawad, 2004, p.2). The Kurds resisted domination by the Arabs and rebelled initially against the British and then against the Iraqi governments in 1919, 1930, 1935, 1943, 1961 and 1973. However, the imbalance of power between them and the British and the Iraqi governments did not enable them to reach a compromise about their right for self-rule. Therefore, the Kurds did not demand separation from Iraq in their rebellions and limited their demands to tribal interests and cultural rights. For example, the 1961 rebellion was against the agricultural law that the first republican government issued which affected the Kurdish feudal class (Jawad, 2004, p.3). After that, the Kurdish issue continued as a brooding presence that determined the extent of the Kurds' demands and had a negative effect on Iraq's stability and territorial integrity. In fact, there were three main causes for this which I have identified in the following way:

**3.1.3.1 An External Element.** The regional and international powers intervention to suppress or to support the Kurds in their desire for independence contributed to the evolution of the Kurdish issue and to extending the level of the Kurds demands. Generally, during the twentieth century, the international community was not concerned with the Kurdish issue and it consequently supported the Iraqi governments' efforts to control it. For example, in 1975 Iraq signed an agreement with Iran which was endorsed by US President Ford and the Secretary of State Kissinger to stop Iranian support for the Kurdish Democratic Party (KDP) (O'Leary and Salih, 2005, p.7). Moreover, after 1991 the US moved to support the Kurds and to protect them from the Saddam regime through the no-fly zone which provided the Kurds with a golden opportunity to internationalise the Kurdish issue and to consolidate their gains made after their separation from the central government (Marr, 2004. p.256). The regional environment also obstructed the Kurds demands for independence although it supported the Iraqi Kurdish parties against the Iraqi governments because of their conflict with those governments. In fact, the competition between the (KDP) and the Patriotic Union of Kurdistan (PUK) contributed to and resulted in forming different sets of relations with neighbouring states (Stansfield, 2003, p.139).

**3.1.3.2 The Internal Instability and Authoritarian Regimes.** The political instability, which has characterised Iraq since its creation and the rise of the authoritarian regimes that sought to assimilate the Kurds, weakened the ability of the Iraqi governments to deal with and control the Kurdish issue. Military upheavals during the 1960s and the Gulf Wars, which destroyed the Iraqi army that had been used to suppress the Kurdish rebellions, all strengthened the Kurds' national aspirations for self-rule. The use of violence by successive Iraqi governments made the Kurds more assertive in their demands. Indeed, there were two competing approaches inside the Iraqi governments concerning how to deal with the Kurdish issue: one represented the military institution's opinion and the second represented the political opinion recognised King Faysal and by some Iraqi politicians, such as the late Iraqi Prime Minister Al-Bazzaz who both believed in political solutions to meet the Kurdish demands (Jawad, 2004, p.4).

**3.1.3.3 A Strong Sense of National Identity and the Role of the Kurdish Leadership.** The Kurds of Iraq are different from Kurds in Iran, Turkey and Syria for two reasons: first, they were better organised both in conducting an armed and a political struggle and in nurturing and maintaining their constituency. This was because of the role of the Kurdish leadership and especially the charisma of Mustafa al-Barzani who dominated the politics of the Kurds in Iraq from 1930-1979. Barzani institutionalised his charismatic authority and achieved military discipline among the contentious Kurds (O'Leary and Salih, 2005, p.23). Moreover, after 2003 and despite the conflicted relations between the main two Kurdish leaders, Masoud Barzani and Jalal Talabani, they ensured to unify their political positions in an attempt to keep their gains. Second, the Iraqi governments allowed the Kurds to use their national language, traditional costumes and celebrate their national occasions, despite their quarrel with them, something that was not, and is still not, authorised by other regional states which contain a Kurdish minority. Given this, the Kurds of Iraq demanded more.

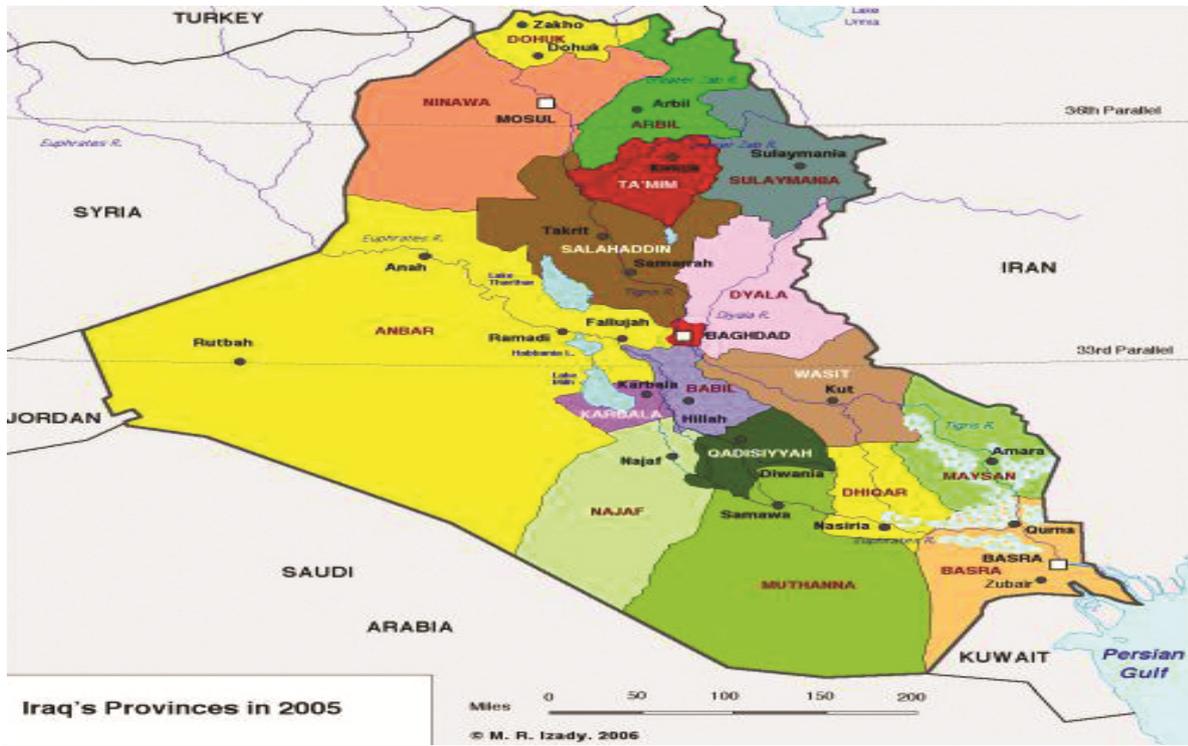
These causes decisively intensified the Kurdish issue and increased the level of the Kurds' demands. During the 1960s the Kurds demanded autonomy as a solution to their problem and considered the rights that the provisional constitution of 1958 provided such as language rights and recognition were not enough, while the Iraqi

government thought that these rights were sufficient to calm Kurdish fears. Later, in 1966, Al-Bazzaz signed a declaration which clearly recognised the bi-ethnic (Kurdish-Arab) character of the Iraqi state and implied regional autonomy, as long as it did not undermine Iraq unity (Kerim, 2007, p. 17). However, the military rejected this declaration and forced al-Bazzaz to resign. In 1974, the government of al-Baath issued an autonomy law for Kurdistan which was rejected by the Kurdish national movement. As a consequence, the violence that had abated after 1968 restarted. The iron hand of al-Baath controlled Kurdish aspirations until the Second Gulf War, which was recognised as a turning point in the Kurdish issue and its demands. After 1991, their demands were to focus on an extended autonomy and an insistence on a federal solution (Jawad, 2004, p. 6). This was legitimated by the construction of the Kurdish National Assembly (KNA) which proposed in 1992, through a parliamentary bill, a draft constitution for a two-unit federation in a future Iraq, one to encompass the Kurdish region and the other to encompass the rest of Iraq - a declaration that was renewed in 2002 (O'Leary and Salih, 2005, p. 35). The Kurds insisted on federalism because the regional situation did not allow its secession and the construction of a separate state in northern Iraq. Therefore, the Kurds were the main advocates of a federal solution as an alternative to their aspiration to separate from the Iraqi state at least for the foreseeable future. It was, in short, a second policy preference.

After 2003, the Kurds wanted to consolidate the status they enjoyed under the no-fly zone. Both the Transitional Administrative Law (TAL) and the 2005 Constitution were designed to maintain the autonomy they enjoyed. However, this special position of the Kurds influenced the opinion of minority groups in the northern part of Iraq regarding federalism because of their fear of discrimination by the Kurds. Alongside these minority groups are the Turkmens, who also expressed their opposition to the establishment of a Kurdish region with Kirkuk as its capital. This opposition was backed by the Turkish government when its foreign minister Gul stated that Turkey would intervene militarily to prevent Kirkuk from becoming the capital of Iraq's Kurdish region and when it sent its troops into northern Iraq to guarantee, according to Gul, Iraq's territorial integrity (Brancati, 2004, p. 12). Turkey considers itself the protector of the Turkmen rights because of their common ethnicity and it also sought

to control the Kurdish minority in Turkey so that it is not pulled into the Kurds' Iraqi federal experiment.

(Map Number Two)  
The Administrative Structure of Iraq



### 3.1.4 The Historical and Territorial Factors

As we explained in Chapter One, the historical legacies of state-building and national integration formed the context in which the desire for unity and regional autonomy were nurtured. The main pillars of state-building in Iraq contributed to the foundation of a highly centralised state ruled by the Sunnis that did not correspond to the regionalism and the power-sharing desires of the Shiaa and the Kurds. The continuity of the pillars of the state-building and national integration processes throughout the modern history of Iraq has consolidated its strength.

In reality, among the historical forces that generate the desire for unity are those events that have affected and contributed to the formation of Iraqi cultural identity such as, the history of the earliest civilization in Sumer, Babylon and Assur in the south and the north of Iraq and the impact of the Islamic civilization and particularly the Abbasid caliphate (rule). In that period, Baghdad became the capital of the Islamic world, the wealthiest and the most intellectual and cultural territory of the caliphate. The glories of the history contributed to the formation of a common feeling that gathers together all the segments of Iraqi society.

Among the historical events that generated the desire for regionalism, mainly for the Kurds, was their incorporation in the modern Iraqi state and the subsequent rejection of their independence by the British. This contributed to the formation of a Kurdish political identity and marked the beginning of their long and troubled relationship with successive Iraqi governments. In fact, their long history of contestation with Iraqi governments which responded brutally strengthened their desire for regional autonomy<sup>4</sup>. Consequently, the Kurds were more federalist than other Iraqi groups.

The territorial factor also encouraged the desires for union and separation which led to the formation of the Iraqi federation. Iraq consists of 18 provinces with contrasting geographical zones close to each other: generally dry and plain in the middle and the south with marsh areas, and rainy and mountainous in the north. However, these contrasting geographical areas do not obstruct the desire for maintaining the unity of Iraq because they are interlinked by different forms of communication and economies that have encouraged a vital sense of interdependence. Moreover, these provinces shared the same administrative and educational structures designed by the previous governmental systems which simplified the interdependence. Simultaneously, the concentration of the Kurds in the distinctive northern territories was an additional element, alongside the cultural, linguistic and ethnic elements that added to the sense of distinction from the other Iraqi groups. This sense translated into political demands for regional autonomy.

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<sup>4</sup> For more information about the troubled relationship between the Kurds and the governments of the states that incorporated them see Stansfield, Gareth and Hashem Ahmadzadeh (2007), 'Kurdish or Kurdistanis? Conceptualising Regionalism in the North of Iraq', in: Reider Visser and Gareth Stansfield (eds), *An Iraq Of Its Regions: Cornerstones of a Federal Democracy?*, pp. 123-149.

### **3.1.5 The Role of the Political Leadership**

The Iraqi leadership contributed to the contrasting desires for unity and regionalism through their different political projects. The circumstances that accompanied the political process after 2003 contributed to giving some of the political leaderships a stronger position than others in the process of rebuilding Iraq. Therefore, the formation of the Iraqi federation was not introduced just because of the previous factors. In fact, it was the decisive role of the political leadership that in general lacked the ability to control the state as a whole and mobilise the diverse groups among the Iraqi people, which decided to form the Iraqi federation. The Iraqi federation was negotiated, designed and structured by the main Iraqi political powers (mainly the Kurds and the Shiaa), whose previous history of marginalisation from the state of Iraq had placed them in a special position in the process of rebuilding Iraq after 2003. Consequently, a compromise was reached among them and the US, as we will explain later in this chapter, and they decided to create a federation. In other words, the Iraqi federation was a political bargain among elites which reaffirms Riker's federal theory; it was formed from above without any popular support for the formation of a federation (Haddad and Rizvi, 2008, p.58).

Most current Iraqi politicians were part of the Iraqi opposition in exile during Saddam's rule. They had different political agendas that led to different visions of the structure of the new Iraq. These different political agendas and visions of the state compounded with their different international connections and their different resources hindered any effective cooperation among them and consequently failed to promote a sense of national belonging, as we will explain further on in the thesis. In that regard, it will be important to explain the different political projects that existed, and continue to do so, which contributed to the development of the desire for unity and regionalism that impacted on the desire for the formation of the Iraqi federation.

**3.1.5.1 Religious Projects:** These projects are mainly embedded in the Islamic Shiaa parties such as the al-Dawa party, the Supreme Council of the Islamic Revolution in Iraq (SCIRI), the al-Sadr movement and the al-Fadhilah Party, a splinter group of the al-Sadr movement. Some of these parties, such as the Dawa and SCIRI, have historical roots while others appeared after 2003. The al-Dawa

party, which heads the government, is now under the leadership of Nuri al-Maliki and its electoral list (A State of Law). In the 2010 election, it won 89 seats in Council of Representatives to come second to the al-Iraqia list. It was established in 1959 and was based in Iraq. Its main creed is to defend Islam in the face of creeping secularism (Jabar, 2003, p. 164). However, its main aim was changed so that it worked to end Baath rule and, because of that, it based itself in Iran after the Iranian Revolution but maintained some political and religious distance from Tehran and its philosophical thought.

In contrast to this political party is the SCIRI which was established in 1982 and was based in Iran with the support of the Iranian government. It reflects Iranian Shiaa Islamic views and has an armed wing called the Bader organisation (known as the Bader Brigades before 2003). The SCIRI was the defender of a southern regional federation, hoping for a special union with Iran, which was rejected by most of the Iraqis in the South who considered it just a step towards the fragmentation of Iraq. In contrast, modern political Shiaa represented by al Sadr and al-Fadhilah appeared after the American invasion. The al-Sadr movement, headed by Muqtada al-Sadr, the son of ayatollah Sadiq al-Sadr killed by Saddam in 1999 because he was calling on the Shiaa to participate in political life, has made its biggest impact since 2003 through its Mahdi Army militia, but has also gone in and out of participation in electoral politics as the overall situation has shifted (Weintraub, 2009, p. 4). This political force represents a wide section of Shiaa Arab deprived youth who suffered during Baath rule, many of whom are still suffering. Like al-Dawa, the al-Sadr movement favours centralism over federalism. Despite its recent construction, this movement proved its potential influence on Iraqi streets during the 2010 election when it won 40 seats out of 67 in the National Alliance which included SCIRI, Sadrists and Fadhilah. The latter shares the political views of the Sadrists but is led by the spiritual religious leader, Mohammed Yaqubi, whereas both the Dawa and SCIRI followed Grand ayatollah Ali al-Sistani, the most prominent ayatollah in Iraq during the US invasion, who did not want the creation of an Islamic state with the ayatollah at its head (Ehrenberg, et al, 2010, p. 317).

**3.1.5.2 The Secular Project:** This project is represented by some Shiaa and Sunni political parties. The Shiaa secular powers are the Iraqi National Council (INC) and

the Iraq National Accord (INA). The INC led by Ahmed Chalabi, was set up in 1992 and is backed by the Pentagon and based in London (Herring and Rangwala, 2006, p. 17). It joined other Shiaa religious parties in a unified electoral list that won 67 seats in the last parliamentary election in March 2010. The INC and the Islamic Shiaa parties joined forces in an effort to earn the majority of Shiaa votes. The INA led by Iyyad Allawi, was also set up in 1992. Most of its members were ex-Baathists and military officers. Allawi was chosen as the first Iraqi Prime Minister after the invasion and his political list (al-Iraqia) won most votes in the 2010 election. It also includes mainly Sunni political characters. Allawi's project emphasizes constructing a strong democratic centralised state based on secularism.

The Sunni secular powers include the Iraqi Concord Front which includes the Iraqi Islamic Party (IIP) led by al-Hashimi, the previous vice president, and the Iraqi Front for National Dialogue (IFND) under the leadership of Salih al-Mutluk. Both the IIP and IFND joined the al-Iraqia list in the last election in March 2010 and shared its political project.

**3.1.5.3 Ethnic Projects:** The Kurdish parties are good examples of ethnic projects. There are two main parties, the Kurdistan Democratic Party (KDP) formed in 1949 and led by Masoud Barzani, the current president of the Kurdistan region, and the Patriotic Union of Kurdistan (PUK) formed in 1975 and led by Jalal Talabani, the current Iraqi president. Both parties are secular and have demonstrated a high degree of coherence and discipline in their attitudes to the Kurdish role and demands in the new Iraq, despite their violent past<sup>5</sup>, which arises from their strong sense of ethnic identity and their aim of a Kurdish state. Moreover, both have large Peshmerga militia forces. Another kind of ethnic project is the Turkomen United Front which was set up in 1995 as a political front of 26 groups aiming to represent the Turkomen community in Iraq and to challenge the authority of the Kurdish parties in northern Iraq. It has a good relationship with Turkey which frequently declared its readiness to intervene in Iraq to protect them. Moreover, there is the al-Rafidian list which represents the Assyrian nationality and all the different Iraqi Christian groups.

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<sup>5</sup> There was a long violent struggle between the two parties during Baath rule to control the three Kurdish provinces. The KDP was more cooperative with the central government in Baghdad even after the separation of the north Kurdish provinces in 1991.

If we examine these projects we can recognise not just the contradictions among them, but also the contradictions within them. Religiously, the Shiaa religious parties have a different political view regarding the shape of government (centralism or federalism) and their alliance with the INC seems incompatible with their Islamic project. Moreover, there is a real dilemma between the religious project and the secular project represented by the al-Iraqia List. Religious parties consider the al-Iraqia project an attempt to return to a tyrannical centralised governing system ruled by ex-Baathists and members of the past regime, while al-Iraqia consider the religious project as an Iranian project in Iraq aimed at constructing a theocratic state similar to Iran. There is no consensus on the shape of the state. On the other hand, the competing Iraqi political projects reflect the political fragmentation and mistrust among the political leadership which was generated from their desire to hold authority and the lack of a democratic culture. The Iraqi Sunni group needs to consider that they are only a part of the Iraqi social fabric and it would be impossible for them to run the state by themselves. At the same time, the Iraqi Shiaa must recognise that other Iraqi groups have the right to participate in running the state and being the majority does not mean more despotism or state domination. Because of the array of diverse political powers and projects, a pluralistic democratic system is a prerequisite for a stable Iraq. Furthermore, the Kurdish powers should realise that obtaining autonomy or self-determination does not mean necessarily a device to threaten the state's integrity or to pressure the centre to implement their national demands.

### **3.2 The Novel Factors**

So far in this chapter we have investigated the classic factors that contributed to the desires for unity and regionalism which made the formation of federation a feasible option for rebuilding Iraq. However, there were other factors that classic federal theory is silent about which we would call novel factors. In combination with the classic factors, both set the foundation for a distinctive kind of federation. These novel factors were the need for democracy and the external pressure applied by the US. Both are novel and represent a deviation from the classic factors and an addition to federal theory as regards the origin and formation of a federation. It is important to

note that the novel factors and the classic factors are not isolated from each other. They are interrelated. For instance, the prospect of independence and the role of the political leadership were closely interrelated with the democratic and external factors. Bearing this in mind, the next section will analyse the two novel factors of the democratic imperative and external pressure.

### **3.2.1 The Democratic Factor**

This novel factor played an indispensable role in generating the desire for both unity and regionalism. This factor does not feature in classic federal theory but it is a clear indication of the evolution of federal theory in the subject of the origin and formation of federations. In fact, the existence of this factor means that a new consideration of federalism begins to form. Federalism is not an instrument to create a union, as in the first wave of federations 1789-1945 or to maintain the unity of a state, as in the second wave of federations 1945-1970, in fact it becomes after the Cold War a mechanism to re-build states on liberal democratic bases. Most of the conflicts that stormed the world after that time were linked to the desire for more freedom and civil rights and demands for self-rule by minority groups that all threatened the continuity of some states. Therefore, moving towards democracy becomes an attractive form of government because its principles embrace human rights, needs and desires and it can often deliver them in reality (Beetham, et al, 2008, p.17).

In Iraq, democratic principles have been essential in the re-building of the new state because of Iraq's authoritarian military legacy and its religious, ethnic and cultural diversity. However, Iraq is a state without a democratic past. The democratic political culture and the rule of law did not develop among the Iraqis because of previous authoritarian regimes that governed it. These regimes started from the last decade of the monarchy in the 1950s and continued until Saddam's removal from power in 2003, and this contributed to the Iraqis' desire for liberty and democracy. In the last four years of the monarchy the political parties were shut down, the licences of most opposition newspapers were withdrawn and elections were controlled in order to produce a pliant parliament (Dawisha, 2013, p.189). This situation continued during republican rule which was distinguished by the idea that the leader was the sole

embodiment of democracy and liberty. Iraqis, in general, were jailed and killed for making or laughing at a political joke. They were deprived of simple civil rights and the rule of law was abandoned. Therefore, democracy was the agreed principle among the Iraqi opposition parties after 1991 and again after 2003.

With the marginalisation of democracy, discrimination arose against the Shiaa and the Kurds as the main Iraqi groups which developed liberal democratic political demands. The political democratic demands of the Shiaa, as we indicate in the social and cultural diversity factor of the classic factors, did not include any demands for autonomy and regionalism. Instead, as the majority group their political demands were focused on more involvement in the political process and more freedom to express and practise their Islamic faith. Therefore, their democratic political and social demands did not threaten the territorial unity of Iraq and were conducive to the desire of maintaining Iraq's territorial unity. On the contrary, the democratic demands of the Kurds were conducive to the desire for regionalism and self-rule. Alongside their ethnic and cultural differences from the rest of Arabic Iraq which were not accommodated by the Iraqi governing systems, the denial of their right to independence at the end of the First World War and their compulsory inclusion in the modern state of Iraq, all accumulated in their desire for autonomy and self-rule and even separation from Iraq. Thus, the different democratic desires of the Shiaa and the Kurds contributed to the foundation of the different desires for unity and regionalism, embedded in the formation of the Iraqi federation.

Coercive methods were used by the previous regime to control the political demands of the Shiaa and the Kurds and their aspirations for liberty, equality and freedom. Clear evidence of the brutality of Saddam's regime are the al-Anfal campaign against the Kurds in 1988 during which chemical weapons were used and the mass graves of the Shiaa in the South after their uprising (al-Intifadha) in the aftermath of the second Gulf War in 1991. In return, both the Shiaa and the Kurds demonstrated little degree of loyalty to the state's institutions which became instruments of brutal suppression and gradually damaged the Iraqis' ability to make political change. These repressive institutions were instruments to monopolise force and resources for the benefit of the sole leader. Moreover, Saddam never hesitated to punish cruelly even the members of his own family and government just because they did not agree with his policies or

if they showed different opinions. Given this, most Iraqis desired a political change that would satisfy their social and economic demands and interests, provide them with liberty and freedom, protect their rights and enable them to participate directly or indirectly in the political process and which would provide Iraq and the region with political stability. Iraq was the arena of three wars in 23 years because of its political regime. With the construction of a democratic system in Iraq the chances of war should decrease because democratic systems usually do not fight each other. Given these reasons, the desire for democracy was vital to maintaining its territorial integrity, meeting popular demands and preventing the rise of tyrannies. Therefore, democracy is both the target and instrument at the same time.

In fact, it is important to mention that the internal desire for building a democratic Iraq was also promoted by the external desire represented by the US as one of its targets for Iraq after the toppling of Saddam, as we will explain in the next section. The US and Iraqis shared the aim of building a democratic Iraq because it is true that democracy cannot be forced on an unwilling population (Anderson and Stansfield, 2005, p. 189).

Because federalism is built on and arises from liberal democracy it should guarantee the nurturing of democracy in Iraq. The combination of self-rule and shared-rule depends on the devolution powers and sharing powers which is very difficult and complicated to develop without strongly intertwining democratic principles. These values along with other federal values such as empathy, tolerance, recognition and dignity create the federal principles of autonomy, partnership, self-determination and mutuality (Burgess, 2012, p. 261). In sum these principles all create a federal solution for Iraq. Despite Iraq's diversity and regardless of who works to achieve this solution, federalism creates a sense of "us" and "them" (Linz, 1997, p. 46) within a strong unified Iraq. Consequently, federalisation and democratisation were initiated simultaneously in Iraq. If Iraq was to become a liberal democracy, it could only be a federal democracy or one with powerful federal elements.

Hitherto, the process of democratisation has proved that stability and security have been more important for the Iraqis than democracy. This is mainly because of the brutal violence and anarchy that coincided with democratisation after 2003. The

Iraqis were incapable of recognising democracy's merits within that violent atmosphere. In addition, a democratisation process that implies a transition from authoritarianism to liberal democracy requires time to become established, something that the Iraqis did not have (Heywood, 2007, p. 32). Iraqi society is wounded and its people are burdened by the misery inflicted by the previous regime's policies as well as international policies, therefore, security, stability and services have become more crucial and desirable at this stage. The establishment of democracy in Iraq is not easy and the current political process cannot guarantee it because of the absence of the political culture, civil society and the nature of the political process in Iraq which has conflicting rather than competitive characteristics.

### **3.2.2 The Role of the United States**

The other novel factor that is absent from classic federal theory concerning the origin and formation of the new federal models is the pro-active role of external powers. The new international system that appeared after 1990 has provided the US and the United Nations (UN) with a superior position to intervene in ending conflicts and supporting states' transition to liberal democracy. The US intervened in Somalia, Haiti, Bosnia, Kosovo, Afghanistan, as well as Iraq. Each case is unique but all included military action. The role of the US as the main foreign power in Iraq after 2003 also contributed to strengthening the desire for unity and regionalism in the formation of the Iraqi federation through its efforts to rebuild Iraq on democratic bases. The federal political bargain was introduced by both the Iraqi political leaderships and the US.

The declared aims behind the American intervention were to destroy Iraq's weapons of mass destruction, remove Saddam from power and democratise Iraq. However, when the target of the first aim was shown not to have existed and the second aim was quickly accomplished, democratisation became the main aim which without any doubt fitted American regional interests. The neo-conservative group in the US Administration saw forcible regime change in Iraq as the key to the reconfiguration of the whole of the Middle East (Beetham, 2009, p. 444). Despite the US consideration of the Kurds' long history of discrimination, at the beginning Washington informed the

Kurds that there was no place for their regional government in the interim constitution, and the proposed federal system would be based on the eighteen provinces because it was concerned that Kurdish autonomy may lead to their separation from Iraq and that might destabilise Turkey which was not prepared to accept a semi-independent or fully autonomous Kurdish region or state on its southern border, which is the aspiration of some Iraqi Kurdish leaders (Jawad, 2009, p. 1, Diamond, 2005, p.161, Galbraith, 2006, p.165). However, this plan dissatisfied the Kurds and made them more determined to maintain their semi- independent state. They negotiated their future directly with Paul Bremer, the American Governor of Iraq, and they were determined to keep control of their region, as we will explain in Chapter Five. According to Galbraith, “the Kurds knew the strength of their hand: they controlled their own territory, they had their own army and they were politically united” and the way that Bremer handled the Kurdish issue inspired the Kurdish independence movement to pursue its goal more aggressively (Galbraith, 2006, pp. 162,170). Therefore, the US failed to put pressure on the Kurds to accept its plan for a federal Iraq based on its eighteen provinces. Consequently, the US ignored the Kurds’ heritage of discrimination and marginalisation and twelve years of independence and fuelled their desire for regionalism that led to a very loose federation in the 2005 Constitution.

On the other hand, the impact of the agreement between the US and the Kurds to recognise Kurdistan as a federal region with its wide-ranging powers encouraged some of the Shiaa groups to seek something similar to what the Kurds had achieved. A good example of this was the desire of the SCIRI for a structure for the Southern region which would consist of nine provinces. As we noted before, this desire was rejected by most of the Iraqis in the south who insisted on maintaining Iraq’s administrative structure as a guarantee for a unified Iraq. This was the attitude of the al Dawa party and al Sadr who thought that a Kurdistan regional government would threaten Iraq’s territorial integrity as a first step on the slippery slope to its independence. The same attitude was expressed by the Sunni Arabs who insisted on rejecting the idea of forming federal regions and limiting it to Kurdistan only because it would threaten Iraq’s integrity.

In fact, Iraq was a difficult experiment for the Americans and this difficulty hindered their plans and demanded more consideration for Iraq's particularities. The difficulty of Iraq arises from the fact that it cannot be addressed in isolation from other regional issues, interests and unresolved conflicts. The Arab-Israeli conflict, Iran, the need for economic and political reforms, and extremism and terrorism are inextricably linked (Baker and Hamilton, 2006, p. 44). Furthermore, it is important to consider that the nature and dynamics of Iraqi politics was another source of constraints on the US, which placed heavy predictable burdens on it. The US expected to be able to transfer power quickly to the Iraqi opposition in exile, however, it became clear that those exiles lacked support within Iraqi society and it was only the Kurdish powers that had the support of the Kurdish population. The rise of the new local Iraqi powers, such as al-Sistani and al-Sadr, also put pressure on the American plans which were modified in line with Iraqi demands. In addition, the difficulty of Iraq also arises from the US choosing to act without the authorisation of the Security Council, without the support of NATO and with only a handful of allies (Galbraith, 2005, p. 249). This has negatively impacted on the legitimacy and the credibility of its plans for Iraq and compelled it to gain international and regional support, mainly from the UN because its role was crucial to giving credibility to the election. Finally, the years since 2003 have proved that there was a weak understanding and unsatisfactory planning by the Americans as regards the Iraqi situation. US policy makers were, as David Little and Donald Swearer argue:

Not well acquainted with the history of Iraq and because of their unfounded preoccupation with disposing of unconventional weapons, the task of reforming the government and making peace was considerably more difficult than expected after the invasion. Their focus on eliminating Saddam Hussein as a geopolitical threat also blinded them to the complex realities of Iraq's cultural, religious and ethnic situation. The US was not aware that it was entering a society fraught with revolutionary potential (Little and Swearer with McGarry, 2006, pp. 33-34).

Consequently, the US has had to be more considerate to Iraq's difficulties and to adapt to them in a way that would also protect its own interests. A clear example of this is the Americans' decision to go ahead with a rapid transfer of power leaving the precise dimensions of that process to the Iraqis to decide, without any clear indication of who would be likely to take control or in which political direction they would take Iraq (Herring and Rangwala, 2006, p. 261). Some theorists argue that the war in Iraq

was a war of choice in contrast to the war in Afghanistan which was a war of necessity for the US and this would explain what they consider to be flexibility towards the Iraqi political process by the US (Ghani and Lockhart, 2008, p. 5). However, the flexibility might arise from Iraq's difficulties, the non neutralisation of regional states and the pragmatic policy of the US. Moreover, this flexibility, if it is flexibility, might also derive from the compatibility of the demands of the Kurds and US goals. The Kurds wanted their own autonomous state based on ethnic federalism and the US sought a democratic federal Iraq based on its eighteen provinces. With federalism, the Americans could achieve democratisation, giving the Kurds what they wanted and maintaining Iraq's integrity and the creation of a stable state able to strike a balance with Iran. Moreover, this project was compatible with the Shiaa political project announced in the July 2002 declaration. This declaration<sup>6</sup> was written by, Mowaffaq al-Rubai, Ali Allawi and Sahib al-Hakim who represent different trends within the Shiaa house and called for a new Iraq based on the principle of democracy, federalism and community rights. Both al-Rubai and al-Hakim favoured the idea of forming a distinct Shiaa region, consisting of nine southern provinces under a federal system (Ehrenberg, et al, 2010, p. 313). Given this, the US supported the adoption of federalism because it was not at variance with its agenda in Iraq and the whole Middle East, and it was the favoured choice of the Kurds which was accepted by the Shiaa. Therefore, any efforts to force any other political system might have created additional difficulty for the US in Iraq.

Many scholars argue that federalism was imposed on Iraq and Iraqis by the US, however, it can be said that the decision was not a wholly American one. There was some kind of political bargain struck between the Iraqis and the US, and it was not easy for the Americans to impose a federal system without a desire from Iraqis to form such a system. That was incompatible with its democratic plan for Iraq and it thought that imposition would cripple the Iraqis' ability to work independently. For instance, the Coalition Provisional Authority (CPA) resisted first the bilingualism of the Iraqi federation and insisted that federalism should not be based on ethnicity; however, the Kurds rejected the mono-lingual project and insisted on including both

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<sup>6</sup> To see the declaration document and the principles contained in it look at "The Iraq Papers", John Ehrenberg, J.Patrice Mcsherry, Jose Ramon Sanchez, Caroleen Marji Sayej, 2010 (New York, Oxford University Press) p. 313-316.

the Arabic and Kurdish languages. Moreover, ayatollah Ali al-Sistani criticised the way that the CPA selected the Iraqi Governing Council and the way the (TAL) was produced. It was written by American lawyers and signed by 25 Iraqis appointed by Paul Bremer ( the American Governor to Iraq), therefore, al-Sistani issued his famous democratic Fatwa calling for obstacles to be put in the path of reaching a permanent constitution (Rothchild and Roeder, 2005, p. 1). It also called for a nationwide boycott until a democratic election was held to elect members of the national assembly which would be responsible for drafting the Iraqi constitution The Americans were forced to support al-Sistani in his demands. Furthermore, he put together a coalition of Shiaa parties called the United Iraqi Alliance that won 53 to 54 percent of the seats in the Council of Representatives in the 2005 election. However, after 2007 he refused to engage anymore in politics or even to meet politicians.

## **Conclusion**

This chapter has analysed how the desire for unity and regionalism contributed to the formation of the Iraqi federation. This desire was fostered in Iraq through the existence of a combination of both classical and novel factors. The former date from the foundation of the modern state of Iraq, such as the desire for Kurdish independence and the complex social - cultural diversity in its society, while the latter, such as the democratisation and the role of the US, are of only recent origin. In their entirety, then the classic and novel factors provide a comprehensive explanation of why Iraq became a federal state.

The formation of the Iraqi federation was a political bargain between some Iraqi elites and the US represented by the CPA. The Kurds' insistence on maintaining their semi-state compelled them to bargain over their relations with Iraq. Most of the Shiaa and the US sought the maintenance of Iraq's territorial integrity in a democratic context. Given these different motives and priorities, all these actors had to reach a viable compromise in order to reconcile these demands. The central conclusion that emerged was that the Kurds should continue to enjoy their semi-state founded in 1991 and they would share power with Baghdad through a federal formula in return for accepting democracy and maintaining the territorial integrity of Iraq - the main

demands of the Shiaa and the US. This reaffirms the contemporary relevance of Riker's federal bargain theory, as we explained in Chapter One, but at the same time highlights its deficiency because it is limited to the desire for military defence and territorial expansion. This particular deficiency also indicates the general deficiency of classic federal theory that fails to explain comprehensively the origin and formation of the Iraqi federation as one of the new federal models. The existence of the novel factors highlights the need for classic federal theory to be adapted and updated in order to restore its theoretical and empirical utility. The novel factors produce a much more complex and sophisticated explanation of federal state formation because a much more context-specific approach to understanding how and why contemporary federations are formed is needed.

Despite the importance of the classic and novel factors for the formation of the Iraqi federation, there are within them, however, what we would call the "necessary" factors that impacted on the formation of the Iraqi federation and which are equally crucial. The role of the Iraqi political leadership and the role of the US were without a doubt necessary for the creation of the Iraqi federation and without them the Iraqi federation would not exist. Again this highlights the bargain context in which the Iraqi federation was constructed.

George Anderson argues, the Iraqi federation belongs to the third historic wave of federalism, which includes the new federations that emerged from unitary states and a post-conflict situation (Anderson, 2008, pp. 8-10). However, each federation is unique. The idea of developing a federal system was appropriate for the deeply divided Iraqi society that had been ruled by an authoritarian regime because it was the only possible solution that would achieve the different demands of the main players. A key question raised by the complicated circumstances surrounding the creation of a federal Iraq is the precise nature of its origins and formation. What kind of federation is Iraq? We can begin to answer this question with reference to the recent literature that classifies different kinds of federal states. In this regard we can turn to the work of Alfred Stepan, whose notable article 'Beyond the US Model' was first published in 1999, and which gives another indication of the novelty of the Iraqi federation. He claimed that historically there are "coming together" federations - in which previously sovereign states agreed to give up part of their sovereignty in order

to increase their collective security and to achieve economic goals based on Riker's bargain theory - and "holding together" federations - in which multicultural polities come to the decision to devolve power constitutionally to hold the states together democratically (Stepan, 2005, p.256-257). Since then, in 2004, a further category – 'forced together' federations - has been added by Nancy Bermeo (Bermeo, 2002, p.108). Regarding the Iraqi federation, many argue that it is an "imposed" federation enforced by the US on Iraqis. However, the position of the Kurds' and al-Sistani could easily show that it is not an imposed federation. It is true that the US has played and continues to play a very important role in Iraq and in its political process, but it could not impose federalism on Iraqis. Indeed, even if it could do so, this would impact negatively on long-term regime stability. Therefore, in many respects it is not a fully imposed federation. On the other hand, the status of the Kurds as a semi-independent state established after 1991 and their choice to rejoin the Baghdad government under the pressure of the regional environment, mainly Turkey, and the desire to share the economic benefits that the huge oil revenues provide, could be construed as a kind of 'coming together' federation. Furthermore, it could also be a kind of 'holding together' federation, if we consider the acceptance of the Kurds' special status as a way to keep them in Iraq in favour of sustaining Iraq's integrity. Consequently, the Iraqi federation exhibits elements of all of Stepan's and Bermeo classifications and this allows us to see that it is clearly a new federal model in terms of its origins and formation.

Given that, the next chapter will focus on how bargain theory has been embedded in the political process by examining Iraq's reconstruction process and its main actors, pressures and challenges.

## **Chapter Four**

### **Iraq's Reconstruction: Actors, Pressures and Challenges**

#### **Introduction**

In Chapter Three we investigated the factors that contributed to the formation of the Iraqi federation and we identified that there were, alongside the classic factors, novel factors unexplained by classic federal theory; this demonstrated that the Iraqi federation is a new federal model. Moreover, we underlined that despite the importance of all the factors in the formation of the federation, some of these factors were necessary and their impact was crucial. Furthermore, the chapter indicated that the Iraqi federation was the result of political bargaining between Iraqi politicians, mainly the Kurds and the Shiaa, and the US, however, the Iraqi federal bargain arose from conditions different to those stipulated by Riker for the formation of federation. Consequently, these classic and novel factors provided us with a theoretical explanation for the formation of the Iraqi federation. However, in order to fully understand the origin of the Iraqi federation and why Iraq became a federal state and to answer the second part of the thesis question – how Iraq became federal - we need to examine how the political bargain was embedded in the new political process. According to Paddy Ashdown, “post-conflict reconstruction involves compromises between what it is best and what it is possible to do” (Ashdown, 2008, p. 127). This chapter examines the post-war reconstruction process for the purpose of understanding the compromises that Iraq's reconstruction included.

We will investigate the post-war reconstruction process during 2003-2005 until the formal formation of the Iraqi federation in 2005 in order to highlight how political power was fractured through the working of its main pillars. Herring and Rangwala have examined the fragmentation of political power in Iraq and, according to them, the characteristics of the US state-building process contributed to that fragmentation (Herring and Rangwala, 2006, p. 2). However, they did not link this fragmentation to the four main pillars of the reconstruction process – justice and reconciliation, security, governance and participation and economic development - and to the

development of the political bargain approach as the only approach that would ensure the inclusion of the different political interests. Consequently, this made the establishment of a federal system the only possible compromise. In this chapter we shed light on the effects of the reconstruction process through the work on its four pillars on the formation of the federation. By examining the different phases of the post-war reconstruction, evidence arises about how the political bargain controlled the political process and continued to do so. Accordingly this gives us a comprehensive understanding of the origin of the Iraqi federation. The main question of this chapter is how the process of reconstruction had contributed to the creation of the Iraqi federation.

The structure of this chapter includes four main parts. The first part explores what we mean by post-war reconstruction. The chapter will then go on in the second part to identify the specific challenges for the reconstruction process in Iraq and its main actors. The third part examines the reconstruction process in more detail, splitting it into three main phases. Finally, I will analyse how the reconstruction process contributed to the formation of the Iraqi federation.

#### **4.1 The Concept of Reconstruction**

The term “post-war reconstruction” has been shaped by the evolution of the international system and is interrelated with the terms “state-building” and “nation-building” that are also widely used to consider the process of re-building in a post-war situation. However, after the end of the Cold War the term nation-building shifted to mean reconstruction. After the 9/11 attacks, military doctrine and the priorities of national security changed, mainly in the US. War became the tool for re-building failed states for the purpose of enhancing democratisation. Consequently, the US shifted to using the term reconstruction instead of nation-building. For Brownlee, the term nation-building shifted in terms of its outcomes and its primary agents (Brownlee, 2007, p. 316). Moreover, Hamre and Sullivan identified three reasons for this shift. First, the reconstruction concept is more accurate in representing the role of external actors which assist in post-conflict reconstruction, without seeking to build a nation or a state. Second, the reconstruction concept emphasizes overcoming the

legacy of conflict and applies to those areas where the conflict has indeed subsided, but not necessarily in all parts of a country's territory. Third, it carries less historical baggage compared to the nation-building concept, which implies cases of failure (Hamre and Sullivan, 2002, pp. 89-90). Therefore, Coyne defined reconstruction as "the rebuilding of both formal and informal institutions; it involves the restoration of physical infrastructure and facilities; minimal social services; and structural reform in the political, economic, social, and security sectors" (Coyne, 2008, p. 9). Moreover, the term reconstruction "requires rebuilding, and in some cases building from scratch, both formal and informal institutions in order to achieve fundamental political, economic, and social change. State-building and nation-building can be seen as a subset of reconstruction and involves transferring governance capabilities. Likewise, peace-building can be seen as a subset of reconstruction that involves stabilising a conflict-torn society (Coyne, 2008, pp. 9-10).

According to the World Bank, reconstruction begins by supporting transition from conflict to peace in an affected country through the rebuilding of the country's socio-economic framework (The World Bank, 1998, p. 4). Barakat argues that post-war reconstruction means "a range of holistic activities in an integrated process designed not only to reactivate economic and social development but at the same time to create a peaceful environment by addressing the emerging deficits in security and political and institutional capacity that will prevent a relapse into violence" (Barakat, 2005, p. 573). From these definitions we understand that reconstruction is an interrelated process for re-building the state in different aspects social, economic, political and security - which need to run parallel for the purpose of enhancing peace, democracy and stability and shifting from a state of failure, fragility, war, conflict and despotism. This process is characterised by the engagement of the external actors. The result is intended to be democratic liberal states that are more stable in terms of their internal politics and international relations in the long-term. The results in the short-term can be highly destabilising. Therefore, in the short-term this process will be challenged in a state-specific context, and in a different way depending on the state's internal circumstances and the role of the external actors.

## **4.2 The Actors in the Reconstruction Process**

The reconstruction process in Iraq has been distinguished by the influence of different external and internal actors. The influence of the actors should be positive as we are examining efforts to re-build a state, however not all the actors have worked in a positive way. Some actors sought to undermine the process, some were not given real powers to influence the process while others dominated it.

The US administration was the main planner for pre-war and post-war Iraq and it was the main actor that dominated the reconstruction process. As Coyne explains, domestic special interests represented by major American companies like Halliburton, Parsons, Fluor and Bechtel, and bureaucrats in government agencies in the US influenced reconstruction efforts in Iraq (Coyne, 2008, pp. 91-94). For the first group, the American politicians chose the contractors that were best able to contribute to efforts to transform the conflict situations to one of sustainable cooperation in the country being reconstructed. For the second group, different American agencies, like the Department of Defence (DOD), the Department of State, the Office of the Secretary of Defence (OSD), the Central Command, the Department of Commerce and the Army Corps of Engineers competed to control the reconstruction process. According to Phillips, the relationship between the OSD and the State Department became acrimonious over control of Iraq. Each of these American institutions had its own views. Cheney, the Vice President, and Rumsfeld, the Secretary of Defence, clashed with Colin Powell, the Secretary of the State, about the need to go to the UN (Phillips, 2005, pp. 7,42). Moreover, as Diamond explains, there was a lack of coordination inside the Bush administration so for example Rumsfeld opposed any role for State Department experts (Diamond, 2005, p. 30). This negatively impacted on reconstruction efforts in Iraq.

On the international level, the UN also participated in Iraq's reconstruction process. At the beginning, the US administration, particularly Cheney, Rumsfeld and the neo-conservatives, were distrustful of international organisations particularly the UN, which according to them was ineffective and full of anti-American countries (Rohda, 2008, p. 40). The post-conflict reconstruction was led by the US first by choice and later by default, rather than the international community led by the UN, as in Kosovo

and Afghanistan (Castillo, 2008, p. 195). The US did not want a decisive role for the international community in Iraq and sought a limited role for the UN which itself was wary of involvement because its Secretary General Kofi Annan believed the war to be illegal (Phillips, 2005, p. 9). However the complicated nature of the process of rebuilding Iraq and unexpected challenges altered American opinion. The need for legitimacy raised the potential need for the role of the UN and other international organisations. The UN role was to assist in preparing for elections and advising on a political transition. Moreover, the Bush administration wanted an effective role for the actors who were involved closely with its foreign and security policies and to ensure its control. Thus, there was a significant role for the World Bank and the International Monetary Fund (IMF) in reconstructing Iraq, both of which have consistently proven themselves to be firmly affiliated with US policies and interests. Indeed, the appointment of Paul Wolfowitz to serve as World Bank president was seen by many as confirmation of the Bush administration's drive to mesh the World Bank's development and post-conflict reconstruction (Bello, 2006, p. 87). Both the IMF and the World Bank engaged heavily in economic reconstruction and sent experts to Iraq to estimate the degree of destruction, the aids the economy needed and how to reschedule or write off debt. Both imposed conditions that restricted the role of the Iraqi government in the economic reconstruction.

Alongside those actors, there was also a wide range of other players that emerged from inside Iraq. Alongside formal powers represented by exiled politicians and their political parties, which as we explained in the previous chapter, were fragmented and represented different political projects, there were tribal leaders, religious clerics and militia leaders who sought to assert the practical autonomy that they enjoyed due to the collapse of the state institutions even if they accepted the notion of the potential authority of an Iraqi state. Moreover, the insurgency powers worked on preventing the state from being re-established (Herring and Rangwala, 2006, p. 48). Consequently, in general the impact of the internal actors was not supportive to the formation of a national approach to re-building Iraq. This fragmentation among the Iraqi actors therefore gave the US the opportunity to control the reconstruction process especially in light of the limited role of the international community.

For an effective reconstruction process a cooperative approach among all actors is needed. The international and local actors must cooperate and coordinate in order to share the burden of the reconstruction by sharing responsibility, costs and obligations. However, each actor takes a different approach depending on their aims, for example, the main role of the World Bank and the IMF is to assist in economic reconstruction and broaden the donor base while the UN focuses on political reconstruction. Furthermore, each case study of a reconstruction process, like Bosnia, Afghanistan and Iraq, has its specific conditions and needs that affect the approaches that are likely to be adopted and impact on the complexity and speed of this process. Given that, there is an argument that the post-war reconstruction process in Iraq is unique and can therefore provide a new approach and lessons in reconstruction (Sovacool and Halfon 2002, Tripp 2004, Rathmell 2005, Brownlee 2007).

#### **4.3 The Challenges and Pressures of the Post-war Reconstruction Process**

The reconstruction process in Iraq was, and still is, full of challenges and difficulties. It is not yet finished and it is therefore not easy to predict how it will continue or what its consequences might be. As a result, it cannot yet be evaluated precisely. However, we can examine the problems and challenges that have arisen in order to understand how they have impacted on the approaches to the functioning of the reconstruction process and its main pillars and consequently the liberal political, economic and social order that it aims to structure.

Most literature on the subject of reconstruction's challenges classifies the challenges in four main categories: security, political, economic and social. These categories emphasise the obstacles that arise from inside the state. This kind of classification ignores or at least marginalises the impact of external actors on the reconstruction process. However, for the purpose of this chapter, I will use another category, based on James Dobbins and his co-authors in the book "*America's Role in Nation-Building: From Germany to Iraq*", which identifies the factors that influence the ease or difficulty of nation-building, such as prior democratic experience, the level of economic development and ethnic homogeneity (Dobbins, et al, 2003, p.

xxv). Therefore, the new category stems from internal and external factors that have complicated Iraq's reconstruction process and eventually contributed to the fracturing of power and to the development of compromises in the political process and the formation of the Iraqi federation. The social, political and economic situation of Iraq in the context of the reconstruction process was examined in the previous chapter, so this part will focus on the miscalculations of the external actors - mainly the US as the main actor in Iraq's reconstruction - the regional pressures on this process and the specific problems that exist in Iraq and directly affect the reconstruction process.

#### **4.3.1 The External Factors:**

##### **4.3.1.1 The Miscalculations of the United States in the Post-conflict Phase**

The US dominated the process of the reconstruction of Iraq. However, this domination did not ensure the comprehensive control of the different aspects of the process and provide the effective resources to administer it. One of the most crucial aspects that reflected the lack of control of the Americans and which negatively impacted on the reconstruction process was the absence of a clear vision or plan for post-war Iraq and an insufficient level of resources deployed by the Bush administration. This was for various reasons. First, the different aims of the US for Iraq after removing the Saddam regime. These aims ranged from destroying Iraq's weapons of mass destruction (WMD), creating a democratic system compatible with US interests that could be a model for Middle Eastern states, and fighting al-Qaeda. These aims also encompassed the maintenance of regional stability especially for the US alliance to be achieved within the US military strategy developed after 9/11 to deal with failed states in order to protect US national security. Secondly, there was an absence of effective cooperation and coordination among the DOD, the United States Central Command (CENTOM) and the State Department, as regards post-war planning in Iraq. President Bush formally appointed the DOD as the body to direct post-war reconstruction in October 2002. The DOD wanted to reduce the military presence in Iraq as quickly as possible after the end of war, and if there were any serious efforts at nation-building to be made, someone else could do this, such as the leader of INC Ahmed Chalabi (Pollack, 2006, p. 2). For the State Department, priority was placed on gaining international approval for the war to facilitate post-war

reconstruction (Drechsler, 2005, p. 16). All this reflected the fact that the US had not planned effectively for post-war reconstruction in Iraq. However, according to Phillips, the US problem was not the absence of a plan: Iraq was thrown into crisis when Bush administration officials, especially Pentagon political appointees, rushed to war and decided to ignore the planning that was underway (Phillips, 2005, p. 5).

The Americans' decision to go to war with limited international support, as we explained earlier, at the beginning of the reconstruction, deprived the US of the opportunity of receiving assistance and advice from other actors and deprived the Iraqis of additional international support. This also undermined the legitimacy of US efforts at post-war reconstruction. British Prime Minister Tony Blair's efforts to convince the Americans to give a central role to the UN in this mission were rejected (Dobbins, 2006, p. 154). The US was against the participation of French, German and Russian companies in reconstruction contracts. On the other hand, many international powers also hesitated to participate in a process, which lacked international legitimacy and in which they would not have a real role in decision-making. Furthermore, there was another opinion which argued that the international community did not want to clear up after the mess made by the US against their advice (Hippel, 2005, p. 260).

Moreover, the absence of a clear vision resulted from inadequate planning by the Bush administration which was built on the assumption that functioning institutions of the Iraqi state could be utilised (Dodge, 2005, p. 29, Bensahel, 2006, p. 457). The US Administration thought that the removal of Saddam's regime and his top political leadership would not affect Iraq's technocratic bureaucracies and they would be able to contribute to the reconstruction process. This vision stemmed from the US experience in nation-building in Germany and Japan after the Second World War. It envisaged that Iraq's reconstruction process would resemble these two states because of the successful military occupation (Dobbins, 2006, p. 153). However, what happened in Iraq after the end of the war, that is to say the total disappearance of the state's institutions, exposed the ineffective and inaccurate planning that did not anticipate this eventuality. It was difficult to move the reconstruction process forward because of the absence of a clear vision for post-war reconstruction. This complicated Iraq's situation and compelled the Bush administration to refine its

strategies for the new Iraq and its political system. Therefore, the argument that the planning for war took nine months while the planning for the post-war reconstruction took only eight weeks before the invasion (Hippel, 2005, p. 258) might be true in light of the complications that arose in the reconstruction process.

The absence of a clear plan for post-war reconstruction also impacted on the deployment of sufficient resources. The quantity of manpower and the quality of training of the military forces, time and money, in the post-war period were insufficient given the extent of the complications and challenges in Iraq. According to Ashdown, these resources are crucial for the stabilisation that should be the main aim of reconstruction in the short term. The levels of Coalition forces in Iraq averaged around five per 1,000 head of population after the invasion but according to one US study, if the intervener's goals are ambitious as in Iraq, it may need as many as 20 troops per 1,000 population which was almost exactly the ratio NATO deployed in Bosnia (Ashdown, 2008, p. 70). The population of Iraq at that time was nearly 25 million which required 500,000 troops on the ground to meet the standard in that study and this number was more than three times the number of foreign troops deployed to Iraq at that time (Bremer, 2006, p. 10). The US kept roughly 140,000 American troops in Iraq in 2003, supplemented by 11,000 British and 10,000 other coalition troops (Castillo, 2008, p. 194). And Paul Bremer himself, in May 2003 informed the DOD and in particular Rumsfeld to consider this study, but he never heard back from them (Bremer, 2006, p. 10). Therefore, it was a huge challenge for the process of reconstruction to function without sufficient troops to fill the security gap that had been created with the collapse of state institutions and the disbanding of the Iraqi army. Consequently, the US lost the trust of Iraqis because of the deterioration of the security situation.

On the other hand, the Bush Administration, and initially mainly the DOD, wanted the reconstruction to be cheap and quick so that sovereignty could be handed to the Iraqis. However, the miscalculations and unexpected tasks pushed it towards deployment of more resources and time. For instance, in 2004 Iraq received \$20 billion, which was a huge amount for one year compared with the four years that the Marshall Plan took to distribute \$60 billion after the Second World War. The US also believed that Iraq should receive tens of billions more in aid from other countries and

international agencies (Clawson, 2004, pp. 20-21). However, these huge amounts of money were not protected through internal and effective legalisation, from corruption that was, and remains, a major threat to the reconstruction. As a result, there was no real improvement in the life of the Iraqis.

For other actors, mainly in the economic sector, the efforts of the World Bank and IMF to nurture healthy economic development were restricted by the security situation, the absence of diversification in Iraq's economy and a significant private-sector, the weak institutional system and devastated infrastructure, which were all crucial for the granting of loans and attracting investment. In a reconstruction process donors and investors need to be sure that there is a secure and safe environment for economic development.

In the end, these intended or unintended miscalculations in planning for post-war reconstruction and the insufficient resources allocated undermined US ability to be the only power in Iraq which in turn weakened its position.

#### **4.3.1.2 The Pressures of the Regional Environment**

The other external factor that affected the political transformation and reconstruction process in Iraq is the neighbouring states. Turkey, Iran, Syria and the Gulf states all influenced the Iraqi situation and the reconstruction process in a way that preserved the continuity of their political systems. The impact of the regional environment added to the difficulty of the reconstruction. And because the US was the main actor in the reconstruction process and the Iraqis did not have the ability to combat the regional pressures, the US was the only power that could deal with them to ensure that the desired aims were reached in Iraq. However, in light of the US miscalculations, the Bush Administration also did not develop an approach that dealt with the regional environment until 2006 when the report of the Iraq Study Group recommended an external approach, along with an internal approach, for the reconstruction process (Baker and Hamilton, 2006, p. xiv).

The existence of the US troops in Iraq and the declared aim of the US Administration to build a liberal democratic Iraq that would be a model for the whole Middle East provoked the neighbouring states that were worried about the presence of American troops but which were unlikely to support the democratic transition in Iraq because of their own authoritarian political systems. Therefore, they placed constraints upon, and declared complaints about, how the new political process was going. For example, the Arab League Secretary General Amr Musa criticised the Iraqi Governing Council because it was not formed on the basis of elections (Clawson, 2004, p. 20). However, at the time none of the League's leaders themselves had been chosen in a democratic election. Nonetheless, regional involvement was a necessary condition from the beginning of this process. This is in contrast to US strategy in Afghanistan. The aim of democratisation, for example, was not included in the US strategy in Afghanistan and the US did not aim to make Afghanistan a model for central Asia, consequently the US ensured the support of Iran, Pakistan, Russia and Tajikistan for the war (Dobbin, 2006, pp. 155-156). In Iraq, in contrast, the regional states rejected the new political process and worked on complicating the US mission. These states, mainly Iran, Syria and Gulf-states, used their relationship with the Iraqi political powers to hinder the efforts of the US to establish a democratic national government. They provided opposition groups with money and arms which contributed to the rise of the phenomenon of militia. Furthermore, the neighbouring states did not stop the flow of al-Qaeda fighters to Iraq. They also provided shelter for many insurgents related to al-Baath. This was because of the realisation that the US was unlikely to engage in another military action alongside Afghanistan and Iraq. For Turkey, the fear of a possible Kurdistan separation led to strong pressure on the Bush administration to prevent that. This happened mainly before the war when it refused to allow its territory to be used by US military troops. Given that, the US lost some of the power needed to achieve its aims and, as Larry Diamond argued, to put pressure on Iraqi political groups to compromise over the fundamental issues that divide Iraq: the constitutional structure, the distribution of oil revenues and security (Diamond, 2006, p. 152).

### **4.3.2 The Internal Factors**

#### **4.3.2.1 The Security Situation**

The other challenges for the reconstruction process in Iraq arose from internal problems represented by security challenges and political contestation. The disappearance of the state security institutions reinforced by Bremer's decision to disband the Iraqi army, intelligence services and security forces created an insecure environment for reconstruction. Nearly 400.000 Iraqis became unemployed. The CPA gave ordinary soldiers and junior officers one month's severance pay, and senior officers nothing, and dismissed senior members of the Baath Party some 30,000-50,000 individuals (Diamond, 2005, p. 39). This situation created a serious security vacuum at the first stage of the reconstruction process, which was holding the situation. The security vacuum, which was compounded by other external challenges and internal problems and weaknesses – the political contestation, the destruction of governmental institutions, the economic deterioration and the rise of the militia and insurgents - contributed to the rise of different societal powers that aimed to fill that vacuum. Therefore, dealing with the insecurity problem was crucial not only for holding the situation but also to reduce the centres of power within society.

Without security Iraq lost the opportunity to promote economic reconstruction. An effective economic reconstruction would have ensured the flow of investment opportunities which are important elements for economic growth. Both the reconstruction and investments would have contributed to the creation of a private sector which would have assisted in creating jobs thereby lessening the intensity of the unemployment problem that Iraq faced and still faces. With the lack of security, investment in Iraq - mainly in the oil industry - did not develop effectively between 2003 - 2005 and was at a minimum.

The importance of creating a secure Iraq would also have reflected positively on the rule of law that would have enhanced the role of governmental institutions and supported the state as the formal provider of order and stability. In Iraq, creating a secure and safe situation would have meant mainly that the Iraqi politicians and their parties had achieved a new state of interaction based on reconciliation and cooperation. However, the politicians did not reach this kind of consideration.

Therefore, the power of the state did not develop. The ordinary Iraqi people - despite the miscalculations of the Bush administration and the state of chaos that spread through Iraq - did not respond positively to the CPA plans and approach to reconstruction which negatively affected the confidence of the Iraqi people in the aims of the US in Iraq. According to one survey, almost half of Iraqis thought the US intended to rob Iraq of its oil and only five percent thought the US had invaded Iraq to assist the Iraqi people, meanwhile only one percent believed it was mainly to establish democracy in Iraq (Diamond, 2005, pp. 25-26). Given that, controlling the security situation in Iraq through an effective strategy and in different dimensions was a priority for the CPA, mainly after the Office for Reconstruction and Humanitarian Assistance (ORHA) had failed to provide law and order, because it would reflect the state monopoly of power and improve the CPA position within Iraqi society.

#### **4.3.2.2 The Cultural and Social Constraints**

The other element that challenged the prospects for the reconstruction was the cultural and social conditions in Iraq. The habits, traditions, beliefs, social phenomena and different set of knowledge and skills affected the efforts to reconstruct the state and its new institutions, and influenced the prospects for success and failure of the reconstruction process. As Coyne explains, social, economic and political cultures provide the foundation to facilitate or hinder the reconstruction process (Coyne, 2008, pp. 54-56). For example, the absence of a democratic political culture undermined the effectiveness of the reconstruction process. The lack of institutions that would support the rise of civil society, like political parties and a free press complicated efforts to produce social change for the existing political culture and build bridges between society and the state. The concepts of democracy, federalism and human rights were new for Iraqis so clarifying these concepts and introducing them to society was important for reconstructing Iraq.

The absence of a democratic political culture influenced the role of informal powers after 2003, a role that was exaggerated with the collapse of the state. The Iraqi people turned to these loyalties because they needed informal structure, like tribal support and protection, to provide them with security and benefits and to meet their

needs. Moreover, the new political powers depended mainly on subordinate cultures and loyalties to get the support of the Iraqis. Consequently, it was not easy to reconstruct Iraq when its people were not loyal to the state. This fragmentation among different loyalties was embedded in the reconstruction process and impacted on the structure of the state and the nature of its political process because the informal powers became part of Iraq's political realities.

In reality, wars and economic sanctions also undermined the Iraqis' ability to carry on their responsibilities in the process of reconstruction. Poverty, the migration of skilled people, corruption and the destruction of the middle class impacted on how quickly and efficiently this process would happen. Social and cultural weaknesses contributed to the corruption problem that was, and still is, a huge challenge for the reconstruction process in Iraq, mainly in its economic aspect, which is also a threat to the new political process. Politicians and civil servants exercise influence and deploy resources to gain the support of the informal powers, regardless of their formal bureaucratic positions, for the purpose of sustaining their authority. This influenced the efficiency of the state's institutions and the local governmental administrations.

#### **4.4 The Reconstruction Process**

The rebuilding of the Iraqi governmental institutions added to the challenges of the post-war reconstruction because, as Coyne argues, certain institutional prerequisites are required as a foundation for the reconstructed order (Coyne, 2005, p. 330). According to a World Bank report, Iraq had to focus on creating critical institutional building blocks and in some cases strengthen some; this should be the second priority after security (The World Bank, 2004, p. 2). This gave the Americans the responsibility of rebuilding the state institutions to cope with the internal and external challenges and the requirements of democratic reforms and political transitions.

Early in 2002, the CENTCOM planners created a framework for post-war Iraq called "Stability and Reconstruction Operations" which was also called Phase IV. This framework specified three sub-phases. Phase IVa was primarily a stabilisation phase led by CENTCOM, Phase IVb related to the reformation of the Iraqi state, led by the

State Department and phase IVc was the transition to an Iraqi elected government (Drechsler, 2005, p. 7). Although, this plan was not applied, this classification can be utilised for the purposes of this chapter. The period between the end of the war in April 2003 and the formal creation of the federation in 2005 is classified in three main phases. This classification demonstrates how each phase of the reconstruction process included a different plan, a different approach and different aims. And all involved three tracks - security, economic and political. According to the State Department report, progress along each of the tracks reinforces the other two (State Department, 2006, p. 6). Hamre and Sullivan went even further when they explained that post-conflict reconstruction consists of four distinct yet interrelated categories of tasks or pillars: security, justice and reconciliation, social and economic well-being and governance and participation (Hamre and Sullivan, 2002, pp. 91-92). Examining these phases is important to ascertain the impact of the reconstruction on the fragmentation of power and the development of compromises and the bargain approach in Iraq's political process and the formation of the Iraqi federation.

#### **4.4.1 The Stabilisation Phase, April – July 2003**

The end of Operation of Iraqi Freedom in April 2003 was the beginning of the reconstruction process. The collapse of state institutions alongside the different challenges drove the US to start the reconstruction process. However, there was no state of peace which usually marks the beginning of a reconstruction process. In reality, Iraq's reconstruction process started mid-way through an insurgency and chaos which were, and to some extent remain, one of the main reasons for its slow and its complicated character. This means that a state of stability did not exist, which is an important condition for starting a reconstruction process. This was in contrast to the strategy of reconstruction that is based on a "take, hold and build" approach that was applied in Bosnia's reconstruction process. This approach was focused mainly on providing stability before initiating the reconstruction (Ashdown, 2008, p. 74). The fact that this did not happen highlights the miscalculations and inadequate planning for post-war Iraq that was led by the DOD.

The previous commitments of the US had to find a space in the reconstruction process in order not to complicate the situation in Iraq and with the Iraqis themselves<sup>7</sup>. The mission for the Americans became how to rebuild the Iraqi state, and not just regime change and state reform. The main actors at this stage were the US and Iraqi politicians with a limited role for the UN.

From April to May 2003 two plans and approaches appeared. The first one, the ORHA<sup>8</sup> plan, was based on regime change and then state reform<sup>9</sup>. The state reform was to be based on the neo-liberal model that supports a democratic transition and reduces the state's role in the economy. The IMF and the World Bank demanded in return for their loans not only free trade but also the liberalisation of capital and financial markets (Mastanduno, 2000, p. 499). Therefore, it was a limited state reform not maximum state-building that guided policy development aimed at stabilising Iraq (Dodge, 2005, p.707). However, the miscalculations of the Bush administration in planning for post-war Iraq combined with the low level of deployed resources and the regional pressures compounded by the state of insecurity, political mistrust and rivalry and a failed economy and infrastructure, reflected the inadequacy of the ORHA plan. This plan was based on a quick transition of authority, and Garner, the Head of ORHA, intended to complete the transition to a permanent Iraqi government within four months. To achieve that, the first step was to send his team to Baghdad and meet the Iraqis in order to select an interim government. Second, the interim government would select a constitutional convention that would write the new Iraqi constitution that would be ratified. Finally, elections would be held to hand over

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<sup>7</sup> In December 2002 during the London Conference the Bush administration and the Iraqi opposition made a commitment to federalism but without any detail about it. And in March 2003, President Bush asserted that he preferred a federation in Iraq with three regions for the Shiaa, the Sunni and the Kurds. This disturbed the Turkish government which turned down an agreement with the Americans to allow the latter to use Turkish territory in the war in exchange for U.S. \$ 21 billion. In light of this, the Department of Defence modified its plan for the war on the northern front by depending on the Kurds and their Peshmerga and a few U.S. Special Forces. This strengthened the Kurds' position in the political compromise that followed to form the Iraqi federation. For more information about the consequences of this conference see David L. Phillips, *Losing Iraq: Inside the Post-war Reconstruction Fiasco*, Basic Books, New York, 2006, pp. 89-101.

<sup>8</sup> ORHA was based on the Future of Iraq (FOI) project that established in 2001 by the State Department.

<sup>9</sup> Garner's plan called for rebuilding Iraqi infrastructure, reforming government ministries which an interim government would be appointed, a constitution would be written, elections held and then Iraq would govern itself. He got Bush's agreement to depend on the Iraqi army for state reform. For more information see, David Rohda, *Musing on Iraq*, available at <http://musingsoniraq.bolgsport.com/2008/06/overview-of-americas-policy-towards-h>.

power to an Iraqi government by August 2003 (Diamond, 2005, p. 32). The approach to achieve this plan of state-building was based on Garner's close relationship with both the formerly exiled parties and the main Kurdish parties, in order to achieve legitimacy and place as much responsibility as possible in the hands of those Iraqis as quickly as possible (Dodge, 2005, p. 32). However, according to David Rohde, Garner never received agreement to his plan from Washington, in other words, it was an ORHA plan and behind it was the DOD. This indicates poor coordination within the Bush administration regarding post-war Iraq. However, because of the insufficient and mistaken calculations about Iraq which stemmed mainly from the exiled politicians, who were supposed to be the basis for the new political process, ORHA failed to implement its plan. The politicians, most of whom had not enjoyed wide support inside Iraqi society as they had claimed, emphasised the sectarian and religious character of Iraqi society which deepened communal antipathy. This reflects not only their lack of knowledge about Iraqi society but also their poor connections and communications inside Iraq during their period of exile. Garner's plan and approach failed to be implemented because of difficulties related mainly to the provision of security, law and order and the selection of the interim government.

There were three visions for the future of Iraq, as Charles Tripp identified: a strong government, a broad-based government and a democratic government<sup>10</sup>. However, all were contradictory and all were implemented with an emphasis on the third choice. This indicates the reality that the situation was very problematic. In order to control Iraq, the ORHA and the tasks that it was designed to deal with, which mainly dealt with civil affairs and humanitarian matters, became unsuitable for the new unanticipated tasks. As a result, the ORHA, which was created in April 2003, was replaced by the CPA in May of the same year and Paul Bremer, who was linked to the State Department, was chosen instead of Jay Garner, who was linked to the DOD. According to the senior British representative in Baghdad, ORHA had no

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<sup>10</sup> The first choice was favoured by Donald Rumsfeld who believed that nation-building was not the business of the US and its interest would be served just by removing Saddam regime. The second choice was favoured by the State Department, some elements in the CIA and also by Vice-President Cheney who believed in managed transition to more democratic government. The final choice was supported by Paul Wolfowitz and Condolleezza Rice who thought of a more radical choice which stemmed from the early months in Iraq and emphasised the US role in re-founding the Iraqi state and reshaping its role in society. For more information see Charles Tripp, *The United States and State-Building in Iraq*, *Review of International Studies*, Vol. 30, 2004, pp. 545-558.

leadership, no strategy, no coordination, no structure, and was inaccessible to Iraqis (Herring and Rangwala, 2006, p. 14). And Garner himself admitted that his team did not really have enough time to plan (Diamond, 2005, p. 31). Thus, the situation in Iraq deteriorated because of the errors in planning that was built on unrealistic expectations.

The second plan came with the establishment of the CPA in May 2003. The previous failure of the ORHA to provide law and order and the almost complete collapse of state institutions needed to be dealt with within a new strategy for rebuilding Iraq. That strategy was based on Iraq's priorities, as well as the US interests in Iraq and the region. The Bush administration revised its aims and plans as the Iraqi situation developed. However, the CPA made the same mistake that ORHA did, which was to rely on the exiled Iraqi politicians for whom positions would be created in the new political process. The CPA declared that its objective in Iraq was limited, and it was firm that "we seek an independent, free and secure Iraq" (RFERL, 2004 , p. 4). However, Bremer's first plan was not limited. According to him "the ultimate goals that we envisioned for Iraq was a durable peace for a unified and stable state, a democratic Iraq with a vibrant economy and a representative government which underpinned and protected freedoms" (Bremer, 2006, p. 115). This plan was based upon a long-term and intimate US involvement in the direction of its politics because, according to the plan, Iraqis could not be trusted to rule themselves until the US had ensured that democratic institutions were up and running (Tripp, 2004, p. 548). This meant a central role for the CPA in the process of restructuring the state and re-establishing governmental institutions on democratic bases. This plan was based on MacArthur's model of reconstruction in Japan after the Second World War.

The priorities of the CPA were moved to restore order and security and basic services as immediate and short-term goals rather than building a democratic political process as a long-term goal. To provide security, the CPA disbanded the Iraqi army and security forces to build a new army and security forces. Moreover, the CPA sought to eliminate the role of militia and other armed forces with the aim of limiting weapons to be used by the state only. In fact, Bremer could not eliminate the role of the militia and he disbanded only the INC militia because he did not like Ahmed al-Chalabi, the Pentagon's favourite. However, all these efforts to control the state of

insecurity were not based on a real reconciliation process among the Iraqis. Instead of building real conciliation, the CPA took some decisions that increased insecurity and deepened the violence and fragmentation among Arab Iraqis in particular because Bremer's decisions and administration did not include Kurdistan as de facto autonomous. This contributed to the deterioration and complexity of the reconstruction of Iraq. On 16 May 2003, Bremer issued the decision to dissolve the Baath Party in order to ensure that Baath elements would not hold authority again. This decision dismissed all the Iraqi Baathists from the top three levels of management in every government ministry. Consequently, there were more than 120,000 qualified Iraqis out of a job (Phillips, 2005, p. 145).

The CPA approach to administrating Iraq and achieving its aims in the short-term was based on the military coalition division of Iraq. In fact, the coalition authority divided Iraq from the beginning of the occupation into four sectors: the central sector based in Baghdad, the northern based in Erbil, the south central based in Hillah and the southern based in Basra, until the end of July ( see map number 3). Each sector had its own civil administration, as well as a military command in order to perform their regional and central responsibilities. Moreover, each sector divided its responsibilities among the governorates for the purpose of controlling the security situation and identifying closely the needs and difficulties. This approach is based on the institutional structure of the CPA that also consisted of two kinds of administrations, the civil and the military. The civil administration was led by the ORHA first then by the CPA and finally by the US Embassy.

Politically, Bremer promised to hold a national conference of Iraqi political leaders in July, but without indicating clearly the purpose behind it, whether to select a provisional government or a limited interim authority. In the event, this conference was cancelled and Bremer decided to appoint a 25 to 30 member advisory council. He justified this with the worry that an early exercise of democracy, even at the conference, could rip open the deep ethnic, sectarian and political (exile vs. internal) divisions in the country (Diamond, 2005, p. 40). Others argued, that he wanted to convince Iraqis that they would have some say in this process (Tripp, 2004, p. 548). Bremer, like the Bush administration in general, distrusted Iraqi politicians because of the rivalry among them which added to the violence and complications in Iraq. The

Americans' previous decision to hand power to the INC became difficult to apply mainly because of the rise of new local powers that competed with the exiled political groups. Therefore, there was a real hesitation over who would rule Iraq and what type of government would control Iraq and secure US strategic interests in the country and the region. Consequently, Bremer selected, with UN assistance, the Iraqi Governing Council (IGC) on 18 July 2003, as a holding operation. This appointment was based on the fractured image that the exiled politicians reflected and illustrated about Iraqi society, which later became the main base for the new political process. The members of the IGC were not chosen on a territorial basis to include all Iraqi governorates but along sectarian and religious lines to represent Iraq's diversity. They represented the different Iraqi political groups in exile, which alongside their fragmentation and their failure to mobilise popular support, were supportive of the American role in Iraq. The IGC consisted of 25 members. Thirteen of the members were Shiaa, five were Kurds, five were Sunnis and one member represented both the Turkomens and the Christians. According to a State Department poll, only seven of the 25 members of the IGC were well known enough for 40 percent or more of the population to have any opinion of them (Pollack, 2006, p. 8). This indicated the absence of popular support for this council which had been undermined because of the undemocratic way it was selected which also undermined its legitimacy.

Although the selection of the IGC was undemocratic, the UN believed it to be a good decision. The UN pushed for the establishment of a provisional government as a suitable option for Iraqi post-war reconstruction. The UN mission in Iraq believed that the direct administration approach, whether it was implemented by the UN or by the US would be very difficult in Iraq. This was because the UN had never administered a post-conflict territory of the size and complexity of Iraq which was 10 times the size of Kosovo and 25 times the size of East Timor. Moreover, the UN considered that any direct administration of Iraq by the Americans would likely contribute to the generation of resistance from the Iraqi people (Diamond, 2005, pp. 55-56). Therefore, the UN assisted in the foundation of the IGC.

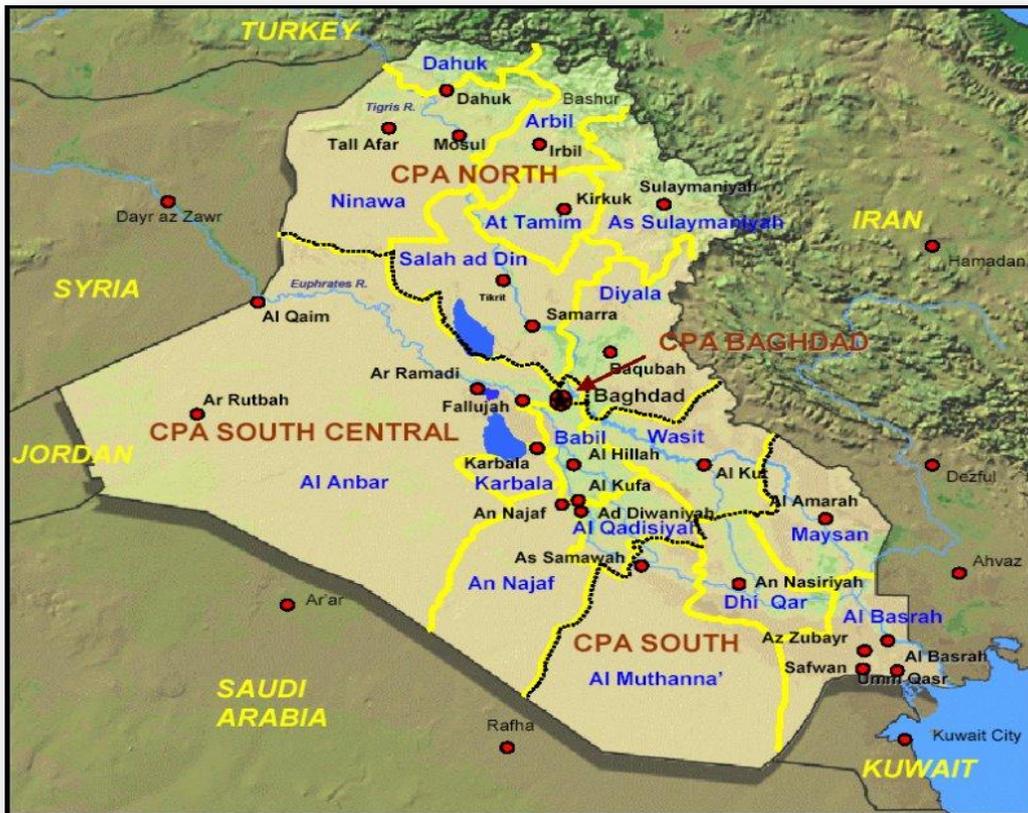
The formation of the IGC triggered the rise of opposition to it and to Bremer's plan which represented the preference for al-Sistani and al-Sadr. At the time the CPA alleged that the IGC would have both legislative and executive functions and it would

have a rotating head of state, like the Swiss system (Steele and Whitaker, 2003). However, the real power continued to be held by the CPA. Moreover, the presidency issue was limited to a few members who were the heads of the exiled political parties. The IGC did not include the new local political powers that had emerged after the end of war. This had fractured the Iraqis even more. At the same time, in June 2003, Bremer stopped direct elections to create local councils in some parts of Iraq which started a few weeks after the end of war. Instead, the CPA appointed leaders to positions of local authority (Herring and Rangwala, 2006, pp. 109-110). Bremer's decision was to build a strong and centralised state meant to be controlled by the exiled leaders and eliminate any other powers such as tribes, mosques and militias which had been strengthened with the collapse of the state.

Economically, the CPA was dogged by its insufficient resources to rebuild Iraq. Therefore, the priority task for the Bush administration was to protect the oil infrastructure because oil revenue would be the main source of funding for the reconstruction process. However, because of reconstruction complexities, the CPA needed the assistance of other international and regional actors that hesitated to participate in rebuilding Iraq. Both the World Bank and the IMF were the main economic actors after the United States. In order to support Iraq's economic reconstruction, the World Bank, the IMF and the United Nations Development Group (UNDG) initiated a joint needs assessment of Iraq which later formed the basis for an International Donors Conference for Iraq in Madrid in October 2003. The initial assessment estimated that Iraq needed about \$55 billion for its reconstruction process.

(Map Number Three)

The Military Coalition Division of Iraq



**4.4.2 The Transition Phase July 2003- June 2004**

The IGC was widely criticized by the Iraqis because of its undemocratic formation, symbolic authority and sectarian nature that was openly introduced into Iraq's political process when previously it was absent. Therefore, Bremer's first plan was condemned by al-Sistani who was concerned about the prolonged American occupation and their efforts to transform the new political process. The important position of al-Sistani in the Shiaa community impacted on the rise of Shiaa opposition to the CPA approach even in the IGC. Moreover, UN assistance in the setting - up of the IGC was followed by marginalisation from the CPA. According to Diamond, De Mello, the UN envoy in Iraq who persuaded Bremer to give the name of "governing council" to the IGC and to give it the right to name Iraqi ministers, felt that he had been used by Bremer just to legitimise the IGC and then dropped by him (Diamond,

2005, p. 57). All this gave the impression that the US had decided on a strong and long- term control over Iraq.

To counter internal opposition and to allay Iraqi suspicions, as well as to contain Iraq's complicated situation, the CPA modified its plan. On 15 November, 2003, a new plan was formulated. It was based on drafting the fundamental law by the end of February 2004, transferring sovereignty to a select group, between 200-500 members, who would select a cabinet and a leader for Iraq by July 2004. According to Dodge, this body would shepherd Iraq to real elections in 2005 and the writing of the new constitution (Dodge, 2005, p. 34, Morphy, 2004). The plan rested on an indirect election and a caucus system rather than a direct election. Bremer's plan II, which was backed by the major Iraqi political groups, was condemned again by al-Sistani, who demanded a full democratic election by the end of June 2004 and not a selected government. Despite efforts by Bremer and the CPA staff to meet him and reach a direct compromise with him, he refused to meet any of them. Consequently, most of the Shiaa members in the IGC, who had accepted Bremer's II plan, turned to supporting al-Sistani in his demands. This was for two reasons. They sought to legitimise their role and the new political process in order to increase the popular support that the position of al-Sistani could provide. Moreover, the Shiaa members also sought to seize some powers from the CPA that held all the decision and policy making-powers.

The other challenge to this new plan came from the Kurds who demanded that special rights be approved in the fundamental law, which later on became the Transitional Administrative Law (TAL). Furthermore, the other challenge to the Bremer II plan was how to achieve a complete transition. There were many things to deal with, but the most important one (which is related to the purpose of this chapter) was how to broaden political participation and bring more Iraqis into the process, the core issue in the debate over elections (Wright and Chandrasekaran, 2004). These challenges were compounded with the deterioration of the security situation and the failure of the CPA to provide basic services to Iraqis. To deal with all these challenges and provide legitimacy, the Bush administration turned again to the UN and Lakhdar Brahimi.

The approach to implementing this plan, in the political sphere, was to further divide Iraq into six sectors rather than four that applied in the immediate post-war period in order to increase control over Iraq. Generally, the structure of the CPA had two layers of governance, in Baghdad, the centre and in the governorates, the periphery. Each governorate also had its own military and civil administration and both followed different arrangements and measures, which were different from the arrangements followed in Baghdad and other governorates. These administrations were also characterised by the lack of coordination, communication and institutional coherence (Herring and Rangwala, 2006, pp. 98-105). The arrangements and measures were determined by the specific circumstances in each governorate. The process of political transition required handing over responsibilities to local authorities that were also affected by the particular arrangements of the dual administrations and the needs and circumstances of the governorates. The plan of the 15 November, Bremer II, emphasized the need to focus on local administration for two main reasons: to control state insecurity and to provide more legitimacy for the political process. The Americans realised that the exiled Iraqi politicians installed at the centre through the IGC were lacking political experience and popular support and consequently they needed to transfer some local powers in order to control resentment of the Americans and assist in reconstructing their local areas. The local politicians would also develop the formation of the local administration that would assist in filling the gap that the collapse of the state institutions caused by providing security, law and order and basic services. The impact of this approach, which had the purpose of legitimising the political process, meeting al-Sistani demands and controlling and absorbing increasing Iraqi resentment, resulted in the growing ability of local leaders to resist subordination to the CPA and the exiled political parties (Herring and Rangwala, 2006, p.112).

The first step in plan II was the reconfiguration of dozens of local city councils that were originally appointed by American military commanders or provisional authority officials in the field. Some councils had been completely dissolved, whereas others had just had new members added. The approach depended mainly on the local powers with the input of the IGC members from the area (Wright and Chandrasekaran, 2004). In the second step, the CPA worked to select and create coordinating committees in each of Iraq's 18 provinces consisting of 15 members

whose mission it was to select members for caucuses, which would in turn select legislators for a new national assembly (Wright and Chandrasekaran, 2004).

Economically, Iraqi resentment increased with Bremer's plan II to reform Iraq's economy. He advocated free market reforms which included privatising the economy, closing state-run businesses, opening up trade and ending government support (Rohda, 2008, p. 62). The economic reforms needed international help to support Iraq reconstruction and to obtain sufficient resources to finance this costly process. Therefore, in May 2003, the UN Security Council Resolution number 1483 called for a donors' conference. This conference was held in Madrid in October 2003. It pledged \$32 billion, most of which was in the form of loans not aid. The IMF and the World Bank, not other countries, were the major contributors because, as we stated earlier, the US was unwilling to share Iraq with other countries and because these institutions were close to US foreign and security policy. The International Reconstruction Fund Facility for Iraq (IRFFI) was presented to help donors channel their resources quickly and coordinate their support for the reconstruction of Iraq (Hadad-Zervos, 2005, p. 6). However, because of the limited international contributions, in December 2003, the US authorities announced that only contractors from the coalition partners could bid for reconstruction projects (Castillo, 2008, pp. 211-212). In fact, most of the country's reconstruction work was funded by \$19 billion from the Iraqi fund in American Banks and by Iraqi oil revenue not by the US or other international organisations.

The road map for economic reconstruction, according to World Bank reports, encompassed providing law and order, building and strengthening institutions, debt restructuring, establishing a legal and regulatory framework and creating investment opportunities which would promote the rise of the private sector and provide jobs. One of the main approaches that the World Bank and the IMF focused on was the creation of local economic development capability in a small number of cities, recognising that economic development tends to happen at the municipal and sub-regional level where it is often easier to identify opportunities and resolve the constraints to doing business. Moreover, they promoted the establishment of economic zones as a response to the need to maintain security and provide basic services and infrastructure (World Bank, 2004, p. iii-iv). In addition, the World Bank,

the UN and the US focused on a project system. This instrument created a series of structures that ran parallel to the government. The existence of these projects led to the creation of a dual bureaucracy (Ghani and Lockhart, 2008, p. 99). These bureaucracies ran in the central government in Baghdad and in the local authorities in the governorates. In fact, as Barakat argued, focusing on local participation and harnessing the capabilities, knowledge and expertise of the local population and utilising them wherever possible would help kick start the local economy that had stalled as a result of conflict and more than a decade of international sanctions (Barakat, 2003, p.2).

However, because of al-Sistani's opposition to the caucus system and his insistence on arranging democratic elections, Bremer was forced to produce his third plan. The third plan kept the date of the handover of sovereignty by June 2004 but the body to which the US would hand over sovereignty was undefined (Tripp, 2004, p. 549). With the involvement of some Iraqi politicians, Sistani agreed that if the UN declared it impossible to hold elections by July, he would go with Bremer's third plan for a transition government. Therefore, the CPA had to hand over authority to a caretaker government until a direct election could be held (Wright and Lynch, 2004). This had needed the help of the UN which set the establishment of an Iraqi interim government as a condition for a renewed UN political role in Iraq, after the attack on its headquarters in Baghdad (Diamond, 2005, p. 49). By February 2004, the IGC had ratified the basic constitution for the interim government that was called the Transitional Administrative Law (TAL) or the interim constitution. This document laid the foundation for the permanent constitution and determined the main features of the political structure in Iraq, for example, the adoption of federalism. By the end of June, the interim government had been chosen officially to declare the return of sovereignty and the dissolution of the CPA and the IGC.

#### **4.4.3 Retaining Sovereignty Phase June 2004- December 2005**

With the establishment of the interim government, the reconstruction process moved to another phase that reflected more roles for the Iraqis, at least superficially. Most powers continued to be held by the Americans because no Iraqi power could control

the explosive situation because of the insurgency and terrorism and the failure to provide basic services. Bremer was replaced by the ambassador John Negroponte, and General Sanchez, the head of CENTCOM, was succeeded by General Casey. Unlike Bremer and Sanchez, Negroponte and Casey got along well and coordinated their efforts (Rohda, 2008, p. 85).

On the political side, the priority was security. The head of the interim government was the ex-Baathist, Allawi, who emphasised the importance of establishing security forces and re-building the Iraqi army as a beginning for reconstruction. He emphasised the need to initiate a real reconciliation process through re-integration of the ex-Baathists and officers of the Iraqi army. According to him, without this process there would be no stability. However, his efforts were rejected by other politicians, mainly the Shiaa, who insisted on moving forward in the de-Baathification process. He accepted the TAL but he refused to ratify it. This was another indication of the internal political divisions which affected Iraqi society and negatively impacted on social coherence. Law and order was still weak. The most important task for the transitional government was to prepare for elections by the beginning of 2005. The elected government also had the task of building a strong relationship with the Iraqis by convincing them that it ruled in their interests. However, that did not happen for administrative and ideological reasons. Administratively, it could not provide security and order and basic infrastructure. Ideologically, it failed to build a national project that mobilised popular support. The main feature of Iraq's politics during that time was the role of the rival exiled political parties in Baghdad which challenged the governorates. The local political powers, based on informal structures, like tribes and mosques, had been further strengthened to challenge the central government and the politicians at the centre.

In January 2005, despite the instability and violence, the Iraqis elected their first democratic government. The elections were boycotted by the Sunni who refused to participate in the political process, as we will explain in detail in the next chapter. In May, the government was formed. The lack of reconciliation and consensus impacted on the formation of the government. The Shiaa coalition parties won the election. The Dawa party named the prime minister while the SCIRI named the key ministers. It took nearly six months to form the government. This was because of competition

among the political parties to hold power and the absence of a national consensus among them. The permanent constitution was drafted by August 2005, and was approved by a popular referendum in October 2005. The 2005 Constitution inherited the TAL problems which were the role of Islam and the role of the Kurds, federalism and the division of powers and revenue. The Shiaa and the Kurdish roles were effective in the constitutional process and both sought to balance the role of the other Iraqis. The Sunni rejected the Constitution and voted against it and they were very close to blocking it. After that, the constitutional government was elected by December 2005 with the help of the UN and the US. Like the TAL, the permanent constitution reflected political compromises between the Shiaa, the Kurds and the Americans, which in turn reflected the short-term needs and aims for stabilisation and holding authority. Therefore, the institutional structure of the state did not provide for the long-term reconstruction needs and aims for democracy and welfare which means that the current institutionalisation remains slow and complicated.

Economically, the life of Iraqis did not improve because of the security situation, corruption and nepotism. Six American companies asked secretly through the United States Agency for International Development (USAID) and via the Bush administration to submit bids for contracts in Iraq. These companies were chosen because of their political connections with American politicians and their campaign contributions. They included Halliburton, headed by Dick Cheney, and the Parsons Group, headed by James McNulty (Coyne, 2008, pp. 91-93). In fact, these companies lobbied the political decision-makers in Washington in order to protect the interests of their companies. Therefore, the CPA drafted rules to sustain the interests of these companies. Because of the absence of effective governmental institutions and regulations that would check the work of these companies, most of their contracts were not implemented.

In November 2004, the Paris Club and a group of creditor states agreed to forgive at least 80 percent of Iraq's approximately \$40 billion debt to its members. The Iraqi press described this deal as Iraq's "second liberation". The US led the way by forgiving 100% (\$4.1 billion) of Iraq's debt, using \$352 million in IRRF to pay the US budget cost of this forgiveness (State Department, 2006, p.9).

#### **4.5 The Reconstruction Process and the Adoption of Federalism**

From this examination of the phases of the reconstruction process we can highlight a number of important points. The process of reconstruction in Iraq was initiated in April 2003 after the end of military combat but it has not finished yet. The US was the main actor, but not the only actor. There was no civil or internal conflict in Iraq and the Iraqi governmental and administration institutions had the recourses to function. Therefore, Iraq was not a failed state<sup>11</sup>. The US military intervention was the main cause of the collapse of the government institutions in Iraq which, despite the effects of previous wars and economic sanctions and their polarisation on the sole leader, nevertheless functioned. Total destruction happened after the end of the war with massive criminal looting and burning which the US forces had not had the capacity to stop, in terms of manpower and insufficient planning. All ministries, except the Ministry of Oil which had been protected, universities, hospitals, schools, museums, libraries and theatres were looted or burned. Therefore, there were no institutions that could be used after the end of the war. The stages in the plan of any post-war reconstruction - hold, stabilise and build – that should be implemented one after the other did not apply in Iraq. All these points distinguished the reconstruction process in Iraq.

How did the US and other actors influence the main tracks of reconstruction and consequently contribute to the introduction of compromises in the new political process and the development of the federal bargain? For the CPA, we have seen that its approach to rebuild Iraq combined both centralisation for installing the exiled politicians that would ensure the implementation of the US plans and decentralisation for containment of the new Iraqi political powers, by strengthening the appointed local leaders and controlling insecurity and popular resentment. In fact, it was a haphazard approach restored to it under the pressure of a deteriorating situation in Iraq which, it

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<sup>11</sup> For more information about the concept of a failed state see Mary Manjikian's article titled "*Diagnosis, Intervention, and Cure: The Illness Narrative in the Discourse of the Failed State*", *Alternatives: Global, Local, Political*, Vol. 33, No.3, 2008, pp. 335-357. The definition of a failed state provided in this article is "a state that cannot perform many of the functions that a state is expected to perform, including the provision of political goods to its citizens – including security, education, health services, economic opportunity, environment surveillance, a legal framework of order and a judicial system to administer it, and fundamental infrastructure requirements such as roads and communications facilities". See also, Ashraf Ghani and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World*, Oxford University Press, New York, 2008.

was thought, would be the best way to solve Iraq's problems. The challenges of miscalculations in planning for post-war Iraq, the lack of cooperation and coordination between the DOD and the State Departments and even with the CPA, the political commitments of the US towards Iraqi politicians and some of the regional states, the failure of the exiled political parties in Baghdad to mobilise and hold Iraqi society and the rise of the new local political powers in the governorates needed to be dealt with in a democratic and legitimate approach. All these challenges contributed to fracturing political power in Iraq through a power sharing system. This combination of centralisation and decentralisation reflected not only the plans and approaches of the CPA but also its hierarchy.

The CPA dual approach also stemmed from the desire to control the result of the entire democratic process. The US sought to ensure that the democratic process would not lead to Shiaa control over the state. Shiaa control would mean a strengthening of the Islamic forces in Iraq which could threaten stability in the region particularly if it was directed by Iran. To reduce this possibility and to correct this miscalculation, the Bush administration and the CPA moved from creating a strong centralised Iraq to insisting on a power-sharing system among the main Iraqi groups - the Shiaa, the Sunni and the Kurds. This would maintain Iraq's integrity by ensuring the Kurds' right to maintain their self-rule and block any justification for separation that the US and its allies in the region sought to prevent. Furthermore, the Americans did not desire a centralised strong Iraq that would threaten the stability of the region and the security of Israel.

To explain how this approach contributed to the creation of a federation, we will now analyse its impact on the development of a political bargain through the main tracks of the reconstruction process.

**Governance and participation:** The CPA adopted a centralised approach, mainly in the first phase, for various reasons. The first reason was the collapse of the state institutions and the need to re-build them. Moreover, the Iraqi politicians who arrived with the Americans needed to fit into the political process instead of the Saddam regime. This required the creation of authorities and jobs to fill the power vacuum. Furthermore, there was a need to maintain the territorial integrity of Iraq by

eliminating the idea of a Kurdish independent state. However, this approach stumbled due to Iraq's difficult circumstances, the Kurds' resentment and popular resentment of the CPA control over Iraq. The installed politicians also did not enjoy popular support to legitimise the new political process. In fact, this central approach, that is also called a "top-down" or "cookie-cutter" approach which the Clinton administration imposed in Haiti, Somalia, Kosovo and Bosnia, had failed in these cases because it ignored the unique political realities on the ground (Hulsman and Phillips, 2003, p. 1). The same thing happened in Iraq. Consequently, the CPA moved towards decentralisation to deal with these realities and to respond to the unique challenges in Iraq. This shift was supposed to create another opportunity for the reconstruction process to succeed. Therefore, the CPA moved towards creating real local administration through engagement with the local powers which enjoyed the credibility and acceptance of the population.

At the time that the CPA changed its approach, another change was taking place inside Iraqi society. The collapse of the state institutions contributed to the consolidation of informal forces like tribes, *hossinia* (Shiaa's mosque) and mosques (usually for Sunnis). These informal forces, in their areas, held and implemented the duties that the state usually has, such as providing security and maintaining order. Moreover, the tribal leaders and Imams of the *hossinias* and the mosques arbitrated when people had troubles. Therefore, with the shift from centralisation to decentralisation, in fact, the CPA recognised and supported these informal powers and gave them a formal character through the formation of the provisional councils. In other words, these powers were "strengthened" by the Americans, who themselves did not have the capabilities to counter these local powers, in order to ensure the implementation of the US aims which the exiled politicians in the centre struggled to achieve.

The Iraqi politicians in Baghdad also contributed to the empowerment of these informal actors, especially within the governorates that they belonged to, for the purpose of gaining popular support that would provide them with legitimacy and achieve their main interest which was authority. As a result, competition and contestation between the exiled politicians in Baghdad and local leaders in governorates over authority came to the surface, mainly in the governorates that

were ruled by ambitious local leaders. This happened in the Basra and Najaf governorates. On the other hand, the exiled and local politicians were also empowered by neighbouring states that needed to sustain their interest in Iraq and the region. These states also feared the rise of a strong centralised Iraq able to threaten them. Therefore, they adopted sectarian and religious projects to keep Iraq in turmoil and to hinder any reconciliation efforts that might lead to a liberal, democratic and prosperous Iraq. As a result, the Shiaa made efforts to construct the southern region, backed by Iran and recently the calls for a Sunni region backed by Saudi Arabia and Turkey (Fuluji, 2012).

**Security:** At the time that the CPA efforts were focused on rebuilding the collapsed state institutions through its centralised approach, it disbanded the Iraqi army and dissolved all the security forces. Both the Shiaa and the Kurds also did not want an effective role for an army that was brutal to them. The decisions disbanding the Iraqi army and all security forces and emptying the governmental institutions of Baathist was in contradiction with the building a strong centralised Iraq and the necessity of providing security and stability. However, the impact of losing security and the necessities of the centralised approach to rebuilding the state institutions required rebuilding the national army to carry out its duties in defending Iraq against any possible threats and also to assist the American troops in providing law and order. Therefore, the CPA engaged in building the Iraqi national army. However, the Iraqi national army should operate within certain limited capabilities and training in order not to threaten the new political process and the regional states. Simultaneously, alongside this centralised approach, and because of the increased insurgency, the CPA empowered the tribal and local militias for the purpose of assisting it in providing stability and security. Again this meant empowering the informal powers within Iraqi society that reached effective compromises within the CPA and the Iraqi governments. Later, these militias became the nucleus for al-Sahawat (Awakening) forces that became part of the state security forces. The immediate and short-term goals, which were stabilisation, security, law and order and the provision of basic services, required the establishment of these local administrations and local forces.

Both stability and security also required the inclusion of all Iraqis in a representative government. However, the CPA mistaken approach of emptying governmental

institutions of experienced Baathist staff, who were generally Sunni, was not supportive of the formation of national representative authorities and national governmental institutions. Consequently, the Sunni rejected the political process and threatened to undermine it. Many of the Sunni also joined the insurgency which was the incentive that forced the CPA to enter into negotiations with them to bring them back to the political process.

**Justice and reconciliation:** The CPA, through both the centralised and decentralised approaches, did not emphasise building a real reconciliation process among the Iraqis which would contribute to resolving state injustice and instability in Iraq. The decision to disband the Iraqi army and other security forces and the de-Baathification created a huge number of resentful people, who as we explained earlier, were mostly Sunnis. Those resentful Sunni, who were used to power, were left without salaries and pensions or a social system that would prevent them from turning to the insurgency or becoming fighters for al-Qaeda because of money. This negatively impacted on the sectarian tension between the Shiaa and the Sunni mainly because the Kurds had been separated from the Iraqi state since 1991. Thus, rather than working on the reintegration of the members of the Iraqi army and security forces and the Baathists to bridge the gap among the components of the Iraqi population, the CPA widened this gap. This in turn led not only to the creation of opposition to the new political process but also to development of the view that it was illegitimate. Both the Shiaa and Sunni turned to fighting each other for the purpose of holding authority. This Sunni rejection of the political process led to calls from some Shiaa political powers for the creation of a federal system to ensure that they would not be marginalised from authority and that they would enjoy a self-rule system in the south, should the Sunni return to hold the authority in the centre. Under this assumption, the SCIRI called for the establishment of a southern region. However, when the democratic process started to develop and it appeared that the Iraqi Shiaa majority, as all other components, would not be marginalised again, the idea of a southern region faded away. The Sunni's political frustration at losing power impacted on their attitude to the new political process in which they refused to participate. This refusal undermined their position to compromise effectively on the constitutional and institutional structures. This frustration drove them to call for the establishment of a Sunni region in three Iraqi governorates when they realised that

they could not control the political process in Baghdad. Given that, the incentives for federal regions arose from a real desire to hold authority and not from a real belief in the federal principle as an appropriate political solution to Iraq's difficulties.

The failure of the CPA to stress the importance of reconciliation nevertheless drove the successor American authority in Iraq to engage in efforts to build a national reconciliation process. A good example of the importance of the reconciliation process is the Kurdistan region. CPA decisions did not apply in Kurdistan because its institutions had not collapsed due to its de facto independence from Iraq. The Kurds effectively built their own reconciliation process not only between the two governing parties that had fought each other for years but also with the Baathists in their region under the motto "we will forgive but we will not forget". This ensured justice among the Kurdish people in the region. As a result, the trust and loyalty between the people and the Kurdistan government was bridged, which in turn supported and contributed to the success of the reconstruction process in the region and its stability compared to the rest of Iraq. This was due to the successful reconciliation process that ensured and enhanced the trust among the Kurdish political groups and the people. However, they needed to ensure a fair share of authority with the centre in order to ensure a fair share of revenue to fund the region and the reconstruction process in it. Therefore, the Kurds' efforts to promote the federal system arose not only from their distinct ethnicity, language and culture, but also from the need to ensure their regional autonomy and a fair share of revenue. The federal system it was thought would ensure an equitable distribution of revenues especially because Iraq's natural resources are unequally distributed.

In contrast to Kurdistan and its successful reconciliation was the Al-Anbar governorate. Its people were mainly Sunni and they were mostly members of the Iraqi army and security forces. They lost their positions when the army and security forces were disbanded, and because of the absence of a real reconciliation process, the governorate became the centre of the insurgency and al-Qaeda. Consequently no reconstruction efforts were initiated.

**Economic development:** There is little evidence for significant economic development during these years for the simple reason that the conditions for its

progress were absent. The CPA worked to end the central role of the state in the economy for the purpose of moving toward a free market system. To achieve economic development, Iraq was to rebuild its institutions at the central level as well as on the local level. The US needed to focus on Iraqi participation and resources in rebuilding their country, in a bottom-up approach because of the limited resources and narrow international engagement in this process that proved to be costly, unsustainable and ineffective (Barakat, 2003, p. 2). This needed a political consensus and real social reconciliation. At the time that the CPA was trying to enhance the re-building and re-functioning of the governmental institutions in the centre, it also worked on building the governorates' councils and the local administration for the purpose of sharing the burden of the reconstruction with local people in order to accelerate the process. The Americans realised a few months after the end of the war that Iraq's reconstruction would be difficult and costly. However, the CPA did not ensure a real economic recovery because there were no real bids for contracts with certain conditions or qualities for the implementation of projects. The big American companies, like Halliburton, won contracts with higher prices and then transferred them to a number of local contractors with cheap prices compared to the first price. Because there was no an effective authority to check the legality of contracts and the quality of project implementation, corruption among the Americans and the Iraqis became rife. The decentralisation approach was supported by the World Bank and the IMF because it would assist them in carrying out the economic projects, providing the needs and services of each area, increasing intergovernmental competition, discouraging corruption and also maintaining national cohesiveness (Hankla, 2008, p.633).

The work on the four pillars of the reconstruction process, despite their muddling through nature, contributed to shaping intergovernmental relations through the existence of central power and regional and local powers. The consolidation of the local powers and regionalism became one of the political features in Iraq that could not be avoided and needed to be incorporated in the new political process. Therefore, for the purpose of a quick and unproblematic political transition and to legitimate it as well it also needed to be consistent with the actors' interests, the new political system would be based on a power-sharing system.

The work on these four pillars, according to Hamre and Sullivan, had to be carefully integrated to ensure the success of the reconstruction. However, as we explained, in Iraq the work was not integrated. In fact, it was fractured. For example, the work on the security aspect was not integrated in the reconciliation process that did not get real attention. Most literature on reconstruction in post-war states focuses on the priority of security to initiate post-conflict reconstruction, however in the Iraqi case, we argue that the reconciliation process should have had the priority over security in order to build on political consensus that was a necessary factor for a stable political process. The failure of the reconciliation led to a political contest about authority among the main Iraqi groups and among the political powers in Baghdad and among the local and regional powers in the governorates. Consequently, the contest for power was the main reason for developing the bargain approach in the new political process that ended with the formation of the Iraqi federation.

## **Conclusion**

According to James Dobbins<sup>12</sup>, the Iraq reconstruction process was not based on the Americans' previous experiences of post-war rebuilding such as in Bosnia and Kosovo, or the DOD experience in state-building after World War II. It created a completely new structure by transferring responsibilities from the State Department and the Agency for International Development to the DOD for matters for which the DOD had never previously been responsible (Phillips, 2005, p. 126). However, we can add that this completely new structure was also shaped by Iraqi circumstances which were influenced by the new international system and the war on terrorism.

Throughout this chapter, the evidence is clear that the reconstruction process led to a fracturing of political power among Iraqis which contributed to the development of compromise and bargains as the only approaches for moving ahead in the structuring and functioning of the new political process. The CPA approach of moving from centralisation to decentralisation laid the foundation for a more effective role of local

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<sup>12</sup> Dobbins supervised post-war relief and reconstruction in Somalia, Haiti, Bosnia and Kosovo for the USA during the Clinton administration. He believes that putting the DOD in charge of Iraq's reconstruction was a mistake because the DOD had never before been responsible for such a reconstruction process. For more information see Katherine McIntire Peters, *Blind Ambition*, available at: [www.govexec.com/magazine/features/2004/07/blind-ambition/17093](http://www.govexec.com/magazine/features/2004/07/blind-ambition/17093).

power in the political process. And because both the Shiaa and the Kurds were in a stronger position than the other communities due to being the majority of the population in the case of the former and the reality of having being independent for more than twelve years in the case of the latter, they were better able to compromise. These compromises were embedded in the main pillars which all combined to introduce federalism in Iraq.

The failure to build a real reconciliation process, which was necessary for building trust among the Iraqis, deepened the social, cultural and religious differences inside Iraqi society. Without social coherence, the reconstruction process stumbled to achieve its desired aims that were mainly US aims. The haphazard approach of the CPA contributed to the devolution of political, security and economic powers to local authorities for the purpose of accelerating stabilisation and legitimating the political transformation process. Power zones were created in the 15 governorates, in the Green Zone, among tribes and religious leaders. Consequently, the political process and the re-building of governmental institutions, which was the main process for building the liberal political, economic and social order, had to consider these realities and incorporate them in this process to support and stabilise the new state structures. Consequently, regionalism and social incoherence impacted on Iraq's political process to adopt a power-sharing system as the only system that fits with Iraq's realities. This, therefore, led to the introduction of a federal system.

The discussion in this chapter demonstrates how the political bargain controlled the political process that ended up being a federal political process. This provides us with a comprehensive understanding as to how the Iraqi federation was established. In order to understand and examine *how* the political bargains moved to be a federal constitutional bargain, the next chapter will investigate the constitutional process in Iraq and the 2005 Iraqi Constitution. In doing this, the thesis is itself shifting in the direction of the second part of the title of the work, namely, the *operation* of the Iraqi federation.

## **Chapter Five**

### **The Constitutional Process, the Constitution and Constitutionalism in Iraq**

#### **Introduction**

In Chapters Two, Three and Four we presented a clear explanation of how the federation was created in Iraq. These chapters brought together the theoretical and practical factors that enabled us to explain the complex circumstances that surrounded the formation of the Iraqi federation so that we can now appreciate more fully the novelty of this new federal model.

To continue working on the logic and history of the current Iraqi federation and to understand the nature and implications of the political bargaining embedded in the Iraqi political process, this chapter focuses principally on the constitution-making process and its outcome, the constitutional structure in Iraq. The political will that drove the process of drafting the Constitution must therefore be examined to enable us to understand the main purpose behind it. Our consideration of this specific subject will provide the answer to the second part of our research question: why Iraq is a federation.

The preamble of the Iraqi Constitution recognised “ the will of the Iraqi people, who are looking with confidence to the future through a republican, federal, democratic, pluralistic system’ that would ‘respect the rule of law, to establish justice and equality, [and] to spread the culture of diversity” (Iraqi Constitution, 2005, p.2). Given these normative federal political ideas, it is obvious that they are designed to achieve certain goals in both the long- and the short term. The new constitution is in many ways therefore an aspiration and the chapter will address what its principal purpose is deemed to be. In other words, the question of its purpose will enable us to determine precisely what it claims to be, whom it represents and the nature of its legitimacy.

Generally, the Constitution aims to structure the political, economic, legal and social affairs in a way that enhances the peace, stability and prosperity of the new state. In the Iraqi case, I will argue that the constitution-making process produced a federal state which, while in theory it is formally liberal democratic, is likely in practice to be neither stable nor prosperous. The process of federal state formation was intended to rebuild the state in a way that did not perpetuate the previous state structure. Instead it sought to replace it with a federation that did not resemble the kind of modern state that developed in Iraq after 1921. This time it was deliberately designed to recognise and respect the plurality of Iraq, balance the needs of the majority and the minority population, provide equal rights and responsibilities, and develop an effective power-sharing system.

Consequently three main elements will be discussed in this chapter: the actors that participated in the constitutional process, their specific aims and the motives behind these aims. In turn, these three elements will be investigated according to three main phases of the constitutional process: The Transitional Administrative Law (TAL), the permanent Constitution and the first major constitutional amendment. Understanding these three elements through different phases of the constitutional process will clarify the different political interests that promoted the adoption of federalism and power-sharing system in Iraq, and the different outcomes of this process. The analysis will also enable us to return later to the theoretical implications for classic federal theory (which will be one of the conclusions to this research).

The structure of the chapter will therefore include, first, understanding the circumstances surrounding the constitutional process. Second, it will explain the constitution-making process through its main three phases, and finally, it will discuss the combined results of the constitutional process that produced a particular constitutional structure.

## **5.1 The Constitutional Process**

A constitution as Grimm argued is the law produced through a political decision that regulates the establishment and exercise of political rule. He also argued that the

notion of constitution itself has evolved from the empirical to the normative to be the condition determined by the public law (Grimm, 2004, pp. 1-2). In reality, the constitution-making process is a crucial step on the road that determines the nature of state and nation - building. Today it should produce a far-sighted and carefully crafted institutional design for the state based on the rule of law. It represents the public consideration, awareness, and desire to protect and stabilise the state through the rule of law. This special moment might rise, as the western philosophical tradition has demonstrated, internally when there is a history of constitutionalism or when the public realises the need to create, organise or reorganise the state, or externally with the input of foreign powers whether as liberators or occupiers. However, neither of these premises existed in Iraq. Internally, the Iraqi population was deprived of any opportunity to think politically about reorganising the state during the Baath rule and after its overthrow for four main reasons: the Baath's suppression and brutality towards any rivals to its rule; the economic sanctions that were imposed on Iraq after 1991 and caused widespread poverty; the disappearance of the middle class; and the state's collapse and subsequent security challenges after 2003. All these reasons made survival the main desire for most Iraqis. Those that enrolled in the opposition factions became the main political players of the political and constitution-making process after 2003. However, they were old rivals and factions of a deeply fragmented opposition. There was therefore no broad consensus on a national project for the future of Iraq among the opposition factions that could facilitate the constitution-making process.

The principal factors that characterised Iraqi politics at this time can be summarised in the following three points. First, the parties' self interests and ideological commitments among the opposition factions - Islamists, nationalists, communists, and secular liberals- overrode the national interest. These ideological differences were rooted in the sectarian and ethnic diversities embedded in Iraqi society. For example, the Dawa party and the Supreme Council of the Islamic Revolution in Iraq (SCIRI) were mainly representative of the Shiaa community. The Arab Nationalist Movements were mainly representative of the Sunni community, and the Kurdish Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) represented the Kurdish community. It is true that there were some multi-sectarian and multi-national factions but the political process after 2003 proved that they were not influential in an

Iraqi society that had mobilised in religious and sectarian ways because of the Baath's policies, like the Constitutional Monarchy Movement (CMM) and the Communist Party. This complicated the possibility of reaching a national consensus on a unified national project for Iraq after Saddam. To deal with this reality, the Iraqi National Council (INC) was formed under the US blessing to bring together the disparate Iraqi oppositions and to unite their work and efforts to overthrow the Saddam regime.

However, each faction of the six main factions represented in the INC - the SCIRI, KDP, PUK, Iraq National Accord (INA), CMM - and the INC itself continued to work separately and independently because, firstly, they did not trust each other and, secondly, the head of the INC, Ahmed Chalabi, was not accepted by all of the opposition factions and he also, as a leader, could not bring together the opposition on a unified agenda. For example, the SCIRI refused to participate in one of the opposition conferences because the Communist party was represented in it (Al-Shabender and Al-Somiedai, 2012). Furthermore, the Dawa party and SCIRI sent only observers to the Vienna Conference in 1992 due to their suspicions concerning the Western influence and their traditional reservations over the joint actions with the secular groups (Gunter, 1999, pp. 137-138). These groups rejected the Americans' idea of military intervention after 2001 and preferred the internal Iraqi revolution to overthrow the Saddam regime. At the time that the Dawa continued its position, the SCIRI accepted the US role only when it realised the impossibility of internal regime change because of Saddam regime brutality in putting down any rebellion as happened after the 1991 Uprising and its strong control on military and security units. Furthermore, the Iraqi society was severely damaged by wars and economic sanctions which undermined its capacity to initiate political change. The Kurdish factions principally focused on maintaining their semi-state. The KDP drafted the Kurdish Constitution that created a loose federation based largely on ethnicity and territoriality in April 2002 just a few months before the London Conference of the Iraqi opposition in November 2002. This was to forge some leverage before the Conference's final statement especially when they knew that the forthcoming London conference would be the final opposition conference before the military action.

Moreover, the fragmentation among the opposition was accompanied by rivalry for the leadership and the percentage of representation in the opposition institutions that the INC structured<sup>13</sup>. A good instance of this was the rivalry between Ahmed al-Chalabi and Iyyad Allawi to lead the opposition which had become one of the principal reasons why the opposition was unable to forge a united front (Allawi, 2007, p. 52). In addition, the civil war among the Kurdish parties the KDP and PUK during 1993-1998 was due to the competition for controlling the Kurdistan region after the first Gulf war in 1991. This civil war also served to undermine the opposition and the formation of a national consensus. In reality, these rivalries explained the absence of effective leadership that could bring together all the opposition factions. Michael M. Gunter has underlined this fact by declaring that “the opposition suffered from the narcissism of parties that numbered in the dozens, each having no more than 10 or 20 members in the most cases and it lacked a leadership capable of exploiting opportunities, of controlling the means and methods leading to recognising the rights of the uprising and the opposition, and of representing the opposition before the UN organisations and decision makers” (Gunter, 1999, p. 138)

The regional and international support for the opposition factions also contributed to the opposition’s fragmentation. The brutality of the Saddam regime in suppressing its opponents drove them to leave Iraq and reside in neighbouring states, like Syria and Iran during the 1980s and then Saudi Arabia, Jordan, Turkey and Lebanon in the 1990s, and to work from there against the Baath regime. The main interest of these states was not the regime change that the opposition factions sought but their aim was a weak but territorially unified Iraq, stripped of its capacity to pose a regional threat or foment crises (Rabil, 2002, p. 14). Consequently, the regional states leveraged the Iraqi opposition factions to adapt them to their own national interests and policies. This motive applied equally to the US and the UK after 1991 when they also supported the combined opposition for their own interests - to overthrow the Saddam regime, maintain stability in the Middle East for the purpose of protecting the oil export to the West and protecting Israel. Both sought to unite the opposition factions through supporting the formation of the INC in 1992 as an umbrella for those

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<sup>13</sup> The INC provided an institutional framework for the proposed Iraqi provisional government to replace the defeated Saddam after 1991. I will discuss the formation of these institutions in the next chapter as the root for the current Iraq’s governmental institutions.

factions which would structure the main political principles and institutions for Iraq after Saddam. However, they also leveraged the opposition through support for their favoured elite actors and through their financial support. For example, the US had suspensions imposed upon the Shiaa political leaders because of Iran's influence on some of them and their reluctance to accept the American role in the regime change strategy, as did the Dawa party and SCIRI. The Bush administration therefore did not intervene in supporting the Shiaa uprising in the south in 1991, when President Bush (senior) asked the Iraqi people to revolt against Saddam. Consequently, the uprising was crushed by Saddam. On the other side, the US protected the Kurdish uprising in the same year by creating the 'no-fly zones'. The Americans sympathised with the Kurds because of the terrible historical abuses they had suffered and because they supported America's role in Iraq. However, the US did not intervene to stop the Kurdish civil war triggered in 1993 at the time that its troops were on the ground in Kurdistan for the purpose of protecting the Kurds from Saddam because it also sought to control and leverage their ambitions for independence. Additionally, it decreased the financial support to the opposition from \$ 40 million after 1991 to \$ 20 million after 1996 because of both a lack of results and corruption. Not only that, but the confusion between the State Department, the CIA, and the Pentagon regarding the approach of how to overthrow Saddam continued after the military intervention regarding the reconstruction process as the previous chapter has underlined. This had impacted negatively on the opposition factions' harmony and work. As a result, the opposition factions were further weakened by regional and external intervention and it was to become much more difficult to reach a consensus among them even after the removal of Saddam, as the constitutional process has demonstrated. Kanna Makiya, who was one the Iraqi liberal secular opposition characters, indicated that the opposition had not always been easy to deal with because it encompassed diverse traditional and modern elements of Iraqi society and it was fractious and prone to infighting (Makiya, 2003, p. 7).

Externally the US could not impose the constitutional structure on Iraq, as the international community did in Bosnia, due to two factors. First, the war of 2003 in Iraq was justified under the interest of self- protection and the war on terror upon which the security strategy of the US was based. The neo-conservatives, who were the engineers of this strategy, believed in using the US military not only to enhance

security, but also to enforce measures that were designed to reshape the world in America's image and, in the process, ensure future access to Middle Eastern oil (Phillips, 2005, p. 56). Feldman argues that there are three types of states that generate terror: those that export terror by supporting it financially abroad; those that are too weak to suppress terror or terror training; and those that unintentionally generate terror against themselves and others by means of their own illegitimacy (Feldman, 2004, p. 137). He argued that Iraq was a "strong state" and the military invasion in 2003 created a weak state or no state at all so that the US had to engage in a nation-rebuilding process, but for different objectives from the earlier American nation-building. The new nation building process was designed to build a stable and (reasonably) legitimate and (reasonably) democratic state, not a rich, capitalist, prosperous and stable state which was not necessarily democratic (pp. 7-19). In other words, the objectives of the US security strategy have coincided with the circumstances and objectives of the new nation building process in creating above all a legitimate state. Consequently in Iraq the coercive approach was to contradict the process of legitimisation and liberal democracy that the security strategy and the new nation building sought to achieve. Moreover, it would also undermine the legitimacy of the new political process in the eyes of Iraqis which means creating a state that would generate terror. Accordingly, we can understand why the US was very concerned about uniting the position of the Iraqi opposition factions, mainly after 2001, as the main element of legitimising the regime change strategy particularly after its failure to maximise the international support for the war. Through a united opposition, the US hoped to ensure a broad popular Iraqi support for any type of action that the US wanted to undertake in order to achieve regime change as well as seeking to demonstrate to American public opinion and to the international community that Iraqi popular will actually supported regime change. However, no one can deny that the US has effectively leveraged the political and the constitutional processes to ensure the favoured outcomes of the security strategy because it was the dominant power on the ground and because of the division among the Iraqi political elites and their competition for authority.

The other factor that complicated the coercive approach was the rise of local political powers that challenged the CPA and the opposition factions by seeking to shape the political process, such as al-Sistani, and by having a share in authority like al-Sadr.

These forces had compelled the US to try to accommodate such ambitions for the purpose of a broadly legitimate political and constitutional structure for Iraq. Consequently, the Iraqi constitution-making process and the formation of the federation were the product of a political bargain, in Riker's terms, among the Iraqi parties on one side and among the Iraqi parties and the US on the other side, as we will explain later.

Generally, the two main objects that the Iraqi opposition factions and the US government agreed on were: overthrowing the Saddam regime and introducing liberal democracy in Iraq. An historical survey of the fragmented Iraqi opposition suggests that democracy was not on the American agenda until the events of September 2001 and the development of a new security strategy. Before that, the US was anxious about the prospect of who would rule Iraq after Saddam and how. After 1991, the US had supported the idea of a military coup to overthrow Saddam as the best approach for regime change which could avoid Iraq descending into a state of turmoil and collapse rather than a democratic approach that would have been very complicated in a state without a democratic tradition and with deeply conflicted political factions. Nonetheless, this approach at least had the merit that it would have blocked any Iranian influence that could emerge with a democratic option that, without any doubt, would have put the Shiaa in the clear position of majority control. The US through the CIA cooperated with the INA to contact some generals in the Iraqi Army to initiate the coup that Saddam and his security intelligence exposed in 1996. As a result, the US reverted to the dual containment policy during Clinton's administration.

After 2003, the constitution-making process in Iraq lasted for nearly two years and six months. It had three main phases: the Transitional Administration Law (TAL) in January 2004, the Permanent Constitution and the National Referendum in October 2005, and the Constitutional Revision Committee. However, even today the process has still not ended because there are still several outstanding issues which have not been resolved such as the oil and gas law. Both Brown and Feldman argue that the Iraqi constitutional process has some roots in the political history of the Iraqi opposition after 1991. Their position is clear:

“The root of the process goes back in the wake of the Gulf-War 1990-1991 with the efforts of the Iraqi exiles to hammer out the political principles that would govern a post-Saddam Iraq. The main political players in this opposition were the same men who would write Iraq’s interim and permanent constitutions nearly 15 years later. The opposition’s basic political vision for Iraq aimed to provide simultaneously for democracy, Islamic values, federalism, pluralism and human rights” (Feldman & Martinez, 2006, p. 886).

Feldman and Brown’s argument is based on the opposition consensus on these political principles in 1992, 1998 and 2002. In short, they believe that there was a basic continuity in elite personnel that produced a set of objectives tantamount to a common political vision. However, it is my contention in this thesis that the opposition consensus on these political principles was both fragile and served as a mere expedient which did not reflect the will of the combined opposition factions. For all the reasons that have been explained earlier about the fragmentation of and the competition among the Iraqi opposition factions and their conflicted agendas, the initial consensus was neither a reflection of a common political will, nor the popular Iraqi will. In reality it was a reflection of the will of the six influential factions in the INC under the pressure of the US. And the most important feature of this predicament was that none of these six main factions represented the Sunni community. It is true that the INC, the INA, and the CMM included actors represented in Iraq’s plurality; however they did not represent the Sunni community.

In contrast, the other three factions (SCIRI, KDP, and PUK) were pure sectarian and ethnic factions that claimed to be the true representatives of their respective communities, namely, the Shiaa and the Kurds, largely because of their historical suppression. The fact that there was not an effective Sunni faction that could represent the Sunni population arose from the political reality that the Sunni community had always been in the ruling system from the creation of the modern Iraqi state up until Saddam’s regime. Consequently the individual Sunni actors in the opposition could not and did not represent their community. Moreover, the few political factions that were considered as representative of the Sunni population, like the Arab Nationalist Movement, boycotted the INC work. At the same time, most of the individual Sunni opposition actors disappeared from political life after 2003, like Hassan al Naqib and Wafiq al Sammrai, for different reasons. They represented the Arab nationalist movements during the period when the theory of Arab nationalism

was popularised inside Iraq and the Arab states. They were also members of the Iraqi military and other security forces that made the majority of Iraqis deeply suspicious of their relations with Saddam, and they could not claim enough support from within the Sunni population that was significantly divided between supporting the Saddam regime, supporting the insurgency and al-Qaeda, and supporting the new local Sunni politicians. This meant that, contrary to Feldman and Brown's claim, the initial consensus in 1992, 1998, and in 2002 did not reflect the Sunni community's desires about the future of the Iraqi state after Saddam. In reality, the political strategy of the Sunni as a distinct social group started to crystallize only after the regime change and particularly at the end of 2005. There was therefore a question of timing involved here so that the constitutional drafting process lacked the deep roots of national consensus among Iraq's diverse sects and nationalities.

In retrospect, even the INC, as we explained earlier, was characterised by rivalry and distrust. If there was a real and strong consensus on these political principles as these authors claim, they would not have been as problematic and controversial as they appeared after 2003. For example, federalism was one of the political principles that the INC sought to promote in Salahaldin but it caused a serious schism within the opposition ranks. The Arab nationalists rejected federalism and boycotted the INC General Assembly work because they thought it threatened Iraq's territorial integrity. The Dawa party, which is prominent in the leadership of the current government, also had its reservations about it. Indeed, even the factions that accepted the idea of federalism at that time (SCIRI, INC, CMM, INA, KDP, and PUK) agreed on its general meaning but they never addressed the specifics of how precisely to implement it. This state of division and competition among the opposition factions in general, and the position of federalism in particular, had not changed very much by September 2002 after nearly 10 years work by the Democratic Principles Working Group<sup>14</sup> (DPWG) and was evident during the London conference in November 2002.

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<sup>14</sup> This group consisted of the 32 Iraqis representing the diversity of the Iraqi society. The DPWG was part of "Future of Iraq" programme initiated by the State department of the United States. The most notable participants who had a role in Iraq after the 2003 war were, Istarbadi and Salam Ghalabi, who both played a key role in drafting the TAL. The DPWG sought to be a bridge between the Salahaldin conference in 1992 and the next supposed broad conference in London. For more information about the formation of this group and aims behind its formation see David L. Phillips, *Losing Iraq: Inside the Post-war Reconstruction Fiasco*, pp. 45-54.

The reality of this opposition fragmentation bothered the Bush (G.W) administration, which was determined to achieve regime change and needed the Iraqis to legitimise the military action and the regime change strategy. It sought through the work of the DPWG to reach a plan for Iraq's economic and political structure after the war and to agree on the guiding principles before going to the broader conference of the opposition in 2002 in London. Although, the final report of the DPWG was comprehensive and included alternative policy options within the common framework of a democratic system of government for the political future of Iraq, it nonetheless exposed once again the reality of deep divisions in the Iraqi opposition and the difficulty in reaching a national agreement. Federalism remained difficult to agree upon because of a lack of trust among the political actors combined with concern about its likely impact on Iraq's territorial state integrity. Other subjects, like the approach to regime change, the transitional authority and provisional government (that according to the report should be dominated by the exiles), were also complicated. Division appeared about how to form the provisional government and what would be the allocation of seats and authorities. Nevertheless, despite this division, the US pressured opposition factions to go to the London conference and all the actors knew that this conference would be the last before going to war. The Dawa party, Arab Nationalist parties, the Iraqi Communist party, and Islamic groups all boycotted the London conference because of the Americans' determination to achieve their preferred outcomes. The participants reaffirmed their agreement on the Salahaldin political principles in the final statement of the London conference, but the rivalry and fragmentation continued to characterise the opposition factions because it was divided by several issues, such as the size and allocation of seats on the coordinating committee that the conference would create, the practice of federalism, and who would lead the coordinating committee (Phillips, 2005, p. 97). Consequently, the consensus was *shallow and fragile* and it did not actually represent the will of all the political factions. As a result, the political bargaining that characterised the political and constitutional processes was channelled mainly among the effective factions in the INC. For this reason, the constitution-making process from 2004-2006 was contentious.

After the end of the military conflict in April 2003, the US pressured Iraqi political leaders to move ahead in the political reconstruction process through drafting a constitution, but without considering the negative outcomes of initiating such a process in the middle of a critical stabilisation phase and during the peak of violence. As we indicated in the previous chapter, in most post-conflict cases there has been an emphasis on achieving peace-building and conflict resolution as the short-term goals “before” determining the nature and future of a state which are the long-term goals. This was to avoid embedding the conflict interests in the structure of the state which could lead to its destabilisation and fragmentation. Indeed, it was precisely because of the initiation of short-term and long-term goals in such a combination simultaneously in Iraq, that the Iraqi Constitution and the federal design in particular have been and still are controversial issues.

The constitution-making process in Iraq was based on three main factors that shaped and determined its structure. In order to understand and analyse this constitutional process, it is important to consider these three factors separately that distinguish the constitution-making part of the process and help to explain why it was such a complicated process.

1. Iraq is a state without a previous history of democratic constitutional government. The first permanent Iraqi constitution came into effect only in 1925 under the British mandate and continued in effect until 1958 when the monarchy was overthrown. It was followed by a series of provisional constitutions in 1958, 1964, 1968 and 1970. The last one continued in effect until 2003. Although Iraq was the first Arabic state that drafted its constitution, achieved its independence and became a member in the League of Nations in 1931, there was no real constitutional culture and effective civil society. In other words, constitutionalism as the culture of political values and citizens’ aspirations that reflect the desire to protect liberty through the establishment of the internal and external checks on government power (Heywood, 2007, p. 321) did not exist in Iraq even after the 1958 revolution that ended monarchical rule. As Al-Istrabadi argued, from 1958 until 2003, Iraq was governed at any given time by the caprice of a single man (Kasim 1958-1963, Arif, 1963-1965, Arif 1965-1968, Baker 1968-1978, Saddam 1978-2003). Constitutionalism, always a weak force, had so receded during this time that the concept of constitutionalism

itself had entirely disappeared (Al-Istrabadi, 2005-2006, p. 270). These circumstances arose because of the political systems that governed Iraq which, like many other political systems in the Middle East, considered constitutions merely as a means to strengthen and support their own personal rule rather than that of the state. Consequently these systems did not create the necessary conditions to develop and promote a real constitutional culture that would provide government with legitimacy based upon prosperity, education, civil society organisations, and the rule of law.

This problem of the absence of constitutionalism was first discussed by the opposition factions in the DPWG, when they were tackling the subject of alternative approaches to the constitution that would govern the interim period in Iraq. The DPWG decided that the “Transitional Authority” must operate under some governing law, or a constitution, that would become the vehicle of a new constitutionally based democratic government. And this governing law was to be either an amended version of the interim constitution of 1970 or by repudiation of the constitutional basis of the old regime and the start of a new road to authentic legitimacy, and this was what happened in practice. Therefore, the new constitutional process in Iraq flourished in an extremely unpromising internal environment. However, and despite the lack of constitutionalism, the majority of Iraqis after 2003 sought and supported the constitutional process for the purpose of ensuring widespread stability, prosperity and development, the things that autocracy did not deliver. Most of them did not really consider the constitutional provisions and the main political principles. For them, the constitution was just to put in place something that Saddam’s era had not thought particularly important. However, this fact, if effectively manipulated by the politicians, could be seen as a crucial base upon which to build the new democratic process.

2. The US role had heavily influenced the constitutional process after 2003. This role was represented by the CPA. The Security Council Resolution 1483 restricted legislation by Paul Bremer’s signature. Bremer, as former diplomat in the State Department of the United States who also served as a special assistant to Secretary Kissinger, had been selected as the ‘High Governor’ of Iraq to guide the political and constitutional process instead of the idea of a provisional government that the Iraqi opposition favoured. However, according to Peter Galbraith, the former American ambassador to Croatia and one of the engineers of the 1995 Dayton Agreement that

had created Bosnia-Herzegovina, Bremer had never been to Iraq, did not speak Arabic, had never served in a post-conflict society, and had no experience in nation-building (Galbraith, 2006, p. 118). The formation of the CPA was not only because of the removal of the autocratic regime, the subsequent collapse of the state's governmental institutions, the absence of civil society, and terrorism; it was also because of the reality of fragmentation among the Iraqi political factions that were all trying to control the post-Saddam authority. These were the opposition factions that could not agree on a unified plan for Iraq's future. Consequently, the Bush administration dropped the idea of an Iraqi provisional government in favour of the formation of the CPA to ensure their preferred policy outcomes in the new security strategy and the new nation-building notion that we discussed earlier.

The role of the CPA had aggravated the problem of the illegitimacy of the political process in Iraq which was predicated upon the illegitimacy of war when the international community represented by the UN did not formally provide it with legitimacy to trigger the war. We have just explained that the US efforts at unifying the Iraqi opposition were for the purpose of redressing this problem of a lack of legitimacy. Moreover, the CPA which formed the Iraqi Governing Council to draft the TAL also lacked legitimacy. In reality, the US was in trouble because it needed to deal with Iraq's difficulties and build a stable state that was democratically legitimate. It was crucial therefore that the approach should be legitimated to guarantee these outcomes. To solve this dilemma, some American theorists, like Feldman who was Bremer's advisor for Legal affairs, sought to justify the role of the US by linking it with the new notion of nation-building and the new version of trusteeship that was to serve the interests of the beneficiary in self-determination (Feldman, 2004, pp.83-86). He argued that the new notions were not based on imperialism or colonialism that needed the direct intervention and control by the nation-builder for an indefinite duration, as the British had done in Iraq. Instead, this new role changed the dynamics of power between the nation builder and the people under the occupation in favour the former, but in the new notion of nation building the dynamic of power was balanced, or at least did not diminish the other. The power of the Iraqis - the official power like the IGC and the non-official power like al-Sistani- served as a counterweight to the CPA. And Feldman gives examples of Iraqis' power such as in the subject of the role of Islam in the TAL. When Bremer declared that the TAL could

not be too Islamic, the Islamists redoubled their demands, and eventually the TAL made Islam a source of legislation and prohibited laws that contradicted the principles of Islam. Again Feldman did not deny that there would be a conflict of interests between the nation-builder and the beneficiaries, and even a conflict of interests among the nation-builders themselves (the ethical and the practical interests). However, he argued that the power of the beneficiaries would pressurise the occupier to be fair and honest.

In spite of this effort to justify and legitimate the American role in Iraq, which Feldman did intelligently, the reality was, and still is, that many Iraqis still have suspicions - mainly the Shiaa and the Sunni - toward the US role. For the Shiaa, they did not secure the majority rule that they thought democracy would provide, while the Sunni, because of the US intervention, had to accept the reality of being a minority in Iraq and that they are never going to rule Iraq by themselves again. This was what drove them to deny the legitimacy of the new political process and their enrolment in the insurgency against the Americans. These suspicions existed also in the minds of legal experts both in Iraq and in the international world because according to the principles of International humanitarian law the occupier may not tinker with an occupied country's legal system except to the extent necessary to defend the occupier's troops (AL-Istrabadi, 2005-2006, p. 270). And this was also what some Iraqi lawyers insisted on during the meetings with some American officials assigned to the Ministry of Justice in May 2003 in the Iraqi Lawyers Association.

However, I would argue that whatever concept is used to explain the US role in Iraq and in the constitutional process in particular- trustee, partial-mediator, honest-broker, or imposer- we need to acknowledge that the US was nonetheless a partner of the Iraqis in the political and the constitutional process. It alone held power on the ground and it worked to guarantee its interests through ensuring favourable policy outcomes. Moreover, as a partner, it was impossible to "impose" these outcomes because of the other partners- the Iraqis. It would seem therefore that bargains based upon negotiation, mediation and compromise rather than simple impositions more accurately describes what happened.

The absence of legitimacy had not only contributed to the problems of insurgency and boycotts by the Sunni and Shiaa radicalism represented by al-Sadr, but it also contributed to the difficulty of the constitutional process and to the complexity of constitutional texts because of the Americans' presence that could easily be linked to the logic of imposition. Therefore, the constitution-making process was not premised on the acceptance of state power as the only legitimate power. This lack of legitimacy, in turn, deepened the problem of national consensus about the future of the state and its main structures. This also affected the foundation of constitutionalism - the means to provide governments with legitimacy - in Iraq. Rory Stewart indicates that "it did not matter what human rights were enshrined in the documents if the local sheikh, party leader, or policeman could still beat you up on the street corner" (Stewart, 2007, p. 399). This is exactly what is still happening today in Iraq.

3. Iraq is a multi-national, multi-religious and multi-lingual state. The failure of the reconstruction process to initiate a real national reconciliation process, as we discussed in the previous chapter, as a basis for political reconstruction deepened the divisions in Iraq. In other words, politics in Iraq after 2003 has aggravated the existing divisions in a manner previously unknown. The state of no-state caused by war and the failure of the political powers - CPA, IGC, the interim and the transitional governments - to fill the vacuum of the "no-state" or "no-government" by providing firstly and importantly effective security and services for the Iraqis had serious consequences. It prevented them from creating a new national loyalty and re-forging their national identity undermined during Saddam's rule. This was accompanied by the absence of a civil society culture and the rule of law. Therefore, the Iraqi people moved to the socio-political organisations and groups that could satisfy their needs, which generally were closer to their cultural, ethnic and linguistic identity.

The popular participation in the political and constitutional process was further weakened by the absence of a novel national identity and national consensus as a potential and necessary factor for any successful constitutional process. For example, the Sunni boycotted the political process because of its perceived illegitimacy and because of America's intervention that caused their removal from the authority that they had enjoyed since 1921. The Sunni thought that they had lost their

privileged position in favour of the Shiaa and the Kurds. This situation was further complicated by policies of De-Baathification implemented by the CPA and IGC. Therefore, they moved towards insurgency and violence because of a problem in their political culture of understanding. They rejected the democratic process and negotiations to rebuild Iraq because it would have exposed them as a minority and it seemed to confirm to them that they would never rule Iraq again. Only when they had realised that insurgency would not lead to Sunni rule, did they agree to participate. This Sunni position of isolation had weakened the state of legitimacy of the political process because of the absence of the third main group of the Iraqi population. I argue in this thesis that the unique circumstances of the Sunni population were more damaging to the Iraqi society and to the legitimacy of the political process than the American role because they turned to violence, not only against the Americans, but also against all the diverse groups of Iraq. At the time that the impact of the Americans' role could have been limited through a wise national Iraqi consensus, the effects of the insurgency had a devastating impact on Iraq - three million orphans, one million widows, and hundreds of thousands of displaced and migrant families. This outcome points to an important reality that stemmed from the absence of influential Sunni leadership, whether religious, political or social, which could organise and push the Sunni towards political participation and initiatory bargains, like al-Sistani's role inside the Shiaa's house. Al-Sistani exemplified this role when he issued a fatwa that obliged each Iraqi woman and man to participate in the national election. This contributed to the unification of the Shiaa political groups' position, despite their internal differences, in the political process. As a result, the composite Islamic Shiaa identity was mobilised, which the US did not expect because of the secular image that the INC had originally suggested for Iraq after Saddam.

In contrast, the *absence* of influential leadership had contributed to the deep fragmentation inside the Sunni community. For example, from 2003-2005 the main two Sunni political powers were: the Iraqi Islamic Party (IIP) and the Association of Muslim Scholars (AMS). While the IIP accepted participation in the January 2005 elections because of its political strategy that was based on splitting the broad Shiaa list of the United Iraqi Alliance (UIA) and bringing the moderate nationalist Shiaa parties over their side, the AMS thought that the goals of the Sunni community could only be reached by boycotting the political process, supporting the armed struggle,

and winning over the most pro-Arab radical Shiaa groups such as al-Sadr (Meijer, 2007, p. 90). These circumstances had limited the political mobilisation of the Sunnis and triggered the insurgency not only against the US forces but also against the Iraqi Shiaa. For the Kurds, their political leadership also succeeded in unifying their position and provided the incentives temporarily to overlook the history of struggle among them for the purpose of effective political bargains. These developments underline the importance of political leadership in the formation of federations and their subsequent success originally emphasised by both Wheare and Watts in the mainstream literature on federalism. Thus, the Sunnis could not make effective compromises on the principles of the Rikerian constitutional bargain.

In summary, these three elements in combination not only served to complicate the constitutional process in Iraq but they also helped to distinguish it from other conventional constitutional processes that current mainstream constitutional theory has identified. And this is what drove Brown and Arato to recognise the inadequacy of current constitutional theory in explaining the overall Iraqi constitutional process. In other words, Iraq's constitutional process had a new theoretical implication that must be underlined here<sup>15</sup>. Rather than firm national interests organised in constitution-making, it was partisan and short-term interests of the Iraqi political groups that had prevailed, with conspicuous US arm-twisting, as we will see in the next section.

### **5.1.1 The First Phase: The Transitional Administrative Law (TAL)**

Because of al-Sistani's democratic Fatwa in June 2003, the November 15, 2003 agreement was reached between the CPA and some members of the IGC- 20 members out of 24 - on transferring authority from the CPA to an Iraqi leadership. Al-Sistani's position wavered between accepting and refusing this because of his insistence upon democratic elections. However, the CPA decided to move away from that agreement supported by its allies inside the IGC. In this agreement, the road-

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<sup>15</sup> For more information about this opinion see Nathan J. Brown, *Bargaining and Imposing constitutions: Private and Public Interests in the Iranian, Afghani and Iraqi constitutional Experiments*, pp.63-76, and, Andrew Arato, *From Interim to Permanent Constitution in Iraq*, pp.163-201. Both are in: Saïd Amir Arjomand's (ed), 2008. *Constitutional Process in the Middle East: With special Reference to Turkey, Iraq, Iran and Afghanistan* (Oxford and Portland Oregon: Hart Publishing)

map for political reconstruction was effectively undermined, a process which began with the drafting of the TAL, the subsequent national elections to elect the transitional government in December 2003, the drafting of the permanent constitution that would be followed by a national referendum in October 2004 and, finally, the national elections to be held in January 2005. This political map was implemented despite the complication of the Iraqi situation.

A committee was formed from the IGC to draft the TAL. The difficult negotiations between the Arabs and the Kurds regarding the subject of the Kurdish demands required CPA intervention. According to Bremer, it was some Arab members of the IGC who demanded his intervention to moderate the Kurds' agenda (Bremer, 2006, p. 269) In reality, and as we discussed earlier, the Americans did not completely leave the constitutional drafting process of the TAL for the Iraqis to decide, especially when the CPA and Bush's administration considered it as the main step to structure the political future of Iraq and when the Iraqi politicians proved that they were divided and found it difficult to agree. Therefore, the TAL drafting process, like all other things in Iraq at that time, was under direct supervision of the CPA and the indirect supervision of other American organisations such as the US Commission on International Religious Freedom (USCIRF) which played an effective role through the CPA to ensure the religious freedom (Mayer, 2007, p. 157). Practically the TAL was considered as an interim constitution for Iraq that would establish the framework for the permanent constitution later and would have a legacy on the political future of Iraq (Allawi, 2007, p. 222, Bremer, 2006, p. 271). This consideration had intensified the desires of the participating parties to implement their specific agendas as the first step in rebuilding the state. For example, the Kurds sought to achieve all their demands at that stage like the distribution of resources, the Kirkuk issue, minority veto, and the boundary of the Kurdistan region. But it proved to be hard to achieve all of their demands, and they continue today to pursue their aims in the constitutional process as long as it lasts because they were and are in a strong position compared to the Shiaa and the Sunni. They were determined not to lose their recently acquired autonomy in favour of a centralised state that could repeat the history of suppression against them. Theoretically the declared purpose behind drafting the TAL was to guide the transition process up until holding the national election in December 2005. This purpose was used by the Americans and their Iraqi allies to calm the fears,

mainly of al-Sistani and the Sunnis, surrounding the constitutional process which was directed by an unelected body in circumstances that lacked legitimacy.

In general, to start work on this step to create a constitutional framework, there should be some departure points, as Nathan Brown has argued. He explained that any “drafting attempts generally begin with an older text or set of texts that is taken as a starting point for revision and negotiation. Alternatively, a group or series of groups often forward their own comprehensive draft as a beginning point” (Brown, 2005, p. 6). Both Brown and Feldman, as I explained earlier, argue that the starting point of the new constitutional process derived from the history of the Iraqi opposition in the early 1990s. However, practically, as we have already demonstrated, there was no real political consensus on starting points that could facilitate the work of the constitution-drafting committee and could create a shared consensus among the participating parties.

The IGC’s committee under the leadership of Pachachi<sup>16</sup>, a secular Sunni politician associated with the liberal block, consisted of the heads of political parties or what was called the presidency council in the IGC. The work started in January 2004 and it was to be submitted no later than March 2004 for the IGC and CPA to sign it without, it must be added, any public input. The TAL was drafted, signed and published and the Iraqi people did not know what the provisions were. According to Ali Allawi, the Kurds, the liberal block and Iyyad Allawi’s group all presented their versions of the constitution with the exception of the Shiaa parties who did not present their versions and preferred to rely on the drafts produced by the others. The strategic assumption evident here is that the Shiaa thought they were the majority of the Iraqi population and that any democratic rule would reflect their majoritarian role. However, because of the conflicting versions between the Kurds and Allawi, between the proposal for a federal ethnic state and strong centralised state, little progress was made which drove the CPA to take over the drafting process (Allawi, 2007, p. 221). Bremer mentioned that some Arab members advised him to moderate the Kurds demands directly and without any Arab representatives. The outcome of the negotiations agreed between the Kurds and Bremer were kept secret and presented very late in

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<sup>16</sup> Mr. Pachachi was the Foreign Minister of Iraq during the 1960s and he drafted the Basic Law or the Federal Constitution of the United Arab of Emirates.

the process (Bremer, 2006, p. 269, Diamond, 2005, p. 161, Allawi, 2007, p. 222). However, as mentioned earlier, the significance of the TAL for the Americans was that it determined their direct role which was facilitated by the controversial agendas of the Iraqis. Therefore a new committee was established formed of the Governance Team of the CPA and some Arab members of the IGC under the leadership of Pachachi who chose some Iraqi exiles, like AL-Isterbadi and Salam Chalabi<sup>17</sup>, both members in the DPWG, to assist in that mission while at the same time Bremer would negotiate directly with the Kurds.

In general, the initial visions of the TAL were linked to three controversial Iraqi projects to restructure the Iraqi state. The Shiaa Islamic parties' project preferred the rule of the majority in an Islamic state. The Kurds' project focused on maintaining their quasi-independence with a preference for secularism, while the liberal and secular groups, which included some Sunni and Shiaa actors, favoured a liberal, secular and unified Iraq. The Sunni Arabs in the IGC were in favour of this project. For the Americans, a democratic, liberal, integrated Iraq that was not formally Islamic was the main goal. According to Bremer, what the Americans sought from the TAL was to structure Iraq's political life through addressing the contentious issue of federalism, protecting the collective minority rights of the Sunni and the Kurds and establishing guarantees for fundamental individual rights (Bremer, 2006, pp. 213, 218, 226). The contentious issues of federalism were: what are the bases of the Iraqi federation, ethnic or territorial, centralised or decentralised, national or multi-national? This aim was compounded by two additional important issues: the success of the reconstruction process and transferring authority to Iraqis or an exit strategy, as Jonathan Morrow has argued (Morrow, 2005, p. 5).

The question we have to confront here is how far the Iraqis or the Americans successfully accommodated these controversial objectives in the TAL. How did they accommodate the interests of the minority and the majority in one formula that would ensure the foundation of a stable and a democratic state? In the beginning, it is

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<sup>17</sup> Al- Istrabadi is an Iraqi- American lawyer. He left Iraq when he young in the 1960s to go to the States. His grandfather was a member in the first constitutional committee in Iraq that drafted the first Iraqi Constitution in 1925. Salam Chalabi, is the nephew of Ahmed Chalabi. He also left Iraq when he was young and settled in Beirut and he was influenced by his uncle's political views about Iraq. For more information see Larry Diamond, Squandered Victory, pp. 143-144.

obvious that there was congruence between the Liberal secular and the American projects. This was the reason that drove the US to support the choice of Iyyad Allawi as the transitional Prime Minister. However, this support did not continue because of the sectarian violence that engulfed Iraqi society and caused the sharp sectarian polarization after 2004. This had enhanced the positions of the religious parties of the Shiaa and the Sunni against the liberal and secular parties among the Iraqis which was not in the United States' plan. And because the Shiaa community hold their supreme religious leadership in high esteem as part of their sectarian religious theory, the Shiaa Islamic identity was more effective compared to the Sunni Islamic identity. Given that, the Americans moved towards parties that could leverage the structure of the political process, balance the new dynamics of the Islamists, and assist in helping them to implement their agenda - the Kurdish parties. The Kurds were seen as a way to change the dynamic of the unexpected and unwelcome Islamist resurgence.

A compromise was reached between the Kurds and the CPA on the contentious features of the TAL that structured the Iraqi state: power-sharing, federalism, and pluralism. These subjects were important for the Kurds to re-integrate with Iraq in a way that would protect their culture, economic and political rights as the second major socio-political group of the Iraqi population after the Shiaa and equal to the Sunni. In fact, what made the Kurdish position decisive to leverage the process of drafting of the TAL was the strong position they enjoyed and built after 1991, their own militia, and the unified and organised position of the Kurdish leadership with its clear political agenda that their western advisers had assisted them in clarifying<sup>18</sup>. They also enjoyed the United States' sympathy towards them because of the abuses they had suffered in their history. Most importantly, their strong position was not challenged by the Shiaa and the Sunni. The Shiaa lacked political experience. They did not have the opportunity to rule themselves, as did the Kurds, and while it was their main concern to rule the state as a majority of the population they had neither a clear nor a clever political strategy. For the Sunni, who had ruled the state under

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<sup>18</sup> In addition to Professor Galbraith, who played an influential role in crystallising the Kurdish political agenda mainly in the subject of federalism, the Kurdistan Regional Government was assisted by a team of constitutional scholars: Professor Khaled Salih, Professor Brendan O'Leary and Professor Karol E. Soltan. See Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, pp. 160, 161, and 166.

Saddam and used the military to prevent the Kurds' ambition for self-rule, they had to adjust to a new sense of powerlessness. The Iraqi army and other security forces the Saddam regime had used to control and intimidate society had been disbanded. These circumstances encouraged the Kurds to demand a special status in the new Iraq. Therefore, the Kurds negotiation with Bremer was intense compared to the negotiations with the Shiaa, who lost the unity among their political parties after the November 15 agreement, misled by what the TAL would contain, and the role of Sistani was "lulled into complacency by the assurances of the Shiaa House that the process was under their control" (Allawi, 2007, p. 221). In reality, there were real efforts by the CPA to limit and constrain the role of the Shiaa majority through the role of the Kurds and the Sunnis because of the fear of structuring an Islamic state related to Iran and to ensure that liberal democracy would be introduced in Iraq. Therefore, it was part of the Americans' strategy to broaden the political process to include the Sunnis, mainly after 2005, and to resist giving the Kurds their special position.

Shiaa awareness had not woken up to these circumstances until the draft of the TAL was submitted to the IGC and incorporated the agreed issues among the CPA and the Kurds on the role of Islam. Consequently, they refused to sign the draft and started their own negotiations with Al-Sistani who expressed his reservations on the TAL because it implicitly constrained the permanent constitution that it was assumed would be designed by the Iraqi people alone. However, their demands to modify the TAL on the subjects of the role of Islam and the formation of the federation were completely rejected by the Kurds and the CPA which was under intense pressure of time to transfer the sovereignty. In turn, intense pressures were exerted on the Shiaa to accept the TAL as it was. Consequently the Shiaa signed the TAL on March 8, 2004 and on the same day declared their reservations about it, mainly on the nature of the federal state, the role of Islam and the process of amending the permanent constitution. This action was to indicate to the Shiaa population that their leaders were not completely satisfied with all of the outcomes of the TAL in order not to lose their support. The TAL, according to the Shiaa political parties, had undermined their role as the majority of the Iraqi population. Consequently, neither the Iraqi politicians nor the Americans could accommodate the different proposals advanced for the new structure of the Iraqi state in one common project, which was exactly what happened

during the opposition period. Therefore, compromise between the US and the minority group (the Kurds) was the only possible approach to draft the TAL. The CPA role undermined the legitimacy of the process by imposing certain principles and sustaining the pressure to follow the timetable envisaged in the November 15 agreement. The Kurds' compromise was based on sectarian ideology that focused on maintaining their status and their national interests as the principal priority. Consequently, the possibility of developing a common constitutional Iraqi project had not had enough time to crystallize, a drawback that was further aggravated by an extremely weak constitutionalism and very little national reconciliation to support it. Consequently, although political bargains and compromises had emerged and prevailed in the constitutional process, the quest for a common consensus among the Iraqi politicians proved elusive. These unique circumstances provide us with a useful insight into the slow and painful process of the construction of a new albeit embryonic political culture - a democratic political culture.

What were the main features of the TAL? The most important feature of the TAL was the subject of federalism. The so-called "federal bargain" between Bremer and the Kurds incorporated in the TAL was based on pluralism, consensus and decentralisation (O'Leary, 2005, pp. 59, 63). At the beginning, this was not the Americans' vision of federalism for Iraq because they envisaged a federation similar to their own US federal model- a composite national majority in a relatively centralised state with significant state autonomy that would be based on territorial constituent units, the 18 Iraqi provinces. However, the inflexibility of the Kurds which we discussed earlier, as well as their fear of rule by the Shiaa majority, led to conceding Kurdish demands according to the second best choice in their strategy- a loose federation. Consequently, the TAL reflected the plurality of Iraqi society in nationality, religion and language (Art.1, no.3, Art.7, nos.1, 2, 9, 10, 53). It also laid the bases for liberal democracy in Articles 15.c and 23 and federalism in Article 4. Moreover, in order to ensure that these provisions would not be altered in the following permanent constitution, the TAL gave the Kurds a veto on amending the permanent constitution (Art.61, no.3). Through these important Articles resulting from the federal bargain, the TAL aimed to create and fix the bases of legitimacy in structuring the Iraqi state largely from the mindset of the Kurds. However, the CPA and Kurds could not solve all the issues concerning federalism and the TAL deferred

a few issues until the later consideration of a permanent constitution, such as the Kirkuk issue and the boundaries of the Kurdistan region.

The other important feature of the TAL was the role of Islam. Bush and Bremer made it clear from the beginning that no Islamic state would be created in Iraq. The TAL considered Islam as the official religion of the state and at the same time adopted the concept of freedom of religion, similar to the Constitution of Malaysia. In Article 7.a., Islam became only a source of legislation. Initially the Shiaa refused it and insisted on the primacy of Islam and Sharia law that they wanted as the principal source of legislation in Iraq. However, because of the Americans' pressure supported by the Kurds and Sunnis – and even the Islamic parties within them – a distinct preference for secularism was established. When the Shiaa could not change this article a compromise was reached. They succeeded in adding a provision that forbade the passage, during the transition period, of any law that contradicted Islam. Pachachi moved smartly by adding to that provision the forbidding of laws that contradicted the principles of democracy and human rights.

The TAL contained a bill of rights that included protection for individual rights and guaranteed freedom of speech, assembly and other civil rights. Pachachi called the TAL's bill of rights "unprecedented in this part of the world" and it was "an inspirational document which looks to the future" (Otterman, 2004, p. 2). However, despite the positive provisions in civil liberties in the TAL, it had many contradictory provisions which undermined its credibility among many Iraqis. These weak points were identified by Jamal Benomar, such as the rush and secrecy of the drafting process which was dominated by the US and an unelected body. Accordingly, this flawed process committed the elected assembly to many important provisions that should have been decided by Iraqis themselves, and it undermined the national consensus (Benomar, 2004, p. 93). These weak points of course were the product of the three main factors that impacted the constitutional process which we discussed in the beginning of this chapter. The first is the absence of a national consensus among the Iraqi political groups. Secondly, there was no constitutional democratic culture in Iraq and even among many Iraqi politicians who were unable to recommend them to national consensus platforms. The third is the role of the US which was not a trustee or mediator or even a supervisor. In fact, it was a partner that leveraged and imposed

principles to facilitate the process of reconstruction of the Iraqi state. The US did not deal with the Iraqi parties on an equal footing in the drafting process of the TAL. It marginalised the Sunnis, constrained the Shiaa and boosted the Kurds, and it did not resolve their conflicting projects. Therefore, the TAL or the interim constitution has added to the fragmentation rather than the unity of the political process.

### **5.1.2 The Second Phase: The Permanent Constitution**

After having established the most important features of the new Iraqi state through the TAL and articulated the provisions that ensured that these features of the new state could not be changed in the permanent constitution, the interim government was chosen by the Americans in June, 2004. The declared aim of this government was to assist the development of self-determination and democracy and to prepare for the national election in January 2005. However, as Adam Roberts explains, such a mission was not possible in the light of the conspicuous absence of major institutions such as an elected parliament (Roberts, 2005, p. 42). He also argued that the interim government was not completely a sovereign “independent” one because it was constrained by the TAL that stipulated the interim government would not amend its provisions, by the UN resolutions, and by commitments made for coalition power (Roberts, 2005, pp. 39-42). In reality, this government, derived from its name, was deliberately designed to be limited in its authority because of the way that it had been chosen and the purpose behind it which was to prepare for the transitional election. The CPA transferred this sovereignty to the Iraqis on 28 June, 2004 to confirm its official dissolution.

What did distinguish the new constitutional phase, as some have argued, was significantly less US pressure compared with the TAL drafting process. The US and many international actors had been more alert to the sensitivities of helping in this process mainly after the popular demonstrations that erupted in Iraq after the TAL was first published. In reality, US pressure was not markedly decreased. It was still present but it had been partially camouflaged by the Kurds’ role. The Kurds were content with what the TAL had established, and would work to maintain it. Moreover, the formal role of the US represented by the CPA under the UN resolutions has

turned into an informal role of the US embassy. According to one Iraqi politician in a recent telephone interview, the Americans were working behind the scenes and they amended the agreements (Al-Hiti, 2012). The other factors that distinguished and impacted the process of drafting the permanent constitution were the outcomes of the national election, the provisions of the TAL and the state of general insecurity and instability that sustained pressure on the Iraqi politicians and the Americans to support and accelerate the political reconstruction.

The national election took place on schedule in January, 2005 and the Sunni duly boycotted the election. Predictably the numerical majority of the Shiaa produced a clear parliamentary majority with the Kurds coming second. And in May, the National Assembly appointed 55 members from its members and according to the size of the parliamentary blocks - the National Alliance assured 135 seats of the National Assembly, the Kurds 70 seats, the Al-Iraqia List 40 seats, and the minorities a seat for each of the Turkomens, the Chelo-Assyrians, the Shabek, the Sabaa and the Yezidi- for the purpose of drafting the constitution. The constitutional drafting committee was placed under the head of Sheikh Hamoudi, a member of SCIRI. Again the legitimacy of the constitutional committee was only on the surface because of the Sunni's chosen absence. Huge efforts from the US and the UN had been made to expand the constitutional committee to include the Sunnis and on 16 June, 2005 the decision was taken by the committee to include the Sunnis. The US chose 15 Sunnis to join the committee that has since been changed to a formal Commission in order to process the administrative issues linked to the addition of the Sunni members. According to the timetable envisaged by the TAL, the Constitution was to be submitted by 15 August, 2005 to the National Assembly followed in October by a public referendum. Consequently, only two months were left to finish the mission.

It is obvious that there was a huge pressure of time which the US chose not to ease through the benefit from Article 61.no.6 of the TAL that gave a further six months extension in case of the failure to meet the deadline. With Congressional elections imminent in the US, Bush's administration sought to reflect on behalf of the international community and to the Americans themselves that the process of political reconstruction in Iraq was going ahead. Any delays were to be considered as a failure. In fact, Pollack and Brown argued that the Shiaa and even the Kurds were

eager to complete the ratification of the constitution in that limited time for their own separate political interests. For the Shiaa, it was important to alter the provisions that they felt they were forced to accept in the TAL and to push for majority rule and an Islamic state. They desired to get what they could not get from the TAL and transform the permanent constitution by forming a majority government. The Kurds also had an important influence to impact the permanent constitution and to preserve the gains they made (Pollack, 2005, p. 4, Brown, 2005, p. 3). In fact, for all the Iraqi parties, drafting a national permanent constitution was to be considered as an important political achievement because of their long experience with such interim constitutions (1958-2003). A permanent constitution could enhance the position of the participating parties inside Iraqi society in general and inside their own socio-political groups because of the poor constitutional record of Iraq. Given that, the three parties - the US, the Shiaa and the Kurds - would benefit from a constitution that at long last was going to be implemented.

For the Sunni, they boycotted the election and rejected the whole democratic political process because it could not put them back in the position of holding the authority individually that they used to enjoy. The only Sunni party that had participated was the Iraqi Islamic party for the reasons that we have already explained earlier in the chapter. In short, they have assessed negatively the effects of the new liberal democratic process in terms of losers and winners. However, in retrospect, this was a wrong assessment because liberal democracy is always about equal rights and equal opportunities under the rule of law. Such an assessment therefore highlights the reality of a hollow democratic culture in Iraq. The Sunni assessment has been a force for both destabilisation and enfeeblement of the political process because they quickly chose insurgency in an effort to change the impact of the democratic process on their position. This has served to weaken the legitimacy of the process in the eyes of many Iraqis, the Americans, and even the Arab states because of the absence of the third largest group in the Iraqi population and the second largest minority group - the main group in the Arab states. The Sunni presence was necessary for several reasons: to guarantee the national consensus; to calm the fears of the Arabs states about the future of the Sunni population; to ensure that the political process, not the insurgency, would be the arena to resolve differences; to balance the Islamic pressures of the Shiaa because they are mainly secular; and to control the separatist

tendencies among the Kurds through a strong coalition with the Shiaa to create a strong centralised federation. It is true that the Sunni rejected the federal idea for Iraq; however, they could also benefit from federalism by helping to structure a centralised federation that would protect Iraq's territorial integrity and would ensure an equal approach in the distribution of the fiscal revenues. Such a federation would be quite close to their own political project.

The constitutional mission was therefore not easy for the committee to get the job done at the right time because it was divided into six subcommittees and one coordinated subcommittee. This particular organisation of committees was followed previously in the work of the DPWG and the drafting process of the TAL. The six subcommittees were to deal with six main subjects in the constitution: the basic principles, rights and duties, the system of the government, federalism, constitutional guarantees, and the transitional and amendment processes. And all the subcommittees and the original committee were understandably to operate by consensus rather than by simple majority role (Brown, 2005, p. 4). However, the mission was still not easy to accomplish and in practice it demanded UN assistance and other international experts. The United Nation Assistance Mission in Iraq (UNAMI), led by Nicholas Haysom, arrived in May to support the constitutional committee. However, the mission of UNAMI was complicated also by the pressure of time, the lack of experts ready for rapid deployment in support of post-conflict constitution-making and by the work to incorporate the Sunnis in the constitutional committee (Morrow, 2005, pp. 13-14). Therefore, it could not efficiently assist the constitutional committee to reconcile the different projects. As a consequence, the constitutional committee was dissolved on 8 August and its responsibilities were transferred to the Leadership Council that consisted of the leaders of SCIRI, the Dawa party and the Kurdish parties, the PUK and the KDP.

The abolition of the constitutional committee was because of one main reason, namely, the members of the committee had not had the free authority to decide and agree on provisions without first going back to their respective heads of political parties. They were merely "delegates" and not "representatives". This exposed different realities: the distrust problem among the politicians, the internal divisions within the political groups, and the fragmented political culture which has become

very obvious today. These circumstances indicated that the constitution was perceived to serve the interests of the political elites rather than the interests of Iraq and the Iraqi population or even the ethnic or religious population. But the abolition of the constitutional committee had further complicated the constitutional process because it also had the effect of ending the Sunni role in the constitutional process when the constitutional discussion moved to the Leadership Council.

In fact, an overall assessment of the Sunni's role demonstrates that it was not effective for different reasons. First, they did not join the committee as one political group. Although they were considered as representative of the Sunni population, they were in reality internally fragmented under different political groups. This had undermined their ability to put their case forward and to compromise in the constitutional process, and a good example of this was the position of the Iraqi Islamic party that supported the draft of the constitution at the time when it was rejected by all other Sunni political groups. Second, the Sunnis were not very welcome in the constitutional process. It was US pressure that was behind their inclusion in the political process in order to remove their violent opposition to that process and ultimately to endow the whole process with the seal of legitimacy because it had to be based on the broadest consensus to be convincing to the world. This candid opinion was expressed by Shiaa and Kurd politicians. For example, and according to Hamoudi, the Sunnis' decision to reject participation in the political process from the beginning, and despite the many requests and appeals from other political groups to participate, had caused this marginalisation. The Sunnis with neither electoral nor official representation nonetheless had eventually joined the constitutional committee. Some of their opinions were taken into account, but that did not mean that the majority was bound to consider all that was demanded by the minority; this would be adverse to liberal democracy (Hamoudi, 2007, p. 1316). Given the abolition of the committee and its inability to finish the draft constitution, the role of the US was reactivated through its ambassador, Khalizad, who was welcomed by some Iraqi groups such as the Iraqi foreign minister, Hoshyar Zibarry. Moreover, Mahmoud Ottman, a Kurdish member in the constitutional committee, announced that the Americans had forged compromises among all the different opinions in all of the political blocs. However, they did not interfere as directly as they had in the drafting process of the TAL. They were meeting Iraqis individually in the backrooms

but the American Ambassador did not attend the sessions of the constitutional committee (Ottman, 2012). One of the Iraqi legal advisers of the constitutional committee Hussain Al-Fuluji, informed this author that the only article that the Americans insisted on was related to the international agreements between Iraq and the international community (AL-Fuluji, 2012). In hindsight, they did not act as a natural mediator (Finer and Fekeiki, 2005).

Constitutional compromises were particularly noteworthy among the different political opinions that were based on sectarian, religious and ethnic agendas. Table number 1 below reveals the different Iraqi opinions about the state structure. Today the Iraqi Constitution, as Ersin Kalaycioğlu has described it, exhibits the characteristic of an uneasy compromise between the opposing parties in this complex and complicated conflict (Kalaycioğlu, 2005, p. 121). Basically compromises were forged on the subjects on which the subcommittees could not achieve a considerable consensus such as the federation, the boundaries of the federal regions, the Kirkuk issue, the distribution of oil revenues and the process of amendment. However, many of these subjects and many other subjects were not resolved when the draft of the constitution was submitted to the National Assembly. In the Iraqi case, however, the submission of an unfinished constitution was considered to be better than either the stalemate characteristic of the fragile political process or the elite personnel continuity in the cycle of negotiations while the Iraqi people continued to suffer from the inadequacies of the security and other essential services. The compromises forged were solid to some extent between the Shiaa and the Kurds; however, they were very weak with the Sunnis.

In addition to the reasons already mentioned above that stemmed from their representation by unelected members and the absence of a unified leadership, another reason for the Sunnis' peculiar position derived from the glaring absence of a constitutional agenda. The Sunni's original rejection of the political process and the elections prevented them from developing a constitutional vision about the future of the Iraqi state. Then when they eventually joined the committee it was very difficult for them to develop such an agenda within that limited time span. Their constitutional agenda and strategic vision developed only later after the December 2005 election. In February 2006, the Sunni politicians crystallized a new constitutional vision which

consisted of eight main points: the process of amendment to the Constitution; the obstacles to the completion of the federal system that prevented implementation of the provisions for regional construction; the national control and ownership of natural resources; the recreation of the national army and security forces that had been disbanded in the process of de-Baathification; the Kirkuk issue; the affirmation of the Arabic and Islamic identity of Iraq; and the confirmation of citizenship rights to be derived solely from the father. If the Sunnis were able to develop a concrete national agenda of their own, they realised that they could possibly change the delicate Shiaa-Kurd compromise because of the fact that the National Alliance was unified in its constitutional agenda, mainly on the subject of federalism, from which they could derive great benefits. Therefore, both the SCIRI and the Kurds, whose main interests lay in decentralisation and federalism, were careful to maintain their fragile compromise to prevent the Sunni from undermining it. They were therefore extremely cautious in welcoming the Sunnis' participation in the constitutional process.

The various political projects championed by these party and group interests were always far away from being a national project. Indeed, as with the TAL, the projects were really a representation of narrow and specific political interests that the politicians sought to propound in the interests of their own religious and sectarian groups. These projects had never been effectively reconciled but each had been subject to compromises to facilitate the constitutional process and to achieve at least some of the desired interests, particularly those of the US. In such difficult circumstances, many critics argued that the Iraqi Constitution suffered from a series of contradictions that weakened the integrity of the state and that it should therefore be amended (Makiya 2005, Horowitz 2005). For example, in some parts of the Constitution we can recognise powerful confederal elements in the federal system, as in Article 115 in Section Four related to the "Powers of Federal Government", that gives the regional laws supremacy over the federal law while in Article 112 of the same section it is clear that only a very limited role has been carved out for the federal government. Moreover, these constitutional compromises still did not solve many of the controversial issues like the distribution of national revenues, the official name of the state, the Kirkuk issue, the borders of the Kurdistan region, the construction of the Federal Supreme Court, the position of non-governmental forces and the amendment process in the constitution, among many other subjects.

The pressure of the timetable during the drafting process of the new constitution did not assist the Iraqis to develop a broad political consensus about the whole constitutional process and especially the very sensitive issues. At the time the US, as Brown argues, fought for a constitutional process that would be “an opportunity for the Iraqis to bind their multiethnic society together in a democracy” (Brown, 2005, p. 2). However, such a bond, which as we have seen never emerged during the period of opposition mobilisation, ideally required more than just two months to forge given the absence of a history of civil society and the lack of a democratic culture and with no common vision or consensus on the main features of the state’s structure. Unerringly, the US maintained the pressure to impose its agenda despite the highly questionable nature of its response to the political, cultural, economic and social needs of Iraqis which in practice should have been addressed in some formal representative capacity. Two days before the submission of the draft constitution, another compromise initiated between the US ambassador and the Sunni community on 12 August was agreed to try to secure their approval for the Constitution which related directly to the ratification process. This consideration referred to Article 142 which stipulated that the Sunnis could block the Constitution and legitimately reject it if 2/3 of the population in any three Iraqi governorates voted against it. Despite this political bargain, the majority of the Sunnis rejected the Constitution in the referendum - in Al-Anbar governorate 96% and in Salahaldin 85% with 60,000 vetoes in Mosul- and they were actually very close to blocking the whole constitutional process had Mosul secured 84,000 vetoes. Consequently, the Constitution was passed but clearly without a national consensus. Correspondingly, this chain of events undermined the new federation’s stability at the outset because its federal birth certificate lacked legitimacy.

(Table Number One)

<b>The Structure of the Constitutional Committee</b>		
<b>Number of the Constitutional Committee</b>	<b>Number of Seats</b>	<b>The Vision for the Permanent Constitution</b>
The National Alliance • The SCIRI • The Dawa • The Sadrists • Al-Fadhila	28	<ul style="list-style-type: none"><li>• The role of Sharia and a strong regional government.</li><li>• The role of Sharia and a strong central government.</li><li>• The role of Sharia and a strong central government.</li><li>• The role of Sharia and a strong regional government.</li></ul>
The Kurdish Union	15	<ul style="list-style-type: none"><li>• Regionalism and Secularism</li></ul>
Al-Iraqia List	8	<ul style="list-style-type: none"><li>• Protecting Iraqi's integrity through a strong central government and refusing regional federalism.</li><li>• Balance the role of Iraqi political groups through limits on the role of the Shiaa and Kurds.</li><li>• Ending the De-Baathification</li></ul>
Minorities (the Turkomens, the Communist party, the Chleo-Assyrians, the Sunnis)	4	<ul style="list-style-type: none"><li>• Stress on the Iraqi national Identity</li></ul>
<b>Total before including the Sunnis</b>	55	
<hr/>		
The Sunni Arab	15	<ul style="list-style-type: none"><li>• Postpone federalism</li><li>• Solve the issue of De-Baathification</li></ul>
Additional Seat for the Minority	1	
<b>Total of the seats after the including the Sunnis and increasing the minorities seats</b>	71	

See Morrow, Jonathan. 2006. *'The Weak Viability: The Iraqi Federal Government and the Constitutional Amendment Process'*, United State Institute of Peace, Special Reports, No.186.

### **5.1.3 The Third Phase: The Constitutional Amendment Process**

The 'Permanent Constitution' was adopted and the first permanent government chosen at the end of 2005. All Iraqis hoped that these important developments would provide Iraq with a long overdue stability, particularly once the Sunnis had decided to participate in the political process in the hope that they might be able to change the nature of the Constitution. Subsequently, the challenge that the permanent government has been confronted with is how to create a working functional federal political system, as well as how to enhance the national dialogue in order to facilitate the legitimate implementation of the Constitution. The reality that the Constitution was not based on a satisfactory national consensus and that it remains incomplete has further weakened the federal government, complicated its function and deepened political differences. Consequently, the Parliament has had to start by processing a series of constitutional amendments in order to work on the Sunnis' demands for the purpose of building the national consensus and articulating the unfinished provisions.

At the end of 2006, the Council of Representatives chose the Constitutional Review Committee (CRC) that would take the responsibility of reviewing the 2005 Constitution in order to accommodate the last minute demands of the Sunni politicians. To ensure that all Iraqis would be represented in the CRC, the hierarchy of the CRC was composed of many "rings" to represent the variety of strong representative currents designed to arrive at a consensus of the whole spectrum of parliamentary opinion. The first ring consisted of three members representing the three main Iraqi groups. Then this small committee sat in the midst of a larger committee consisting of 27 members who also represented the strong political currents. Finally, both of these two rings were to sit in the midst of the largest ring, the Parliament (Hamoudi and Mallat, 2009). This focus upon the achievement of a common consensus was an important part of the effort to overcome the exclusion problem which had existed in the 2005 constitutional process. Its principal purpose was to stabilise the political process and the functioning of government, thereby creating a stronger legitimacy. This concern by itself could be considered as just another development on the long and bumpy road to democracy in Iraq because it formally recognised the need to accommodate differing political attitudes by a form of power sharing which respected different cultures. Meanwhile, the mechanism to

approve the CRC's amendments was based on Article 142, which approves the amendments with an absolute majority in one go rather than to have to resort to the complex mechanism stipulated in Article 126, and this was another important step on that road. Indeed, the strategy of the simultaneous consideration of multiple amendments stipulated in Article 142 was utilised by Iraqi politicians later to pass laws in 2008 when the Parliament passed three contentious laws: the amnesty law, the law setting forth the relationship between the federal and the provisional governorates, and the 2008 national budget. This political strategy, as Jason Gluck has argued, could increase the likelihood of consensus and conflict resolution among the Iraqi politicians (Gluck, 2008, p. 1). And, without any doubt, it marked a new political development to implement the constitutional provisions and the new legislation.

The task of the CRC was to propose amendments for the articles that were contentious and to complete the unfinished articles in the 2005 Constitution. Practically, the CRC successfully drafted many provisions on the subjects left incomplete by the constitution-makers. This success was particularly noticeable in the number of constitutional amendments which increased the number of articles from 144 in the 2005 Constitution to 193 in the 2006 amended version of the Iraqi Constitution (see table number 2 below). For example, in drafting the provisions of the Federal Council in Articles 81-98, the CRC fleshed out the body of the Constitution. However, the CRC failed to amend the contentious issues –federalism and the description of powers between the regions and the centre, the creation of new regions, and the distribution of oil revenue, which remain under discussion. Unsurprisingly, neither the Kurds nor the Shiaa sought further changes to the Constitution which they had just drafted. The strong position of Kurdistan in particular made any further amendments of the regional powers towards reducing them impossible. Finally, the amendment procedures and the veto right for three governorates were very difficult to achieve. Therefore, as Morrow explains, high expectations of the amendment procedure will lead to disappointment and may actually amplify, rather than reduce, violence (Morrow, 2006, p. 1).

At the time when Morrow made this observation in 2006, we can agree with him that such inflated expectations would have been destined for certain disappointment, but

this related to the political context between the drafting and amending period characterised by an absence of political consensus. The political process however is continuous. It is true that even today many important constitutional amendments have still not been agreed and successfully implemented but the basis of the political game has been established. Today a limited but evolving consensus among some Iraqi politicians from the three main groups exists and recognises that there are problems with the Iraqi Constitution. In July 2012, Iyyad Allawi and Barham Salih both confirmed that the Constitution still has big problems (Allawi 2012, Salih 2012). The same opinion was expressed by the Deputy Prime Minister, Al- Mutluk, who was one of the Sunni actors that participated in the constitutional drafting process and had rejected the Constitution. For him, “the amendment process is deadlock and the current Iraqi situation compels us to coexist with the Constitution’s problems until we can amend it” (Al-Mutluk, July, 2012). This acknowledgement of the current impasse related to constitutional amendment among the three main groups, while unfortunate, might nonetheless furnish the basis for a sustained impetus to push the amendment process along and it could be construed optimistically as an indication that a political consensus might be achieved in the middle to long term period.

## **5.2 The Combined Outcomes of the Constitution**

After considering the constitutional phases, it is clear that the combined elements of bargaining and imposition have been embedded in Iraq’s constitution-making process. This combination represents the new approach in constitution-making that Brown and Arato have underlined in order to distinguish it from the other two models of constitution-making: the classic democratic and revolutionary. According to Arato, this new model in constitution-making was a compromise between the two other models: the model of (American) imposition from above and the model of populist democratic constitution-making on the classical patterns (Arato, 2006/07, pp. 544-545).

We do not intend to repeat our earlier explanation of the features of this model and its negative aspects in Iraq, or what Arato called the pathologies of the new model, which he did perfectly in his article on *‘Post-Sovereign Constitution-Making and Its*

*Pathology in Iraq*'. However, it is useful for us to examine the combined outcomes of the constitution-making process in order to understand what kind of state has been created. As we argued in the introduction to this chapter, the constitution-making process, in the light of the factors that we have identified here, is based on a complex, complicated and unstable state but it also adopts a federal formula designed to rebuild the state democratically. In time and with the gradual evolution of a mature political will, this formula has the potential to change the current state of Iraq's political instability to one of long-term stability. To support this argument, it is important for us to examine how the constitution-making process served in practice to aggravate the political instability. Following this, we will analyse some of the constitutional provisions that confirm the federal features of the new Iraq (see table number 2). Comparing these selective constitutional provisions during the different phases of the constitutional process will demonstrate that the federalising and democratising processes are continuous and they that they are contributing to the development of an as yet incipient Iraqi constitutionalism.

### **5.2.1 Instability**

The constitutional process has impacted negatively on political stability in Iraq from several different angles. Let us briefly examine six of the main problems:

1. The constitution-making process was not part of an indigenous evolution of the political process to enhance the existing state. In other words, it was not a part of conventional normative theory where the constitution is the outcome of political evolution designed to create a stable state that should possess a single sovereign authority over the whole of its territory. In reality, Iraq's constitutional process was actually a part of the reconstruction process, which we discussed in the previous chapter, initiated by external forces to re-build the Iraqi state that collapsed with the 2003 invasion. Historically, occupational power usually gives rise to a new constitution and also seeks to impose its constitutional vision, which usually does not appear to be supported completely by locals and only very few constitutions written under circumstances of occupation have survived an extended period after the withdrawal of the occupier (Elkins, et al, 2008, pp. 1173-1174). The same argument

is used by Arato when he explains the practical priorities evident in the process of state re-building. According to him, the prior act in the case of a state's destruction or its collapse would have to proceed with constitution making that should be drafted by and for the public power (Arato, 2008, p. 169). Given that, the process of constitution making was one of the first steps of the reconstruction process which was introduced after creating the IGC, but we are reminded of the opinions of Ashdown and Pollack about the importance of stabilisation and peace preservation before drafting the constitution. However, the constitutional process in Iraq was initiated in the middle of brutal violence and it was also not initiated by the public power but by the indigenous Iraqi political elites and the US for their own specific interests, as occurred in Bosnia-Herzegovina (BiH) and Lebanon. Therefore the constitution-making process was a combination of internal political bargaining and the imposition of external actions. As Ann Elisabeth Mayer put it, while the Iraqis engaged in drafting the constitution and ultimately made only a few concessions to US demands, such as the question of the role of Islam (Mayer, 2007, p. 159), the US was nonetheless the primary player in Iraq's constitution-making process (Feldman, 2005, p. 870) and put great pressure on them to complete that process. Consequently, in drafting the Constitution with both direct formal and informal intervention by the US and without a genuine national consensus or effective public participation, the impact upon both the legitimacy and legality of the constitutional process and ultimately the stability of the state was damaging.

2. In administrative theory, a constitution is meant to create a government with qualified but sufficient powers that can rule the state in an effective way. As Pollack and Dawisha have argued, the constitutional process in Iraq has not achieved the desired aims behind it which are a strong and stable state that provides its people with the basic needs and services (Pollack 2005, pp.8-9, Dawisha 2008, pp.222-225). The Iraqi governments that have emerged from the constitution-making process have simply failed to provide Iraqis with even basic services such as security and electricity. This failure has been explained by different reasons such as the security challenge and terrorism, corruption, insufficient planning, political competition and the institutional collapse. However, the main reason was, and still is, the absence of a real desire for cooperation among the main political groups because of a lack of trust. For example, the failure to address the Sunnis' political concerns in the constitutional

process undermined their desire to support the national unity government's efforts to meet people's needs and to stabilise the state, as is the case of the Deputy President, Al-Hashimi, who was guilty of many terror activities against civilians and security forces.

The failure of Iraqi governments to meet the people's needs has exacerbated the national disagreement on the constitutional design and the structure of the state. For example, all the political parties in the coalition government, including the Kurds, are blaming the constitutional design now because it has blocked any single Iraqi group from dominating the government by itself. Indeed, the Prime Minister, Mr. AL-Maliki, demanded constitutional amendment, at the time that his party was part of the constitutional bargain in 2005, because his personal experience working in the central (federal) authority demonstrated that the Constitution does not give him as "Prime Minister" of the federal government sufficient political authority to control Iraq's public affairs. On the other hand, the Sunni members in the federal government are also demanding constitutional change because initially they were excluded from the constitutional process and their strategic demands were neglected. In addition, and most importantly, they now realise that power is associated with the position of Prime Minister which is directly linked to a parliamentary majority- the Shiaa. Therefore, they are seeking a constitutional change to limit the powers of the Prime Minister. Moreover, for the Kurds, the Constitution has not solved the issues of the Kurdistan regional boundaries and the Kirkuk question which are both strategic issues on their political agenda. Consequently, the credibility of the political process and the stability of the state also have been impaired.

3. Some argued that the democratic formula of Iraq was based on a consociational democratic model for divided societies which was not implemented properly in Iraq and that added to Iraq's instability (Younis 2011, Rees 2008). They argued that while the core elements of this model were introduced in the Iraqi Constitution (an electoral system of proportional representation, a parliamentary system, and territorial autonomy) the model itself failed to promote political consensus and cooperation among the political groups. Consequently, this could be a flaw in consociational theory which failed to address post-conflict reconciliation (Younis, 2011, p. 5). However, I would argue that since Iraq is formally a federal state, its democratic

formula must not be analysed solely as part of consociational democracy but also as part of what is a federal democracy in the making. Moreover, the democratic problem in Iraq is not because of federal democracy or consociational democracy; it derives from the failure to address the demands of an important component of Iraqi society. The constitutional process in Iraq did not address the demands of the Sunni through its different phases because of their initial reluctance to participate in the political process and the difficulty of enacting constitutional change under Article 142. This had a negative impact upon the process of building trust in the larger national reconciliation process and therefore in the efficiency of the national unity governments. The exclusion of Sunni demands from the constitutional process, the absence of any veto power in the Constitution and the provisions of De-Baathification and federalism have all decreased the likelihood of sharing power peacefully (Rees, 2007, pp. 20-22). The Constitution was imposed on the Sunni Arabs but it was bargained with the US, the Kurds, and the Shiaa. When the author interviewed the Iraqi Deputy Prime Minister, Salih al-Mutluk, he stated that “the Americans pressured on *us* (the Sunni) more than the Shiaa and the Kurds because they realised that *we* could obstruct the political process and block the Constitution (AL-Mutluk, 2012). Consequently, the democratic formula has not been applied with national consistency and this has contributed to the instability of the state.

4. The Iraqi Constitution, while it formally recognises the salient ethno-sectarian differences among the Iraqis, also intensifies and deepens them through institutionalising these differences. The ethno-sectarian tension is therefore reinforced as some citizens come to favour the interests of the political groups that belong to the same ethnic or sectarian identity over the national good of the whole society.

5. The Iraqi Constitution creates a very loose decentralised federation that is founded upon an imbalance in the power relationship between the federal government and the Kurdistan government. The Constitution lists few exclusive federal powers and shared powers between the federal and the regional and local governments and leaves all the powers that have not been stipulated in the hands of the sub-national units whether regions or governorates not incorporated into regions. However, the Constitution gives the regions more authority compared to the

governorates, such as the right to draft their own constitutions and the right to form their own security forces. The Constitution also provides regional legislative superiority over federal legislation which is likely to add to Iraq's political crisis and its instability.

6. The Iraqi Constitution has been criticised because of the ambiguity of some of its provisions and for leaving many important questions for future legislation (International Crisis Group 2006, Cameron 2007). For example, it deferred many important issues to the next elected government such as the division of natural resources, the creation of the Federal Council (Art.65), the procedures for the formation of regions, the borders of the Kurdistan region, the Kirkuk issue, and the law of the Federal Supreme Court (Art.92, no.2). Many of these issues remain unresolved up until today, except for the law of regional formation which was enacted in 2008, and they are still subjects that could furnish the basis for political crises in the future. Consequently, while deferring such issues might be a defensible approach for the purpose of avoiding a state of stalemate, any delay in the construction of a democratic and constitutional culture could be problematic.

Thus the Iraqi constitution-making process cannot be explained by the conventional theories of constitution drafting because it was not the outcome of a peaceful and piecemeal historical political evolution. Even as the result of a violent rupture, such as we have witnessed in European history, the Iraqi case is nonetheless quite unique today and its peculiar experience of constitution-making has actually contributed to the instability of the state at a time when it should, as with many other constitutions, furnish the basis of state stability as one of the main pillars of the state. Because the process of state building has been conflated with external military intervention, institutional collapse and international peace-keeping, it is not readily amenable to the familiar theories of post-conflict reconstruction that usually deal with these events as separate and distinct phases. Thus, in a sense, ethno-sectarian conflict has been integrated into the origins and formation of the state which makes it very difficult to imagine stability in the short time.

### **5.2.2 Federal Democratic System**

Despite adding to the instability of the state, the Iraqi Constitution has adopted the federal principle to organise and share responsibilities between the federal (national) government and the constituents units (Kurdistan region and the governorates). Federation is an appropriate way to organise power sharing and local autonomy and is the key structural feature of the new Iraq that will assist toward controlling and shaping other features of the state. This adoption has put Iraq on the road toward liberal democracy because of the close association between federal principles and democracy. The democracy of the new Iraq is 'federal democracy' and not only consociational democracy. Some mistakenly argued that the Iraqi Constitution, as in BiH, has engendered and incorporated the consociational democratic model, analysed by Lijphart<sup>19</sup> for plural communities (O'Leary & McGarry 2007, Casey 2008, Rees 2007, Younis 2010). However, on the one hand and as we discussed earlier, we need to remember that Iraq, unlike BiH, is formally a *federal state* but, like BiH, it is also engaged in the *process* of federalisation, that is, it is evolving into a federal political system. The two principles of federalisation and democratisation as processes must therefore evolve together in a way that will be mutually supportive. Nonetheless, the democratic formula in Iraq will have to adapt not only to the fact of cultural, ethnic and religious diversity in Iraq but also to the US visions and plans for Iraq as the main power on the ground. Furthermore, the democratic formula will have to adapt to Iraqi political demands, such as those of the Kurds who seek self-rule and want to maintain their autonomy (semi- independence), with those of the Shiaa who prefer single majoritarian government but fear any possibility of another centralised regime, and with those of both Sunni and Kurds' desires for a balance of power with

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<sup>19</sup> According to Lijphart, the successful establishment of a democratic government in divided societies requires two key elements: power-sharing and group autonomy. But power-sharing has enormous variations and it is contingent upon specific mechanisms devised to yield the broad representation that constitutes its core (Lijphart, 2004, pp. 97, 99). And as we explained earlier, there are some arguments about the theoretical flaw in Lijphart's model because it did not focus on national reconciliation in post-conflict cases. This argument can be discussed based on the idea that the practice highlights the need for special factors to be considered in order to ensure success. That means that it is illogical to assume the failure of this model, which has functioned successfully in some states, because its practice in Iraq exposes the importance of focusing on national reconciliation, exactly as in the process of reconstruction. The failure of the reconstruction process to build national reconciliation did not mean the failure of reconstruction theories. But, the practice and the specificity of Iraq reflected the need to focus on reconciliation more than security.

the Shiaa majority in controlling the state, together with the need to provide legitimacy in both the short and long-term. In other words, the Iraqi federal democratic formula is unique because it has to accommodate realities peculiar to the Iraqi context. Accordingly each federal model and democratic model is unique. As Samuels argues, “the pure models are rarely successful when applied to real world cases” (Samuels, 2006, p. 4).

The federal principle is realised through the Iraqi Constitution which incorporates power-sharing, autonomy and accommodation measures. Recently McGarry and O’Leary have identified two contrasting federal models that constitute two separate approaches or strategies to achieve constitutional and political stability: the accommodative and the integrative models (McGarry and O’Leary, 2007, p.270-275). The main focus of the former model is to try to address the significant socio-political diversities using different forms of institutional representation in the decision-making process, while the latter model is designed to incorporate these diversities much more firmly into the state and political system in order to defuse conflict by promoting multi-cultural coalitions of political authority. However, the accommodative model was criticised by the supporters of the integrative model, like Horowitz and Dodge. For them, the accommodative approach has so far served to deepen the differences between Iraqis because it has constitutionalised and institutionalised these differences which have added to Iraq’s instability. Nonetheless, it can be argued that in the light of the complicated circumstances that characterised post-conflict Iraq, the integrative model was impossible to adopt. It is true that the Constitution has institutionalised the diversity of Iraq but it was the only approach to maintain the integrity of the state. Moreover, it is also true that the ordinary Iraqi people from the Shiaa, the Sunnis, and probably even from the old generation of the Kurds, preferred an integrative model. However, those people were not at the table in the constitutional process. Rather it has been the political elites, mainly the Shiaa and the Kurd communities, who have controlled the process and neither community wanted another centralised integrative system. The history of discrimination characteristic of the previous regime, the Kurds desire to maintain their semi-independence, the Shiaa eagerness for majority rule, the corrosive state of distrust among the politicians, the failure to forge real national reconciliation, and the need to control violence through offering the Sunni the opportunity to participate in authority, all made the Iraqi elites

determined to guarantee their share of power. Consequently, there was no strong common ground among the elites to encourage them to adopt an integrative approach and form multi-ethnic and multi-sectarian coalitions in the new political process. As a result, a power-sharing approach was the outcome of political compromises among the main actors in the constitutional process rather than a voluntary political will dedicated to democracy as the overriding basis for the new Iraqi state. In other words, power sharing was the only democratic approach that seemed to guarantee the interests of key political elites who were unable to reconcile their differences and divisions.

To examine how the Constitution has introduced the federal democratic system, we will start with the fundamental principles applied in the first section of the Constitution which defines the main features of the state. Article.1 identifies a federal state with a system of government that is republican, representative, parliamentary and democratic. The new political system of Iraq is federal, democratic and parliamentary which is unprecedented in its political history. Federalism is the core organising political principle of the Iraqi Constitution which is designed to accommodate the plurality of society and generate democratic values through the appliance of power sharing and regional autonomy (Art.7 in the TAL, Art. 3 in 2005 Constitution, and Art. 5 in the amended draft). At the time that the TAL stated that “the Iraqi federation was based upon geographical and historical realities”, the 2005 Constitution avoided the reference to the type of federation because of the efforts to diminish the sectarian and ethnic divisions, on the one hand, and to reduce and control the Kurdish desire for separation, on the other. Furthermore, the drafters sought to ameliorate Sunni fears towards federalism which they considered to be an approach that would divide Iraq. However, the Iraqi Constitution admits that Iraq is a country of multiple nationalities, religion, and sects (Art.3). This acknowledgment of Iraq’s diversity is also clear in Articles 2 and 4. Given that, Iraq is a multi-national, multi-religious, and multi-lingual federation. Without any doubt, the new federal system would likely be complicated not only because of the federal principle itself - unity and diversity is complicated - but also because of the absence of a federal democratic culture and the pressures of external powers. However, it was deemed to be the only practical approach that simultaneously could protect the state’s territorial integrity and to accommodate its plurality in a way in which all the Iraqis would benefit. It is certainly

true that there are still disagreements and conflicts on some of the federal provisions which have been blamed for putting Iraq in a condition of constant crisis; however the attempts to resolve them are unremitting.

Apart from being a federation, it is important to note that the political system is also of the parliamentary type. This means that the parliamentary system provides for important checks and balances on the work of the government which is a key democratic principle. The federal parliamentary system of Iraq, as in Canada and Australia, is based on dual legislatures, the Representatives and the Federal Councils. This is to facilitate more power-sharing at the legislative level. However, the provision of a Federal Council has still not been agreed at the time of writing the thesis despite the submission of the law to the Parliament to negotiate it in February 2012. The significance of the Iraqi parliamentary system lies not only in the responsibility of the executive authority to the Parliament but also, as Brown explains, in awarding the Parliament special responsibilities such as finishing the Constitution and determining the basic shape of governmental structures such as the Supreme Federal Chamber, independent commissions and the Federal Court (Brown, 2005, p. 4). The institutional presence and authority of the Parliament have not changed throughout the three constitutional phases identified here.

Another fundamental principle of the Iraqi federal system in Section One is the role of Islam and religious freedom. Islam is the official religion of the state and it is a fundamental source of legislation. However, the Constitution guarantees the full religious freedom of all Iraqi individuals to the point of its superiority over Sharia Law when it gives Muslims the right to change their religion. Simultaneously, Islamic rule is designed to conform to liberal democratic principles and assumptions. Feldman argued it in the following way:

“The effect of these internalised guarantees of religious liberty and human equality was, from the perspective of the rights organisations, a legal hedge against the Islamic provisions that were sure to be adopted in the constitutions in question. In a certain sense, it could be said, these guarantees aimed to assure the worthy goal that Islamic democracy as practised in Iraq and Afghanistan would conform to the internationally recognised practices of liberal democracy” (Feldman, 2005, p. 871).

Clearly the Constitution provides a formula that combines the role of Islam, religious diversity, and democratic values as a composite whole. This formula has not been changed in the three constitutional phases with the important exception of Islam's role in legislation. It is imperative to mention here what Ann Elizabeth Mayer points to regarding the decisive role of the US in incorporating strong guarantees of religious freedom. She mentioned that in the Iraqi 1970 Interim Constitution and in the 1990 Iraqi Draft Constitution religious freedom had been provided in Article 25, whereas Islam had been established as the state religion in Article 4. For her, the jump to religious freedom witnessed in Article 2 of the 2005 Constitution is an obvious indication of US priorities (Mayer, 2007, p. 162).

Section Two of the 2005 Constitution, 'Rights and Liberties', has amplified the guaranteeing of equal individual rights and freedoms among the Iraqis and without any kind of discrimination based on sect, religion, or ethnicity. To establish a working federal system, we can stress once again that only a functioning liberal democratic environment can provide the necessary complement to facilitate this kind of political system. In plural societies, liberal democracy aims to implement equality among the citizens. Civil, political, social, economic, and cultural rights have all been enshrined and protected in the Iraqi Constitution. Functional rights, negative rights and positive rights were all guaranteed because there was a strong public awareness of the need formally to protect them and prevent any abuses of the sort that occurred under the Baathist rule, which AL-Istrabadi, Al-Chalabi, and other Iraqis - who participated in drafting of the TAL - were determined never to repeat (Diamond, 2005, p. 148). All the Iraqi political groups were agreed upon the provisions of this Section with the exception of Article 18, No. 2 which gives the right of Iraqi citizenship to anyone born to an Iraqi father or mother. The Sunni politicians fought hard to restrict the right of citizenship to the Iraqi father only.

In Sections Three, Four and Five, the 2005 Constitution emphasised executive and territorial power-sharing. Power-sharing in the federal executive is clear in the Presidency Council, which consists of a president and two vice presidents, elected by a two-thirds majority in the Parliament (Arts. 70 & 138). The Constitution declared that the Presidency Council will exist only in the transitional period. However, it still exists because of continuing distrust among the politicians and the obvious desire for

holding authority. All the Iraqi political groups now reject the idea of being excluded from the executive power and finding themselves in the opposition in Parliament. Therefore, although the Constitution has not formally associated these positions with any sect or religion, recent practice shows that the Presidential Council is represented by the three main Iraqi groups. The President shall charge the nominee of the largest bloc in the Council of Representatives with the formation of the Council of Ministers (Art. 76, no.1). The nominee should gain the confidence of an absolute majority of the Parliament (Art. 76, no.4). The electoral system, which was based on a proportional representation party list system, is also designed in a way that ensures no single Iraqi group would be able to control the majority in the Parliament. Therefore, political coalitions and political bargains become part of the new political realities to form the Presidency Council and the Cabinet. This has resulted in, on the one hand, a more representative Presidency Council and Cabinet but, on the other hand, it has complicated the function of the government and its effectiveness because of the different political interests. Furthermore, it also contributes to the institutionalising of Iraq diversity. For example, the President should be a Sunni, whether he is Arabic or Kurdish, with two deputies that should represent the different main groups. The Prime Minister should be a Shiaa, the Head of the Parliament is currently a Sunni, the Minister of Defence is Sunni, and the Minister of Internal Affairs is Shiaa. Practically, this approach is similar to the Lebanese executive power-sharing but in reality this approach has complicated the process of coalition formation which was clear after the December 2005 and October 2010 elections. Therefore, the executive power-sharing approach has been criticised because it has increased the instability but failed to increase the inter-ethnic elite cooperation (Rees, 2007, pp. 18-19 ).

In reality, without executive power-sharing, it would have been very difficult to convince the Iraqi elites, especially the Sunni, to join the political process and to accept the new democratic transition. In so doing, it not only increases the political participation and competition as an alternative to the state of exclusion and distrust but it should also make the political process itself richer and more democratic even if it makes the process more complex. Power-sharing, as Dawisha has argued, will comply with the innate interest of each community to limit the power of the others and

provide the political checks and balances that it is hoped will lead to the promotion of democracy at the expense of rigid communal particularisms (Dawisha, 2008, p. 226).

Another important feature of the Iraqi federal democratic system is the principle of decentralisation. Territorial power-sharing in the Constitution is clear through declaring that the federal state is composed of a decentralised capital, regions and governorates (Art.116). The Constitution has recognised Kurdistan as a federal 'region' and it affirms the possibility of the construction of new federal regions (Art.117). The Iraqi Parliament would enact a law that defines the executive procedures to form regions (Art.118), which it did in February 2008. These two Articles prompted the Sunni reservation about the new constitutional reality and they sought determinedly to change them or at least to defer them to the future because they believed that these two Articles would encourage the Shiaa to form their own region which might ultimately endanger Iraq's integrity. The Iraqi Constitution has identified the exclusive powers of the Federal government (Arts. 109-113), and those powers shared with the regions (Art.114). All powers that are not stipulated as the exclusive powers of the Federal Government belong to the authorities of the federal regions and the governorates, and with regard to the shared powers the priority shall be given to the law of the regions and governorates not organised in a region in cases of dispute (Art.115). However, the Constitution is asymmetrical. It has admitted that the federal regions have the right to exercise the executive, legislative and judicial authority in accordance with regional constitutions (Art.121). Moreover, the Constitution has also admitted the right of the Kurdistan government to construct and organise its own security forces (Art.121, no.5). However, it also granted to those governorates that are not incorporated into a new region only administrative and financial authority to manage their affairs in accordance with the principles of administrative decentralisation (Art.122). This underlines the Kurds' strong position in the drafting process and their determination to maintain their semi-state through providing their region with authority to challenge and ultimately override the Federal government.

The Constitution also gives a veto right for the minority when it gives the majority of the population in three governorates the right to block the constitutional amendment (Art.6, no.3 of the TAL & Art.142 of the 2005 Constitution). This Article could be used

by the three main Iraqi groups, the Shiaa, the Kurds and the Sunni, coordinating their interests because they can organise a majority of the population in three governorates to block constitutional amendments, but in practice the community that could benefit most from this arrangement is the Kurds who could legitimately obstruct constitutional amendments and might also use the veto right.

The territorial power-sharing process has developed since the 2010 election with increased calls for the formation of new regions mainly within the Sunni governorates. The central government in Baghdad has responded by increasing the authority of the governorates in an effort to control the competition for power created by the constitutional provisions and in order to postpone the regions' formation which might threaten state integrity. Donald Horowitz argued that the Iraqi state created by the 2005 Constitution is probably the weakest federation in the world since provinces, Sunni as well as Shiaa, have every incentive to unite into regions, each dominated by one of the three large groups (Horowitz, 2005). However, it can be argued that this loose federation is the outcome of an extremely complicated constitutional process for the purpose of maintaining Iraq's integrity by accommodating Kurdistan. It is true that this loose federation has increased the desire of the Sunni and Shiaa to catch-up with Kurdistan because the federation is currently asymmetrical but it also has structured the institutions to try to manage these desires and accommodate political competition, like the Federal Council and the Federal Supreme Court.

Alongside the federal executive and territorial power-sharing, the Constitution also provides for revenue-sharing. Oil and gas are owned by all the people of Iraq (Art.111). The Federal Government along with the producing governorates and the regional government will undertake the management of oil and gas extracted from the present fields provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions, which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards (Art.112). In reality, the Oil and Gas Law has still not been enacted at the time of writing the thesis and it remains under discussion, but the Constitution has identified the general framework or the bases of this law despite the ambiguity in the precise percentages involved as part of sharing power between the federal

government and the region governments in managing the oil fields. The Oil and Gas Law is obviously critical to future federal stability because oil revenues finance more than 90% of state expenditure. As a result, it is already a source of political and economic conflict and competition between the Federal government and Kurdistan. Oil and gas resources are highly likely to be a pivotal factor for Iraq's future success in sustaining its integrity and therefore its consolidation as a federation.

We can now see that the Iraqi Constitution has adopted the federal principle as a direct consequence of historical and political legacies combined with the administrative approach of the US for the reconstruction of Iraq. It is true that one of the US goals was to build a democratic Iraq but it also sought to control the democratic model and its outcomes in order to avoid any threats to its interests and its allies' interests. However, it was unable to impose its democratic vision that was originally based upon a centralised federation, and probably the Americans were aware of what Paddy Ashdown concluded from his personal experience in BiH - that a "mistaken democracy" could be sometimes worse than no democracy at all (Ashdown, 2002). But the Iraqi federal democratic process also remains complicated and difficult because of the absence of a federal democratic culture as well as the necessary structural conditions that assist this process. For example, the law of political parties has not been drafted until today. As Moon argues, democratisation depends on history as well as current forces (Moon, 2009, pp. 117-119). Therefore, the federal democratic process is neither a simple nor a quick process and its recent introduction in practice has undoubtedly contributed to Iraq's persistent instability that leads to undemocratic outcomes, as Makiya has already noted. For him, the Iraqi Parliament looks like a democratic institution but it does not work like one because it is controlled by ethnic and sectarian blocs that are organised by small groups of people who continue to wield the real power (Makiya, 2005). In practice, Makiya is absolutely right but there is another important feature of the Parliament that we must mention here. There is not a single political group which is fully satisfied with the outcomes of the political process and this can be construed as something good because it stimulates more political dialogue and compromise. As Dawisha explains, even a compromise that leaves no one particularly satisfied is better than a deadlock in the constitution-making process, which could undermine any hope for a future workable democracy (Dawisha, 2005, p. 42).

Clearly the dynamic process of democratisation – or democratic transition – is essentially an historical process and it is probably correct to claim that historically a democratic constitution can exist only if its origin and contents are democratic. However, as this thesis has demonstrated, the case of Iraq does not sit comfortably with conventional assumptions, expectations and practices; its only real historical analogies are the constitutional impositions of post-war West Germany and Japan. But today these have been widely acknowledged to have been hugely successful experiments. It remains to be seen if the Iraqi Constitution can effectively reshape its political culture and create a functioning federal democratic political system.

### **5.2.3 Constitutionalism**

The other important outcome of the constitutional process is the gradual emergence of constitutionalism. The referendum on the Iraqi Constitution has reflected the will of the majority of Iraqis to build a state based on the rule of law and democracy. Thus, theoretically the 2005 Constitution is the basis of building a legitimate government. Iraq has no history of constitutionalism that can serve as a means of evaluating the form, substance, and legitimacy of the Constitution (Backer, 2009, p. 676). In such circumstances, this means that constitutions must be used in the first instance to introduce the core values and principles that are the benchmark of constitutionalism and upon which the legitimacy of a government can be assessed. In other words, constitutionalism aims to confer “legitimacy” on the purpose and meaning of government.

In Iraq, the constitutional emphasis on power-sharing, the rule of law, the effective and equivalent democratic approach to represent all the Iraqi people in the government, and the intention to protect human rights and freedoms, are together contributing to building a constitutional culture. Despite the state of instability, the Constitution has succeeded in establishing new political rules from which any diversion would be widely considered as illegitimate. This is a huge achievement for a state without a constitutional democratic history and there is already some evidence to suggest that political behaviour has begun to recognise this. For

example, the Sunni's position in the constitutional and political process has moved from its initial state of rejection and denial of the legitimacy of the federal state to one of general acceptance and participation. It is true that their participation was not effective until now due largely to their desire for a greater share of power. However, they have come to realise that this political process and the current constitutional context is "the only game in town" in order for them to obtain benefits and to achieve their goals. Moreover, it is noteworthy that after each time they have formally withdrawn from the coalition government – the last time being February 2012 - they came back because they have no other choice, apart from the resort to violence, which cannot any longer provide them with legitimate power. Another example of constitutionalism is the campaign initiated in December 2011 by some Iraqis against the Minister for Women's Affairs because of her issuing a number of regulations which were deemed to be against the liberal context of the Constitution. In this case, the Minister issued new regulations about women's uniforms in governmental institutions which triggered the women's campaign against it. This constitutionalism needs time to develop and to entrench itself in the mentality of the Iraqi politicians and even the ordinary Iraqis because it is unprecedented in its history, but we must remember that it took American constitutionalism over 200 years and a civil war for it to become what it is today.

## **Conclusion**

Despite many criticisms of the Iraqi Constitution, it is an important step on the road to building a legitimate federal liberal democratic state. The Iraqi Federal Constitution represents a break from the history of the modern Iraqi state and the constitutional process itself also represents an evolution in constitutional theory because it combined both external and national role(s) in the process of constitution making. Theoretically, Iraq is a federal democratic state but practically it is not yet a fully fledged federal democracy because federalisation and democratisation are still continuous processes through the efforts to amend the constitution. Further reforms in the political and economic structures need to be introduced in order to end the state of political crisis and instability that Iraq confronts today. However these imperatives and shortcomings notwithstanding the 2005 Constitution have many

important strengths and positive gains. I will conclude the chapter by identifying four of these in the following way:

1. The 2005 Constitution ended the idea of a centralised Iraq that became one the hallmarks of the modern Iraqi state in 1921 together with the rule of one group over the Iraqi population. Constitutionally the new Iraq is now a federal, democratic and plural state. It is however a loose federation that in some respects might be closer to a confederation. Political power is divided between the central government and the regional government(s) and the governorates. Moreover, the financial revenues are designed to be shared equally among the Iraqis in Baghdad, Kurdistan and the governments depending on the size of population.

2. Most importantly, the Iraqi Constitution has ended the state of illegitimacy of the political process which was brought about mainly by the Sunni through their rejection of the constitutional process after 2003 and their participation in the violent military insurgency. The constitutional process has re-integrated the Sunni into the politics of federalism under the pressure of the US for the purpose of providing legitimacy and to speed up the political process. This has now been a relative success. The Sunni are no longer rejecting the political process and the core principles of “federalism”. However, they persist with demands for constitutional amendment and political reforms, as do some Shiaa groups, but their efforts are now channelled through the legitimate political institutions. After the election of December 2005, then, the Sunni have become partners in the political process that is relatively stabilised and legitimised by their participation. As the chapter has explained, their role was ineffective in the constitutional process because of their previous position toward the political process but now they are an integral part of the process and are compromising and negotiating along with the Shiaa and the Kurds. However, it must be acknowledged that a negative rivalry rather than a positive rivalry still characterises the Iraqi political process because of a persistent lack of trust and a feeble democratic political culture among the politicians. To modify this feature, the Sunni needs and those of all other Iraqi groups, must concentrate on creating the trust by focusing on agreed and common issues and through consolidating democracy in the political process via its main elements - the law of the political parties and the law of elections.

3. The Iraqi Constitution appears to have brought to an end the Kurds' aspiration for secession. It has established a federal democratic state whereby its diverse groups are accommodated on equal bases that stem from liberal rights and freedoms and the rule of law. This new political culture of accommodation rather than assimilation is new not just for Iraq but also for the Middle East. It is true that the consensus on democratisation and federalisation has not been successfully exported to other Middle Eastern countries but these processes have only just begun. Rather than secession, the Constitution gives the Kurds a special position that accommodates their desire for self-rule. This has maintained Iraq's territorial and plural integrity. However, in practice, the Kurds' somewhat privileged position in the Iraqi state according to Article 121 of the Constitution has nonetheless allowed them during the recent conflict with the central government to wave the secession card for the purpose of gaining more benefits and to compel Baghdad to fulfil its constitutional obligations.

Some commentators argue that the Kurds will eventually secede from Iraq after gaining all their demands, but this is a pessimistic prediction. If the Iraqi Arabs keep their promise to support the federalism of 'self-rule and shared rule', and if the Arabs are prepared to build trust between themselves and the Kurds through a real democratic process to convince them that Iraq is the home for all of its component parts, the Kurds could be persuaded that they will lose more from secession than they would gain. Equally, if the Kurds could reassure the Iraqi Arabs and all the other Iraqi groups that secession was no longer on their political agenda because of the incentives for real participation in the common state interests through federalism, then the issue of secession will likely fade away. The resolution of this issue, however, will depend largely on the competence of the Iraqi political leadership. Federalism alone will likely not maintain the state's integrity and it will not bind the Iraqis together unless it is based on trust and a real desire for cooperation among the politicians, as Wheare originally argued over 60 years ago, and unless a real democratic culture evolves.

4. Finally, the Iraqi Constitution has recognised, maintained and preserved Iraq's cultural, ethnic, religious and linguistic diversity whose roots antedate its

existence as an independent state. The new federal Iraq now has the possibility to strengthen the Iraqi (multi) national identity, raising the prospect of a legitimate, federal democratic, plural and territorially integrated Iraq. Therefore, the next question is what the final institutional structure of the new Iraq will look like and how the current federal system outlined in the Iraqi Constitution works. The next chapter of the thesis will tackle these two questions, which deal with the “operation” of the new federation and enable us to assess its effectiveness in implementing the constitutional objectives.

**(Table Number Two)**  
**The Evolution of the Iraqi Constitutional Process:**  
**The Evolution of the State**

Area	The TAL	2005 Constitution	May, 2009 amendments
<b>1. Fundamental principles</b>	Article 4: the system of government in Iraq shall be republican, federal, democratic, and pluralistic, and the powers shall be shared between the federal government and the regional governments, governorates, municipalities, and local administrations. The federal system shall be based upon geographic and historical realities and the separation of powers, and not upon origins, race, ethnicity, nationality, or confession.	Article 1: the Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic and this constitution is a guarantor of the unity of Iraq.	Article 1: has not been changed
<b>Political system</b>			
<b>Islamic Rule</b>	Article 7.A: Islam is the official religion of the state and is to be a source of legislation. No law that contradicts the universally agreed tenets of Islam, the principles of democracy, or the rights cited in chapter two of this law may be enacted during the transitional period. This law respects the Islamic identity of the majority of the Iraqi	Article 2: <b>First</b> , Islam is the official religion of the state and is a foundation source of legislation and no law may be enacted that contradicts the established provisions of Islam, no law may be enacted that contradicts the principles of	Articles 4, 5: has not been changed

	<p>people and guarantees the full religious rights of all the individuals to freedom of religious belief and practice.</p>	<p>democracy, and no law may be enacted that contradicts the rights and basic freedoms stipulated in this constitution.</p> <p><b>Second,</b> this constitution guarantees the Islamic identity of the majority of the Iraqi population and guarantees the full religious rights to the freedom of religious belief and practice of all individuals such as Christians, Yezidis and Mandeans Sabaas.</p>	
<b>Pluralism</b>	<p>Article 7. B: Iraq is a country of many nationalities, and the Arab people in Iraq are inseparable part of the Arab nation.</p> <p>Article 9: the Arabic language and the Kurdish language are the official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac, or Armenian in governmental education institutions in accordance with educational guidelines, or in any other language in private educational institutions, shall be guaranteed.</p>	<p>Article 3: Iraq is a country of multiple nationalities, religion and sects. Article 4. <b>First:</b> the Arabic language and the Kurdish language are the official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkomen, Syriac, and Armenian shall be guaranteed in governmental education institutions in accordance with educational guidelines, or in any other language in private educational institutions. <b>4.</b> <b>Fourth:</b> the Turkmen language and the Syriac language are two other official language in the administrative units in which they constitute density of population.</p>	Have not been changed.
<b>2. Rights, Liberties and Freedoms</b>	<p>Article 12: All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion, or origin and they are equal</p>	<p>Article 14: Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality,</p>	Article 42: has not been changed

	<p>before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts. In addition to articles 10-23.</p>	<p>origin, colour, religion, sect, belief, or opinion, or economic or social status. Also articles 15, 16 17, 18. Article 18.2: anyone who is born to an Iraqi father or to an Iraqi mother shall be considered an Iraqi. This shall be regulated by law. Article 43.First: the followers of the religions and sects are free to practice of religious rites, including the Hussein rituals.</p>	
<p><b>3. Separation of Powers</b></p>	<p>Article 24.A: The Iraqi transitional government, which is also referred to in this Law as the federal government, shall consist of the National Assembly, the Presidency Council; the Council of Ministers, and the judicial authority. 24.B: The three authorities, legislative, executive, and judicial, shall be separated and independent of one another.</p>	<p>Article 47: The federal powers shall consist of the legislation, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers. Article 19. First: the Judiciary is independent and no power is above the judiciary except the law.</p>	<p>Article 63: has not been changed</p>
<p><b>4. Powers of Federal government</b></p>	<p>Article 25: The federal government shall formulate the foreign policy, the fiscal policy, and national security; regulate weights and Iraqi citizenship, and telecommunications policy.</p>	<p>Article 109: The federal government shall preserve the unity, integrity independence and sovereignty of Iraq and its federal democratic system. Article 110: The federal government shall have exclusive authority in the formulation of foreign policy, national security policy, fiscal and customs policy, regulating standards, weights and measures, regulating issues of citizenship,</p>	<p>Article154: The federal government shall preserve the unity, integrity independence and sovereignty of Iraq and its federal democratic system and protect the constitution. Article 155, add few more authorities to the federal government such as regulating the immigration policy and visa policy, regulating federal</p>

		planning polices relating to water sources from outside Iraq, regulating the policies of broadcast frequencies and mail, and general population and statistics and census.	election and formulating of environmental policy.
<b>5. Powers of the Regional Governments</b>	<p>Article 54.A: the Kurdistan regional government shall continue to perform its current function throughout the transitional period, except with regard to those issues which fall within the exclusive competence of the federal government. The Kurdistan Regional government shall retain regional control over police forces and internal security, and it has the right to impose taxes and fees within Kurdistan region.</p> <p>54. B: the Kurdistan National assembly shall be permitted to amend the application of the federal laws within the Kurdistan region, but only to the extent that this relates to matters that are not within the provisions of 25 and 43 of this law.</p> <p>Article 57: all authorities not exclusively reserved to the Iraqi government may be exercised by the regional governments.</p>	<p>Article 115: All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organised in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organised in a region in the case of dispute.</p> <p>Article 121. 2: in case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region</p>	Still under discussion

<p><b>6. Shared Powers</b></p>	<p>Article 25.E: the federal government shall manage the natural resources in consultation with the governments of the regions and the administrations of the governorates, and distributing the revenues resulting from their sale through the national budget in an equitable manner proportional to the distribution of population throughout the country, and with due regard for areas that were unjustly deprived of these revenues by the previous regime. For dealing with their situations in a positive way, for their needs, and for the degree of development of the different areas of the country.</p>	<p>Article 112.: <b>First</b>, the federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifically an allotment for a specific period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law. <b>Second</b>, the federal government, with the producing governorates and regional governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment. In addition to articles 113,114.</p>	<p>Still under discussion</p>
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<p><b>7. Regions formation</b></p>	<p>Article 53.C: any group of no more than three governments outside Kurdistan region, with the exception of Kirkuk and Baghdad, shall have the right to form regions from amongst themselves.</p>	<p>Article 118: The council of representatives shall enact, in a period not to exceed six months from the date of its first session, a law that defines the executive procedures to form regions, by simple majority of the members present.</p>	<p>Article 163: has not been changed. In October 2006 the Parliament enacted the Law of Regions.</p>
<p><b>8. Oil and gas and the Ownership of Iraq's resources</b></p>	<p>Article 25.E: the natural resources of Iraq belong to all the people of all the regions and governorates of Iraq.</p>	<p>Article 111: oil and gas are owned by all the people of Iraq in all the regions and governorates.</p>	<p>Still under discussion</p>
<p><b>9. Disputed Territories (The Issue of Kirkuk)</b></p>	<p>Article 53.A: the Kurdistan Regional government is recognized as the official government of the territories that were administered by that government on 19 March 2003 in governorates of Dohuk, Erbil, Sulaymanyya, Kirkuk, Dyala, and Neneveh. Article 58.B: the previous regime also manipulated and changed administrative boundaries for political ends. The presidency council of the transitional government shall make recommendations to the national Assembly on remedying these unjust changes in the permanent constitution. In the event the Presidency Council is unable to agree unanimously on a set of recommendations, it shall unanimously appoint a natural arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request</p>	<p>Article 140: first, the executive authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of article 58 of the TAL. Second, the responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in article 58 of the TAL shall extend and continue to the executive authority elected in accordance with the constitution, provided that it accomplishes completely (normalisation and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of the their citizens), by a date not to exceed the 31 December 2007.</p>	<p>Article 189: still has not solved because Article 142 of the permanent constitution states that the TAL shall be annulled on the seating of the new government, except for the stipulations of Article 53.A and 58 of the TAL.</p>

	the Secretary General of the UN to appoint a distinguished international person to be the arbitrator.		
<b>10. The Amendment of the Constitution</b>	Article 61.C: the general referendum will be successful and the draft constitution ratified if the majority of the voters in Iraq approve and if the two-thirds of the voters in three or more governorates do not reject it.	Article 142.First: the Council of Representatives shall form at the beginning of its work a committee from its members representing the principal components of the Iraqi society with the mission of presenting to the Council of Representatives, within period not to exceed four months, a report that contains recommendations of the necessary amendment that could be made to the constitution. 142. Fourth: the referendum on the amended articles shall be successful if approved by the majority of the voters, and if not rejected by two-thirds of the voters in three or more governments.	Article 191: has not been changed.

## **Chapter Six**

### **The Institutional Structure of the Iraqi Federation**

#### **Introduction**

Chapter five examined the constitutional design of Iraq for the purpose of understanding and recognising what kind of state was founded. Constitutionally, Iraq is a federal democratic state but the federal process is continuous. The Iraqi federation is decentralised, multi-national, multi-linguistic and multi-religious. These attributes determined the bases of the new Iraqi state and removed authoritarian features that have defined the state in the past.

In order to continue exploring the Iraqi federation, the principle focus of this chapter is the institutional structure as a necessary complement to understanding the working of the Iraqi federation in general and for two specific purposes: to ascertain to what extent Iraq is “federal” and to examine how the operation of the institutions maintain the political bargain that led to the formation of the Iraqi federation. According to Watts, there is a distinction between constitutional design and operational reality, and federal constitutions can in practice be applied and evolve in different ways (Watts, 2008, p. 9). Some states have federal constitutions but in practical terms they operate in a different way, like the United Arab Emirates. Theoretical constitutional evidence is not enough to indicate that a state is federal or democratic because the value of the constitution depends on how it is implemented. The implementation will be the real criterion to evaluate to what extent the Iraqi state is federal. According to institutional theory, institutions can be causes of democratic stability and the vehicles to install the democratic culture. However, there is another school of thought that explains institutions as indicators, not cases of democratic instability (Waldner, 2009, p. 1). In fact, because there is no formal yardstick for the effective operation of the federal system and because each federal experiment is unique, I will argue that the Iraqi federal system can be assessed as functioning and able to continue if it achieves the dual tasks of nurturing the federal democratic culture and maintaining the political federal bargain. This also connects with the subject of the next chapter which will deal with the theoretical

implications and significance of the Iraqi federation for federal theory and a new consideration of federalism.

This chapter aims to answer the question: is the Iraqi federal system fully functioning? Is Iraq in practical terms a federal state as sketched out by the 2005 Constitution? It examines the origin of the federal institutional design, the constituent units of the Iraqi federation and their vertical and horizontal relationships, and the key federal institutions - the legislative, executive and judicial institutions - their powers and intergovernmental relationships. It concludes by assessing whether or not the federal institutions function and if not what the prospects are for them to operate in the future.

### **6.1 The Origin of the Institutional Structure**

As stated in the last chapter, the origin of the constitutional design of Iraq can be traced back to the beginning of the Iraqi opposition in 1991. However, the basic political principles that characterise the current Iraqi political system have been compromised by some of the opposition forces so that they have not achieved a complete consensus about them. These origins apply as well to the institutional structure. During the Salahaldin Conference in October 1992 both the new political principles and institutional structure were adopted by some of the assembled groups. The Iraqi National Council (INC), which was founded at the Vienna conference in June 1992 and is supposed to be an umbrella organisation including all the opposition groups to enable them to organise and coordinate their efforts to overthrow the Baathist regime, created its basic institutions at Salahaldin. The INC institutions were originally intended to work as a government in exile so it consisted of a national assembly, a presidency council or executive committee and an executive council.

The national assembly of the INC was based on the national assembly that was created at the Vienna Conference in 1992. However, the number of members was increased from 87 to 234 for the purpose of including all the opposition groups and mainly those that did not participate in the Vienna conference. The presidency council consisted of three members representing the three main ethnic groups in Iraq. Two of the three officials were members of the Iraqi Governing Council (IGC) established by Paul

Bremer, the US governor for Iraq: the Kurdish Democratic Party leader Masoud Barzani, and the moderate Shiite cleric Mohammad Bahr al-Ulum. The third person who represented the Sunni community was ex-Baath Party leader and military official Hassan Naqib. This presidency council resembled the presidency council that constitutionally existed after 2005. The executive council of the INC consisted of a prime minister or the chairman of the executive council, who was Ahmed al-Ghalabi, a secular Shiaa and who was later chosen as a member of the IGC, and 26 ministers. The head of the executive council had three deputies who were to represent the three main communities in Iraqi society.

In reality, the institutional structure of the INC changed the political map of Iraq. Before the foundation of the INC, Iraq was divided along ethnic lines to the Arabs, the Kurds and the Turkmen. However, after the foundation of the INC, Iraq was divided among the the Shiaa, the Sunni and the Kurds, and that was obvious in the presidency council of the INC. This new arrangement was applied to all the opposition conferences and later to the IGC. This institutional design revealed the reality of the opposition's division, rivalry and distrust, and the absence of effective political leadership. As in the constitutional process, the foundations of the institutional structures of the INC were also affected by the factors that negatively influenced the opposition's work, as we explained in Chapter Five, as well as the failure to construct a national project and a unified profile for the Iraqi state after Saddam. The political rivalry, the different political ideologies, the impact of regional states and the absence of a political culture of accommodation have all contributed to the political fragmentation of the Iraqi opposition forces and the failure to construct a national consensus. Consequently, the alternative institutional structure to Saddam's institutions which was intended to benefit all the opposition became a failed vehicle for the opposition. For example, both Mohammad Bahr al-Ulum and Hassan Naqib suspended their membership of the presidency council in 1995 because of problems related to finance and rivalry within the INC.

Although the INC institutional structure had failed to work among the opposition powers, after 2003 the TAL and the Iraqi Constitution both adopted the INC institutional design. The question that arises is, if the INC institutional design did not work and could not solve the Iraqi opposition's problems in practice why was it adopted again?

Simply, the answer lies in the lack of trust among the Iraqi political groups that aspired to hold authority. Any other political alternative that would have changed the INC map was rejected because it would not have eliminated the idea of winners and losers that took root in the Iraqi political process after the foundation of Iraq and was confirmed with the violent conflict after 2003. Consequently, this delicate ethno-religious institutional design was the only possible design to ensure the participation of all and establish a legitimate state and a legitimate political process. Therefore, the TAL institutional structure, which also impacted on the current institutional structure, and the 2005 Constitution's institutional structure are both based on that design. However, the challenge was how to make this design workable for Iraq.

## **6.2 The Federal Institutional Structure**

### **6.2.1 The Building Blocks of the Iraqi Federation**

The constituent units representing one of the orders of government constitute the building blocks on which a federation is based, and in different federations the basic constituent units go by different names such as states, provinces, länder, regions, subjects, islands, emirates, and entities (Watts, 2008, p. 71). In the Iraqi federation – the latest federal model - the names of the constituent units add to this list: regions and governorates.

According to the Iraqi Constitution, the federal system in the Republic of Iraq is made up of a decentralised capital, regions, governorates, as well as local administrations (Art.116). These constituent units represent the orders of government that the Iraqi federation is based on. Decision-making authority is therefore divided between the federal government, Baghdad, the Kurdistan region and the governorates. Consequently, understanding these orders of governmental components provides insights into the division of power and the degree to which they have input into the national and the local level.

### **6.2.1.1 The Capital (Baghdad)**

Baghdad with its municipal borders is the capital of the Republic of Iraq and constitutes in its administrative borders the governorate of Baghdad (Art.124). Moreover, the Iraqi Constitution states that the capital may not merge with a region (Art.124, no.3). This article means that Baghdad is the seat of government and the city where the president, the ministries, the Parliament and the embassies and diplomatic missions are located. The drafters of the Constitution might have sought to maintain the historical and national character of Baghdad as the capital of Iraq to reflect historical and local realities. Baghdad was the capital of the Islamic State during Abbasids rule (766-1258 AC). Under the Ottoman Empire Baghdad became just a *vilayet* (state) (1532-1918). With the formation of the modern state of Iraq in 1921, Baghdad was restored to its central position and became the capital of Iraq. Alongside the historical significance of Baghdad, it represents the reality of a diverse Iraq. With about a fifth of the population of Iraq, about 6.5 million, all the different Iraqi groups meet in Baghdad. This is why Baghdad has a special constitutional position that distinguishes it from Kurdistan and other governorates.

The constitutional position of Baghdad has been criticised because of the distinction between the municipal and administrative borders and for the insistence on the impossibility of a merger or form a region of its own which might seem democratically anomalous (Cameron, 2007, p. 157). Baghdad within its municipal borders, consisting of nine municipalities, represents the capital of Iraq which has no right to merge with a region. However, within its administrative borders, which consist of six qada'as (districts), it represents the Governorate of Baghdad which does have the right to merge with a region. This distinction is due to the administrative structure of Baghdad which is different from that of the governorates including those that form the Kurdistan region. The difference between the municipal and administrative structure does not exist in the other Iraqi governorates whose structure is based on administrative borders only.

Territorially Baghdad is divided into municipalities, which include the Municipality of Baghdad (Capital Amanat), which represents the Capital, and administratively its borders encompass greater Baghdad as a governorate. In fact, this design of Baghdad dates back to the early 1970s. For example, before 2003 there were six qada'a

(districts), 14 nahiyas (sub-districts) and nine beladiyas (municipalities) within the municipal borders, and there were four qada'as, eight nahiyas and ten beladiyas within the administrative borders (The Law of Governorates Not Incorporated in Regions, 2008). After 2003, further division in the administrative and municipal structure of Baghdad happened. Within the municipal borders there are two "Katias", nine beladiyas and 94 Hayys, and there are six qada'as and 18 nahiyas within the administrative borders<sup>20</sup>. When the Law of Governorates Not Incorporated in Regions (LGNR) was enacted in 2008 by the Parliament, Baghdad was not included in the hope that the Parliament would pass its own special law to regulate Baghdad's affairs. However, no such law has been enacted yet. For the purpose of avoiding any chaos in Baghdad, the LGNR applies as a temporary measure. For example, the LGNR stipulates that the governorate council shall comprise 25 members with the addition of one seat for every 200,000 inhabitants, if the number of the governorate's inhabitants exceeds 500,000 (LGNR, Art.3, no.1). This stipulation applies to Baghdad council. Furthermore, the LGNR stipulates that the qada'a council shall comprise of 10 seats with the addition of one seat for every 50,000 inhabitants (LGNR, Art.3, no.2), which also applies to Baghdad.

The council of Baghdad represents its legislative authority which consists of 51 members while according to the size of the Baghdad population it should consist of 58. The head of the council is the head of executive authority. The difference between what the council consists of and what it should consist of is because of the special administrative structure of Baghdad which differs from the other the governorates. Despite being the capital of Iraq, the federal government has no authority to govern Baghdad which is considered a decentralised governorate with administrative and financial powers just like other Iraqi governorates. Therefore, Baghdad as the capital of Iraq is anomalous: it is not a full fledged constituent state or federal-district state as in most federal systems.

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<sup>20</sup> For more information about the administrative and municipal borders of Baghdad see: <http://www.iraq-lg-law.org/ar/content>.

### **6.2.1.2 The Kurdistan Region**

The second tier of government in the Iraqi federal system according to the Iraqi Constitution is the federal regions. Kurdistan is recognised in the Iraqi Constitution as a highly autonomous federal region with all its existing powers (Art.117, no.1). This acknowledgment represents a new reality in the political history of Iraq that defines and shapes new asymmetrical political relationships.

The Kurdistan administrative structure is no different from the administrative division applied in the rest of Iraq. The region consists of governorates, districts, and sub-districts which are all administratively decentralised. Each administrative unit has an executive administrative council headed by the president of the administrative unit (Arts. 142&143 of the Kurdistan Regional Constitution).

The Kurds' successful participation in drafting the Iraqi Constitution sketched the shape of the vertical relationships that they sought between their region and the Federal government through Articles 110,112,114,115,116,117,120,121 and 141. The Iraqi Constitution, as explained in Chapter 5, recognises Kurdistan as a highly autonomous region, the only such region in Iraq, which has kept all the authority it achieved after 1991. Kurdistan and the regions that will form in the future are provided with extensive powers that undermine the balance with the federal government. For example, each region, not governorate, shall adopt a constitution of its own that defines the structure of powers of the regions, its authorities, and the mechanism for exercising such authorities, provided that it does not contradict the Iraqi Constitution (Art.120). Moreover, the regional powers have the right to exercise executive, legislative and judicial powers except for those stipulated in the exclusive authorities of the federal government (Art.121, no.1), and for any contradiction between the national and the regional legislation in respect to a matter outside the exclusive authority of the federal government, the regional power shall have the right to amend the application of the national legislation within that region (Art.121, no.2). Furthermore, the regional government shall be responsible for the administrative requirements of the region, particularly the establishment and organisation of the internal security forces for the region such as the police and security forces of the region (Art.121, no.5). Kurdistan also has its own executive, legislative, and judicial authorities to exercise the powers

that are joint with the Federal government and exclusive to the region. Therefore, the distribution of authorities in Kurdistan is distinguished from those of the governorates that have only executive authorities, as I explain in the next section. As explained earlier, the reasons for these distinctions are deeply rooted in the history of Iraq and were behind the formation of the Iraqi federation, as chapters one and three of this thesis have investigated<sup>21</sup>.

In fact, despite these federal constitutional provisions that represent the road map for organising the vertical relationships between the Federal government and Kurdistan, these relationships are still incomplete and unclear due to the difficulty of implementing some of these constitutional articles, such as those regarding the Kirkuk issue, and the ambiguity of others, such as those regarding oil. Moreover, the failure to legislate some laws that would clarify the ambiguous constitutional articles and that relate to the formation and functioning of the governmental institutions, for example the law on the formation of the Federal Council, has added to the complex intergovernmental relationship between the Federal and the Regional governments. Given this unfinished institutional relationship between the Federal government and Kurdistan, there is a possibility that these relationships will either continue to reflect the imbalanced constitutional relationship and maintain the preferential treatment of the Kurds, or it could enhance and increase intergovernmental cooperation and the balance of power required for a stable federal Iraq. In other words, the quality of intergovernmental relationships among them would determine the future of the federation. In this regard it is important to investigate the provisions of the Kurdistan Regional Constitution (KRC) related to the main authorities in Kurdistan and their joint responsibilities with the Federal government, to assess the degree of coordination or contradiction with the Federal Constitution and then assess the impact on the unfinished vertical relationship between them.

The executive authority in Kurdistan is represented by the President of the Region and the Council of Ministers. The governing system in Kurdistan is presidential so that the

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<sup>21</sup> There are a number of factors that affect the distribution of powers in federations as explained by Watts in his book *“Comparing Federal Systems”* such as the process by which the federation is established, the period in which the constitutional distribution of powers was drafted, the prevalence of a common tradition or a civil law tradition, and the character of the federal legislative and executive institutions (pp. 84-85). However, in the Iraqi case the distribution of powers is mainly determined by the first factor only.

president is the supreme president of the executive authority and holds most of the executive power (Arts.99&104 of the KRC). Meanwhile, the Council of Ministers is the executive and administrative authority in the Region (Art.108 of the KRC) and thereby exercises shared federal authority such as executive authorities concerning the region, according to Paragraph 110 of the Federal Constitution. Furthermore, it exercises the joint competences it has been empowered by the Federal and Regional authorities in accordance with the provisions of the Federal Constitution (Art.113, nos.7&8). Most importantly, the Kurdistan government jointly with the Federal government administers the oil and gas fields which were on Iraqi Kurdistan land and were commercially exploited before August, 15 2008, while it shall have all the control over oil and gas fields which were not exploited or which were not invested in commercially before 15 August, 2008 (Art.113, nos.4&5 of the KRC). According to this article, all the oil and gas fields in Kurdistan are under the direct control of the Kurdistan Regional Government (KRG), and the Federal government shares control only of those producing fields. However, this contradicts the Article in the Federal Constitution which states that these resources are for “all” the Iraqi people (Art.111). Without any doubt, the existence of the executive authority in Kurdistan with the responsibilities assigned by the KRC and the Federal Constitution reinforces the autonomy of the region and its accountability in implementing the legislation of the Kurdistan Parliament and strengthens its credibility among the local residents.

The legislative authority in Kurdistan is represented by the Kurdistan Parliament which enacts, amends and abolishes laws relevant to the Region, amends the application of those federal laws that are outside the exclusive jurisdiction of the federal government, as well as enacts those laws relevant to the joint jurisdiction of the federal and regional authorities- concurrency with regional paramountcy. Moreover, the Kurdistan Parliament approves the common policies of the Regional and the Federal government (Arts. 79&93, nos. 3&6). These articles should also be read in conjunction with Article 9 nos. 2&3 regarding the major and constitutional rights of the Region which allow for the passing of laws outside the limited authorities of the Federal government and the signing of agreements and deals with the governments of foreign states; the federal government cannot reject these agreements without legal justification. In fact, this could be a future source of conflict between the Federal and the Regional governments and it could create a “catch up” desire by the governorates.

The Kurdistan Regional Government also has an independent judicial authority that consists of the Judicial Assembly, Kurdistan Constitutional Court, Prosecutor General and Consultation Assembly (Art.130 of the KRC). Furthermore, the Region has its own defensive force the “Peshmarga” to protect the Region and its structure, duties and affairs.

Clearly, the KRG has sought through the KRC to finish what the Federal Constitution had failed to finish or clarify as regards the shape of intergovernmental relationships between the Federal and the Regional governments. The KRC anchored all the rights and powers of the Kurds in Kurdistan through “fitting into those holes of the Federal Constitution” as Michael Kelly has described (Kelly, 2010, p.770). However, it also re-identified and reasserted the supremacy of the Kurdish position and the Kurds’ aspirations and interests in the federal Iraq as in Articles 8, 9 and 10. The assertion of this supremacy magnifies the role of the Regional institutions and shapes the governmental relationships in the Region which thereby become more competent and effective. For example, Article 8 of the KRC asserts the supremacy of the Kurdish position and assures that:

“The people of Iraqi Kurdistan have the right of self-determination. They are free in determining their political status and pursuing economic, social and cultural growth. They have freely chosen a union with Iraq and its people, land and sovereignty while it commits to a Federal Constitution and a federal, parliamentary, plurality and democratic system that respects the human rights of individuals and the community. They may reconsider themselves in selecting their future and political base in the cases below:

First: violation of the dignity of the federal constitution, by the recession of the commitment to the federal system or the major constitutional principles of democracy and the human rights of individuals and community. Second: practicing discriminatory policies and changing the demography of Kurdistan, or maintaining traces of the previous policies which are retroactive from the constitutional commitment of article 140 of the federal constitution”.

This article indicates that the Kurds’ conditions for continuing as a part of Iraq are maintenance of the federal system as designed in the 2005 Constitution which is in reality more of a “confederal” system, and the implementation of the constitutional articles that relate to the strategic interests of the Kurds such as the Kirkuk issue and other distributed areas. Moreover, the right to reconsider their relationship with Iraq

could be reactivated as a justification for claims of legitimate secession. The Kurds have negotiated and compromised cleverly during the drafting process of the TAL and the Federal Constitution in order to ensure their obtaining this position. Any efforts to change the Federal Constitution that may change the Kurds' special position towards a more balanced role with the Centre or the governorates or a failure to implement the articles relating to the Kurds' national interests would mean that the Kurds would have the right to determine their own future.

In addition, the KRC, in Article 10, asserts the major constitutional rights of the Region which are: a fair share of federal revenues based on population and taking into consideration the acts perpetrated against Kurdistan; allocation to it of federal positions and institutions on an equitable basis and the employment of citizens of the Region in the federal institutions in the Kurdistan Region. In essence, these major rights are also the major rights of the Iraqi people in the rest of Iraq, including the diverse Iraqi groups living in Kurdistan. Therefore, the emphasis on the demands based on ethnic identity arguably undermines the right itself.

The approach of asserting the Kurds demands' in the KRC can also be identified in many of the regional constitutional articles that explicitly express the desire for sovereignty. For example, Article 2 of the KRC marks the borders of Kurdistan that include the three official governorates (Dohuk, Sulaymaniyya and Erbil) as well as Kirkuk and all the distributed areas within Nineveh, Diyala and Wasit. This invokes Article 140 of the Iraqi Federal Constitution that identifies three steps to solving the future of Kirkuk and other distributed areas: normalisation, a census and a referendum which should have been completed by the end of 2007. Because of the failure to implement Article 140 of the 2005 Constitution due to a number of factors such as the complexity of the issue as a result of Kirkuk's diverse character, the internal Kurdish reassessment of the boundaries of Kirkuk and other distributed areas (Bartu, 2010, pp. 1330-1341), and reservations about implementing this article by some Arab and Turkmen politicians, Kurdish politicians explicitly argue that the Federal Constitution is being violated and their position with the federal union needs to be reconsidered. Moreover, Article 13 of the KRC states that "the Kurdistan region has a Peshmarga Defensive Force to protect the Region and its structures, duties and affairs". The Federal Constitution gives the regions, not the governorates, the right to form a security

force however, in practical terms this must not negate the role of the Iraqi national army or restrict its role. However, the desire to limit the role of the Federal government in the region is clarified in Article 104 paragraph number 12 of the KRC which prevents the Iraqi Army from entering the region unless it has the permission of the President of the region after approval from the Kurdistan parliament and after clarification of the type of mission, its place and its time. Again, the ability of Peshmarga forces to provide effective security and stability in Kurdistan is the reason behind rejection of the idea of the Iraqi army entering the region, as well as memories of the brutal role of the Iraqi army under the rule of Saddam.

Furthermore, in Article 17 of the KRC the public wealth in the Region is the property of the people of Kurdistan and the natural resources, surface and underground water, unextracted minerals, quarries and mines are the national resources of the Region. This also violates Article 111 of the Federal Constitution that states that oil and gas belong to the Iraqi people in all regions and governorates. Some like Kamil Mahdi, argue that the ambiguity of Article 111 of the Federal Constitution which leaves the meaning of “ownership” wide open is behind the KRG’s own interpretation of it (Mahdi, 2007, p. 16). Moreover, the Kurdistan regional government, as a sign of its superiority and ability to rule the region and as an assertion of the desire to limit the role of the Federal government, passed its own oil and gas law which contains a producing and sharing agreement (PSA). This law enables it to sign over 25 separate PSAs with, primarily, junior oil companies, including Western Oil Sands, Talisman and Heritage from Canada, the Korean National Oil Corporation and DNO of Norway (Bishop and Shah, 2008, p. 9). To undermine the policies of the KRG and its oil and gas law, the Federal government has moved towards more centralisation policies. It has deprived the oil companies that have contracts with Kurdistan of the right to bid for federal oil development contracts. In fact, the question of financial decentralisation is still complex between Baghdad and Kurdistan because, as Raad Alkadiri explains, there has been a failure to reach a broadly accepted accommodation over the role of the central government among the Iraqi political groups who have never been able to reach a common understanding on how extensive decentralisation should be or how power should be divided between the central government and regional/provincial administration (Alkadiri, 2010, pp. 1316-1317). Both the Sunni and the Kurds have expressed a desire to limit the role of the central government because for the Sunni it would limit the role of the Shiaa in

governing Iraq and for the Kurds because their coalition with the Shiaa has not fulfilled their demands in controlling Kirkuk and the ownership of the oil. Therefore, with the development of the democratic process in Iraq, both the Sunni and the Kurds have sought more decentralisation and more fragmentation of powers not because they believe in these principles but because they want to limit the rule of the Shiaa. On the other side, the Dawa Ruling party is seeking a more effective role for the central government in confronting the extremist demands of the Kurds. As explained earlier in this thesis, the 2005 Constitution is ambiguous in many articles such as Article 111 and efforts to clarify them by drafting of the Laws have frequently failed but are still ongoing and therefore the role of the central government and the regional governments remain unclear in the short-term. Consequently, Iraq now has two financial systems: one between the Federal government and Kurdistan and another between the Federal government and the governorates. The KRG, like the governorates, receives a share of the federal budget for its spending on public services in the Region based on the size of the population in the Region. The 17 percentage for Kurdistan includes the expenditures of the federal institutions in the Region. Moreover, although the Federal Constitution remains silent about tax revenues, the KRC asserts that the revenues of the Kurdistan region include taxes (Art.150, no.1 of the KRC). This article identifies five sources of revenue in the Region, besides taxes: dues, public utilities services, income from establishments and firms, income received from investing the natural resources in the Region, grants and loans and the Region's share of the oil and gas wealth and other federal income. Such speed on the part of the KRG in defining its revenues adds to the difficulties in harmonising its relationship with the Federal government mainly in the context of unfinished legislation and institutional structures for solving disputes over the legislation between the Centre and the Region, such as the law of the Federal Supreme Court. The Federal Government, as a consequence, has become unable to pursue the equitable policies that should be undertaken by the central government because the 15 governorates are assigned the administrative rights only in tax collection. Therefore, the asymmetrical constitutional and political relationship between the Federal government and Kurdistan is also paralleled by asymmetry in their fiscal relationship.

The Kurdish approach in challenging and limiting Baghdad's role also applies to its special position in the foreign policy of the Iraqi State. Gareth Stansfield points out that there is no longer "one" foreign policy in Iraq but multiple foreign policies deployed by

sets of political elites because the government of Iraq is still weak (Stansfield, 2010, p. 1402). This applies to the KRG which has also deployed its own foreign policy, for example, with Turkey. For example, in 2013 both Turkey and the KRG have reached an agreement about withdrawing the PPK members to inside the Iraqi borders in Kurdistan without a formal coordination with the Federal government which has criticized the agreement.

In fact, Kurdistan legislation is clear and explicit in challenging and undermining the role of the Federal government in the region for the purpose of maintaining the preferential treatment that they receive in the Federal Constitution. It is important for the KRG to have its own spending responsibilities and discretion to raise some revenue because this is important for its accountability but this should be achieved through a consensus with the Federal government in order to avoid any crisis or confrontation between them, as happened at the end of 2012 about the share of the foreign oil companies that work in Kurdistan. The structure of fiscal relationships should strengthen the capabilities of the Federal, Regional and the governmental levels. However, KRG fears about Shiaa efforts to centralise the federation in Iraq or at least balance the role of the Federal government with Kurdistan are the main reason for the frequent political tension among them. The aspirations of the Kurds for self-rule and the history of discrimination against them by previous Iraqi governments make the idea of the renewal of a strong central government in Baghdad a real threat for the survival of Kurdistan.

The Kurds' desire for sovereignty is supported by a number of internal and regional factors. First, Kurdistan is politically, socially and economically more stable compared to the rest of Iraq. The KRG proved that it is capable of administrating the affairs of the Region effectively and it has succeeded in attracting foreign investment to the region. For example, it has awarded production sharing agreements with 25 foreign firms in the oil sector such as Western Oil Sands and Talisman and Heritage from Canada and DNO of Norway (Bishop and Shah, 2008, pp. 8-9). Second, the Arab Spring revolutions and the transition towards more democratic political systems have provided the Kurds with a golden opportunity to express their right of self-rule. Third, for the first time in the history of the Kurdish question the regional environment is more fragmented in attitudes towards the Kurds' aspiration for independence and self-rule. Syria is still experiencing political violence, Iran is under international pressure because of its nuclear program

and Turkey is no longer against an independent Kurdish state in the north of Iraq. Consequently, the Kurds are pushing for more localisation of powers to the point that this impacts on the operation of the federal institutions and destabilises their intergovernmental relationship.

Alongside the imbalanced vertical relationships between the Federal Government and Kurdistan, there are horizontal imbalanced relationships between Kurdistan and the rest of the Iraqi governorates as well, which contributes to their pursuance of catch-up policies and more symmetry in Iraq. Kurdistan has been assigned more constitutional authorities compared to the governorates such as legislative and judicial rights and the Peshmerga security forces. More importantly, Kurdistan has asserted its right to control and manage oil and gas resources in the Region from the new explorations without any role for the Federal government. This provides Kurdistan with a source of independent revenue that other producing governorates like Basra and Maysan are not entitled to as their revenues from oil exploration are deposited in the Federal government account.

This distorted vertical relationship between Baghdad and Kurdistan might be altered as a result of a number of factors in Kurdistan in particular and in Iraq in general. There are a number of realities inside Kurdistan that would also influence the shape of political relationships inside Kurdistan and with the Federal government. For example, there is the rise of a strong political opposition represented by the “Movement of Change” in Kurdistan against the domination of the main two Kurdish parties the (KDP) and the (PUK) in the political system in Kurdistan. The Movement of Change is demanding real changes to the governing system in Kurdistan towards a parliamentary system which would directly impact on the sensitive balance of power between the two ruling parties. Bearing in mind that the two main Kurdish parties have a long history of conflict and distrust, each one of them still controls a governorate that is not allowed to challenge the other. The KDP controls Dohuk and the PUK controls Sulaymaniyya while Erbil is left as the Capital of the Region. Furthermore, if a political consensus was reached between the Shiaa and the Sunni political groups, a change to the shape of the political coalitions in Iraq would be initiated that would impact on the Kurdish relationship with the Federal government. Therefore, it is to the benefit of the Kurds to encourage the conflicts between the Shiaa and the Sunni as that would further complicate the functioning of the Federal central government and strengthen the Regional government.

The struggle between the centralisation and localisation of power contributes to weak intergovernmental relationships which are compounded by the unfinished constitutional institutional structures which in turn negatively impacts on the relationship between the Federal government and Kurdistan, making it more confrontational than accommodative.

### **6.2.1.3 The Governorates**

The third constituent unit of the Iraqi federation is the governorate. A Governorate is an administrative unit which consists territorially of qada'as (districts), nahiyas (sub-districts), and villages (LGNR art.1). The governorates have three administrative levels: governorate, qada'a, and nahiya. These administrative levels are also identified in Chapter Two, Article 122, no. 1, of the Iraqi Constitution. Each administrative level has a legislative council. In reality, this administrative structure of the governorates existed before 2003. In the 1960s, the Ministry of Local Governance organised the affairs of these different administrative levels and it continued until 2003. During the rule of the Coalition Provisional Authority (CPA), this administrative structure of the governorate was changed and confirmed by the Order 71 of the CPA.

The Iraqi governorates are not new; they have deep historical roots giving them recognised legitimacy among Iraqis. Before 2003, Iraq was divided administratively into 18 governorates that were different in territorial and population size, as well as wealth (see table number 3). The roots of this territorial administration of Iraq date back to the Ottoman governor of Iraq Medhat Baash in 1867 when he sought to introduce administrative reforms of the Ottoman ruling system (Wardi, 1966, p. 135). Baghdad was a *vilayet* and the vilayet was divided into "Sanagiks" (governorates) which were in turn divided into qada'as and nahiyas. At that time the major Iraqi cities were called "Loaa" which are now the city centres of most governorates. Article 109 of the first Iraqi Constitution drafted in 1925 regulated each administrative area, its type, its name and how it was to be created. However, this law and all the laws administered by the Beladiyas and Loaa in 1931, 1945, 1957 and 1964 did not give these administrative

entities the decentralised authority to rule. This did not change with the establishment of the republican system.

During the rule of the al Baath party, the Law on Governorates number 159 in 1969 was enacted to regulate the local governance. The administrative structures that this law created for the governorates form the bases of the current administrative structures of the governorates. This is clear evidence of institutional continuity. Article 2 of this law stated that the Republic of Iraq is divided into governorates, and the governorates into qada'as, and the qada'a to nahiyes, and each had its own character within the responsibilities of local governance. According to Article 4 of this law, a governorate could be created and could change its capital city and its name, as well as its borders on a proposal of the Minister for Local Governorates and after agreement from the Executive Council and the ratification of the Revolutionary Council. The central government continued to rule and control the governorates affairs.

The 2005 Constitution sought to modify the central role of the Federal government in the governorates that prevailed in Iraqi political history by granting the governorates that are not incorporated in a region broad administrative and financial authority to enable them to manage their affairs in accordance with the principle of decentralised administration. This was regulated by law (Art.122, no.2). Moreover, Article 114 of the Constitution specifies shared competences between the federal and regional authorities and grants the governorates, as regions, the priority on disputed issues between the federal and governorate legislation. However, the LGNR has not fully supported the decentralised rule of the governorates over their affairs, which means that the LGNR contradicts the Constitution. For example, Article 7 of the section on the competences of the governorate council gives the council the right to issue local laws, instructions, bylaws, and regulations in order to organise the administrative and financial affairs so that it conducts its affairs based upon the principle of administrative decentralisation in a manner that does not contradict the provisions of the Constitution and federal laws (Art.7, no.3). This underlines that the local laws of a governorate should be consistent and coordinated with the federal laws while Article 115 of the Constitution gives priority to the governorates in case of legislative disputes with the federal law. This contradiction also exists in the fourth point of Article 7 of the LGNR which stipulates that the general plans and policies outlined by the governorate council should be

coordinated with the competent ministries. Although, the Constitution has defined the federal competences and the shared competences between the federal government and the regions and governorates not incorporated in a region (GNR), and granted all the powers not stipulated in the powers of the federal government to the authorities of the regions and GNR, the LGNR seems to have been granted primacy regarding the federal laws and ministries. The governorate council does not have the authority to review, administer, and control the functions of the federal ministries directorates in that government. This is also suggested in the third point of Article 7 of the LGNR which states that “the governorate council approves the governorate draft budget plan referred to the council by the governor, and transfers funds between its chapters with the approval of the absolute majority of the council members, provided the constitutional criteria are observed and submitted to the Ministry of Finance of the federal government to ensure its uniformity with the federal budget”. Once again the LGNR does not provide the governorate council with “complete” legislative authority over governorate affairs because its local laws, local plans and local budget should be consistent with federal laws and authorities. Given that, these are not “broad” administrative and financial authorities for the governorates to control and there is no “broad” decentralised relationship between the federal government and the governorates not incorporated in regions. This could be an incentive for governorates to form regions in the future.

The question to ask is why there has been more centralised rule on the part of the federal government when the 2005 Constitution defines broad decentralized administrative powers for the governorates? Further, does this move towards centralisation reinforce the operation of the local governments and consequently the Iraqi federal system? In fact the LGNR has not resulted in an effective functioning of local government in the governorates; this was demonstrated by an Iraqi civil society organisation in the al-Muthanna governorate. This governorate was chosen as a case study to assess the way in which it functions under the LGNR<sup>22</sup>. In September, 2011, the organisation published its final report that declared that the local government of AL-Muthanna does not function effectively for various reasons. The most important reason is the interlocking of authorities and responsibilities between the local government and the federal government represented by the federal ministries in the governorate

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<sup>22</sup> The fill report is available on <http://vision4iraq.blogspot.co.uk/2011/10/2003.html>.

because most of these ministries are still functioning on the bases of the laws of the previous centralised system which have not changed yet. Other reasons were the absence of effective leaders and administrative staff to manage the governorate's affairs, a lack of financial resources for the governorate and its dependence mainly on the budget allocated by the federal government, and corruption and political rivalry among the political parties within the governorate. Consequently, this move towards centralisation contributes to disputes between the federal government and local governments especially those that have the desire for more decentralisation like Basra. However, it impacts negatively on the efficiency of the federal system whose operation depends on the interaction between the different levels of government. Decentralisation that was intended to reinforce the Iraqi federal system is not enhanced by the LGNR. On the other hand, the move towards centralisation could contribute to more effective and strong federal government which the political experiment after 2003 proved is crucial for a stable Iraq.

(Table Number Three)

<b>Administrative Structure of Iraq</b>				
<b>Governorates</b>		<b>Status</b>	<b>Area sq.km</b>	<b>Population 2009 estimate</b>
1	Al Anbar	Gov	137,808	1,451,583
2	Al Basra	Gov	19,070	2,555,542
3	Al Qadisiya	Gov	8,153	1,121,782
4	Al Muthanna	Gov	51,740	719,824
5	Al Najaf	Gov	28,824	1,180,681
6	Al Sulaymaniyya	K-Reg	17,023	1,878,800
7	Babil	Gov	5,119	1,727,032
8	Baghdad	Gov	4,555	7,180,889
9	Dhi Qar	Gov	12,900	1,864,788
10	Diyala	Gov	17,685	1,370,537
11	Dohuk	K-Reg	6,553	968,901
12	Erbil	K-Reg	15,074	1,471,053
13	Karbala	Gov	5,034	1,003,516
14	Kirkuk	Gov	9,679	1,290,072
15	Maysan	Gov	16,072	1,009,565
16	Nineveh	Gov	37,323	3,237,918
17	Salah Aldin	Gov	24,363	1,551,974
18	Wasit	Gov	17,153	1,158,003
		Total	435,052	33,330,600

Central Statistical Organisation. 'Iraq's governorates area and their relative area and population 1997 and 2009', Ministry of Planning, Iraq.

## **6.2.2 The Federal Institutions**

Alongside the constitutional allocation of powers between the Federal government, Kurdistan and the Governorates that enables self-rule are the shared federal institutions which enable the shared-rule. Watts argues that there are two criteria which must be met in the shared institutions of the federal government: representativeness within the institutions of the federal government of the internal diversity within the federation and effectiveness in federal government decision-making (Watts, 2008, p. 135). As in the United States, Brazil and Argentina for example, the Iraqi Constitution has adopted the principle of the separation of executive, legislative and judicial powers for the purpose of avoiding the abuse of power. Ideally, this should also contribute to the efficiency of the federal institutions which in turn should support the unity of the state. However, as we shall see later in this chapter, for Iraq the situation is different.

### **6.2.2.1 The Legislative Authority**

The parliamentary system of the Iraqi federation is based on the political principle of bicameralism (the Council of Representatives and the Federation Council) which is incorporated in most federations.

#### **6.2.2.1.1 The Council of Representatives**

In the Iraqi federal system representation in the Council of Representatives is based on elected officials from all Iraqi governorates including those within the Kurdistan region based on the size of the population in these constituent units. The members of this Council are elected in a direct secret general ballot and the representation of all components of the people is to be upheld in it (Art.49). As a result of this nationwide proportional representation, the Iraqi parliament consists of 312 members according to the ratio of one seat per 100,000 members of the Iraqi population representing the entire Iraqi population and ensuring minority quotas. The speaker of the Council of the Representatives is elected by direct ballot with an absolute majority of the total number of the Council members in its first session (Art.55). The speaker has two deputies which are elected in a similar way. Therefore, one of the two criteria emphasised by Watts in

the shared federal institutions is met in the Council of the Representatives: the representation of the internal diversity of the federal institution.

According to the Iraqi Constitution, the role of the Council is to enact federal laws (Art. 61, no.1). Laws are proposed by 10 members of the Council of the Representatives or by one of its specialist committees. It is important to know that Article 60 of the Federal Constitution states that laws are to be drafted by the President of Iraq and the Council of the Ministers. However, neither of these executive authorities is able to pass these laws. The right to enact laws is exclusive to the Parliament. For example, despite the efforts of the Prime Minister and the Cabinet in January 2013 to approve the draft of the infrastructure law, the Parliament disapproved it. But the Presidency Council has the right to veto the parliamentary legislation, as we will explain later.

This Council is also responsible for electing the President of the Republic from among the candidates by a two-thirds majority of the number of members (Art.61, no.3 & Art.70) and it also has the right to question the President of the Republic in an absolute majority of its members. It also relieves him of his duties by the same majority in the event that he is convicted by the Federal Supreme Court in cases of perjury of the constitutional oath, violating the Constitution and high treason (Art.61, no.6). Moreover, the Council of Representatives may direct an inquiry to the Prime Minister or one of the Ministers to call them to account on issues within their authority and it also has the right to withhold confidence in them by an absolute majority of its members (Art.61, nos.7&8). This would be part of its main role in monitoring the performance of the executive authorities (Art.61, no.2). The other check on executive authorities by the Parliament is through the power of the purse. The Constitution stipulates that the Parliament approves the national budget that should be submitted to it by the Cabinet (Arts.62&80). Such authority, which is the same in nearly all parliamentary systems, has proved to be very difficult to apply in Iraq because of the proportional electoral system which has resulted in the Parliament consisting of many political blocs with equal legislative power.

The Parliament also approves the appointment of the President and members of the Federal Court, the Chief Public Prosecutor and the President of the Judicial Oversight Commission by an absolute majority based on a proposal from the Higher Juridical Council (Art. 61, nos.2&5).

### **6.2.2.1.2 The Federation Council**

According to the Iraqi Constitution the Federation Council should be constructed according to a law enacted by the Council of Representatives by a two-thirds majority vote. However, the law is yet to be enacted and consequently this institution has not been established. The failure to establish this institution makes legislative authority unicameral which adds to the complications in the intergovernmental relations between the Federal government and the constituent units.

Historically, according to Riker's examination of the Senate in the United States federal system, "the notion of representing the state governments in the Senate, especially since the stated reason was to prevent legislative tyranny by the large states over the small, thus constitutes an attempt to preserve in the Constitution the peripheralisation of the Articles" (Riker, 1964, p. 88). This confirmed the principle of state equality irrespective of both territorial or population size. Therefore, in the case of Iraq, this Council can furnish the basis of stability by providing equal representation among Baghdad, Kurdistan and the rest of the governorates without considering the criterion of population size that is considered in allocating the seats in the Parliament.

### **6.2.2.2 The Executive Authority**

Executive authority in the Iraqi federal system lies with the President of the Republic and the Prime Minister, both of whom are elected indirectly. This indirect representation also adds to the complexity of the Iraqi political process because these two positions have depended, and will depend, on political compromises among the main parliamentary blocs; this was demonstrated in the December 2005 and March 2010 elections. Moreover, this indirect representation has impacted negatively on public support for and loyalty to this authority.

#### **6.2.2.2.1 The President of the Republic**

The President of the Republic of Iraq is the Head of State and a symbol of the unity of the country and represents the sovereignty of the country. He guarantees a commitment to the Constitution and the preservation of Iraq's independence, sovereignty, unity, and

the security of its territories, in accordance with the provisions of the Constitution (Art.67). The President is elected by the Council of Representatives by a two-thirds majority and his term in office lasts four years which can be renewed once only (Arts.70&71).

The Constitution lists the powers of the President which are generally symbolic such as ratification of international treaties and agreements after approval by the Council of the Representatives, ratification and issuance of laws enacted by the Council of the Representatives, and ratification of a death sentence issued by a competent court (Art.73, nos.2, 3, 8). Moreover, the President has powers to issue a special pardon on the recommendation of the Prime Minister, accredit ambassadors, award medals and decorations on the recommendation of the Prime Minister, perform the duties of the Supreme Commander of the Armed Forces for ceremonial and honorary purposes, and issue Presidential Decrees (Art. 73, nos.1, 5, 6, 7, 9). He shall convene the Council of Representatives after elections and he can call the Council to an extraordinary session (Art. 58).

This symbolic role of the President of the Republic also includes some important powers such as presenting draft laws (Art.60) and submitting a request to the Council of the Representatives to withhold confidence from the Prime Minister (Art.6, no.8). As regards the former power, the Iraqi drafters of the Constitution probably sought to fill the vacuum created by the failure to agree on the Federation Council by giving the executive authority the power to draft laws. This was after the wording in the Constitution was changed from the "President of the Republic" to the "Presidency Council" which consists of three members. The provision related to the President is to be reactivated one term after the Constitution comes into effect (Art.138). However, the provision has still not been activated yet and the Presidency Council is still in existence. In practical terms, the Presidency Council, which consists of the President of the Republic and two Vice Presidents who are elected by the Council of Representatives in one list and with a two-thirds majority (Art.138, no.2), clearly shows the importance of consensus among the main political communities representing the three main Iraqi groups (the Shiaa, the Sunni, and the Kurds). Political compromises have been effective in the last two elections to elect the members of the Presidency Council. The political blocs, mainly the ones that would fail to hold a majority of seats in the Council of Representatives, are

given an assurance that the interests of their group would be preserved through the Presidency Council because the Constitution stipulates a unanimous approach to decision-making in the Presidency Council. Not only that, the Constitution also stipulates that there must be the unanimous approval of the Presidency Council for legislation and decisions to be passed by the Council of Representatives (Art.138, nos.4&5). In other words, the Constitution gives the Presidency Council the veto right to block laws enacted by the Council of Representatives. This institutional structure is similar to that of Bosnia-Herzegovina (BiH) where the Presidency takes decisions unanimously and each member has a veto right (Woelk, 2012, p. 116).

#### **6.2.2.2 The Council of Ministers**

The other part of executive authority in Iraq is the Council of Ministers. The President of the Republic charges the nominee of the largest Council of Representatives bloc with the formation of the Council of Ministers within 15 days of the date of the election of the President of the Republic (Art.76). The responsibility of the Prime Minister and the Ministers before the Council of Representatives is of a joint and personal nature (Art.83).

The Prime Minister is the direct executive authority responsible for the general policy of the State and the commander-in-chief of the Armed Forces. He directs the Council of Ministers, presides over its meetings and has the right to dismiss the Ministers, with the consent of the Council of Representatives (Art.78). However, these authorities, which provide for a strong Cabinet, are also the reason for the current political conflict among the Iraqi political groups over this post. In January 2013 the Council of Representatives enacted a law to limit the term of office of the Prime Minister to two terms similar to the President of the Republic. Moreover, these authorities are not unchecked. For example, for the Prime Minister to declare war he needs approval of the President as well as a two-thirds majority of the Council of Representatives (Art.61, no.9a).

According to the Constitution, the Council of Ministers is responsible for planning and conducting the general policy and plans of the State and overseeing the work of the ministers and the departments not associated with a ministry. It also proposes bills and

issues rules, instructions and decisions for the purpose of implementing laws (Art.80, nos.1, 2, 3). The Council of Ministers prepares the draft of the general budget and the closing account and submits them to the Council of Representatives for approval which may conduct transfers between the sections and chapters of the general budget and reduce the total sums, and it may suggest to the Council of Ministers that they increase total expenses when necessary (Arts.62&80). The Council of Ministers prepares development plans and negotiates and signs international agreements and treaties. Most importantly, the Council recommends to the Council of Representatives that it approve the appointment of elite personnel: undersecretaries, ambassadors, senior state officials, the Chief of Staff of the Armed Forces and his deputies, division commanders or higher, the Director of the National Intelligence Service, and the heads of the security institutions (Art.80, nos.4, 5, 6). In reality, this last responsibility has generated disputes inside the Council of Representatives because of the claim that the Council of Ministers' recommendation would lead to the Prime Minister having more control over the State's institutions which frightened political blocs like the Al- Iraqia list.

In order to guarantee a balance of power in the consociational government, the Constitution gives the federal executive and legislative authorities the right of dissolution. The Prime Minister can request the dissolution of the Council of Representatives with the consent of the President of the Republic (Art.64, no.1). As we noted earlier, both the Council of Representatives and the President of the Republic can withhold confidence from the Prime Minister. Moreover, the Council of Representatives may withhold confidence from one of the Ministers by an absolute majority, and it may remove a member of the Presidency Council with a three-quarters majority of its members for reasons of incompetence and dishonesty. In fact, the right to withhold confidence and dissolution among these authorities reflects the importance of three-sided bargaining and consensus building for the operation of the Iraqi system. However, in the current absence of a national consensus in Iraq, each federal institution threatens to use the right of dissolution in its race for power. In this respect it should be borne in mind that each institution is headed by a representative of the different ethnic or sectarian group. Consequently, this system of institutional checks and balances is the main source of instability of the federal system and it is contributing to its paralysis.

### **6.2.2.3 The Judicial Authority**

Judicial authority in the Iraqi federal system is independent and the judges are independent; and there is no authority over them except that of the law. No power has the right to interfere in the judiciary and the affairs of justice (Art.88). This is a clear constitutional stipulation that this authority must be beyond the reach of legislative and executive authorities. This authority consists of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission and the other federal courts that are regulated in accordance with the law (Art.86).

According to the Federal Constitution, the Higher Juridical Council manages the affairs of the judiciary, supervises the federal judiciary and nominates the Chief of Justice and members of the federal courts and other chief justices of other judicial commissions. This nomination should be approved by the Council of Representatives (Art.91). Here is a contradiction with the intention of building an independent judicial authority because it gives the legislature power over the administrative work of the Higher Juridical Council. Moreover, the contradiction emerges again when the Constitution gives the legislature the right to enact a law that would specify the way to establish the Higher Juridical Council, its authorities and its rules of procedure (Art.87).

The second most important judicial power after the Higher Juridical Council is the Federal Supreme Court (FSC). The FSC takes responsibility for interpreting the provisions of the Constitution; overseeing the constitutionality of valid laws and regulations; settling matters that arise from the application of federal laws; settling disputes that arise between the Federal government and the government of the Region and the governorates, municipalities and local administrations; settling disputes that arise between the regions and the governorates, settling jurisdiction disputes between the federal judiciary and the judicial institutions of the regions and the governorates that are not incorporated in regions, as well as jurisdiction disputes between the judicial institutions in the regions and governorates (Art.93). Because of the crucial competences of the Federal Supreme Court, the Constitution stipulates that its decisions are final and binding for all authorities (Art.94) and it enjoys financial and administrative independence (Art.92). However, this important institution is still not

completely effective or even established because of the Parliament's failure to enact the law that would determine its work and the number of its members, who must be judges, experts in Islamic jurisprudence and legal scholars, and the methods of their selection. The Council of Representatives is responsible for enacting this law by a two-thirds majority of its members which is not stipulated as a condition for enacting the law on the Higher Juridical Council (Art.92, no.2). Again the failure to enact this law reflects the complexity of reaching an agreement among the main Iraqi political groups on this institution that would play an effective role in explaining the constitutional provisions and in overseeing the constitutionality of laws. Both these tasks grant the Federal Supreme Court the right to judicial review that is important for striking a balance with the executive and legislative authorities (Casey, 2008, p. 62). Brown describes the Federal Supreme Court as "a strange hybrid institution" because it combines an American name with many of the duties of a German-style specialised constitutional court that also involves disputes over religion (Brown, 2008, p. 73).

The federal judicial authority as a part of the federal government in Iraq is limited to regional judicial authority and it is supreme just in the areas of exclusive federal competences. However, the federal judicial authority, which is run by Iraqi judges and legal experts only, has proved its independence and effectiveness. This is in contrast to the BiH Constitutional Court where three international judges nominated by the President of the European Court of Human Rights support the Constitutional Court (Woelk, 2012, p. 122).

#### **6.2.2.4 The Political Parties and the Electoral System**

The other institutions that we need briefly to survey for the purpose of examining the operation of the Iraqi federal system are the political party system and the electoral system in Iraq. Despite their direct influence on the development of the democratic federal process, these institutions influenced the Iraqis' attitudes towards the political process and the new state's institutions. Most of the Iraqis currently consider the new state's institutions as "the political parties' institutions" because at present each political party in power dominates a number of governmental positions and ministries according to the principle of proportional representation and in light of their ethnic and sectarian

projects. Bearing in mind that Iraqis have no direct experience of a political multi-party system, especially under the rule of al-Baath, the introduction of the multi-party system and the democratic elections, which have been accompanied by increased levels of violence in Iraq mainly after 2003, has been a major and sudden innovation. Iraqis have been confronted by their weak political culture and also their fear of the re-creation of the *state* that might dominate them again. The state during the rule of al-Baath was a tool of killing and destruction against the Iraqis, as well as against the region. The reaction of the Iraqis after 2003 was to prevent that happening again through the power – sharing system and participation in the ethnic and sectarian political parties.

The 2005 Constitution confirms the political rights of the Iraqi people through Article 39 that states “the freedom to form and join associations and political parties shall be guaranteed and this shall be regulated by law” and “it is not permissible to force any person to join any party, society, or political entity, or force him to continue his membership in it”. However, the Parliament has failed to agree on a translation of these constitutional rights into a law regulating the political party system. Many of the current political parties and groups such as the SAIRI, INC and INA, would not benefit from the drafting of this specific law and from consolidating the democratic transition in general. This is because of their internal fragmentation and competition and their weak bonds with the society compared to their strong bonds with regional powers. Drafting such a law would expose their fragility as a democratic institution crucial for building democracy, representing interests, forming governments, managing conflict and promoting stable policies. The current political parties are functioning without formal regulations for organising their operation and controlling performance and their membership. Their financial resources are unknown and the federal government has no power to check on their financial resources. Moreover, the ethnic and sectarian projects these parties adopt hinder a real cooperation among them which is the main challenge that the Iraqi federal democratic process is facing today. In fact, they have the tendency to exacerbate conflict between the different Iraqi groups and to paralyse the state’s institutions as a consequence of not achieving their parties’ interests or after their failure in elections, as the events of Iraq show. For example, the position of the al-Iraqia List from the al-Maliki government and its effort to legislate the Law of Infrastructure. Consequently, the failure in drafting the law to regulate political parties has had a negative impact upon the stability of the political process and democratic transition.

The only existing limitation on the function of the political parties is the electoral system. The Electoral System Law for the 2005 election was based on the Proportional Representation System (PR) with the closed list. The PR system was introduced to Iraq because of its advantages for divided societies. According to the International Institution for Democracy and Electoral Assistance (IDEA) the advantages are: proportionality, inclusiveness, minority rights, few wasted votes, easier for women representatives to be elected; no need to draw boundaries, no need to hold by-elections, facilitates absentee voting, restricts growth of single party regions and higher voter turnout likely (Blinda, et al, 2005, p. 28). However, the IDEA admits that this system has disadvantages among which the most important are: the inability to throw a party out of power; coalition or minority governments are more likely in the parliamentary system; too much power given to political parties; and it can lead to the inclusion of extremist parties in the legislature. Kelley also argues that this system has so far failed to provide enough centripetal incentives in India and Nigeria and so in Iraq it is an inadequate response to the challenges of undemocratic competition and, in some cases, majority dominance (Kelley, 2005, p. 18).

Without doubt, the PR system succeeded in preserving the women's quota 25% and minorities' quotas (Christians - five seats, Sabaas - one seat, Shabeks - one seat and Yezdians - one seat). Moreover, the PR was based on the existing administrative borders of the governorates - each governorate is an electoral base- and it has moved to an open list PR, in which the voters can vote for an electoral list or for one of its candidates in order to give the Iraqis more freedom over candidate selection (The Electoral Law, 2009). However, this system is contributing to conflicts and schisms inside the political parties and among them for the purpose of power control which destabilises Iraq. This has alienated the Iraqis from the existing political parties and the electoral system, and from the whole political process. From 13,571,192 eligible voters in the April 2013 election, only 6,116,897, nearly half participated, according to the Independent High Electoral Commission. This reaction indicates the indispensable need for regulating the political party system and limiting the disadvantages of the PR.

### **6.3 Is the Institutional Structure of the Iraqi Federation Functional?**

The question of whether the institutional structure of the Iraqi federation is functional needs to be approached carefully for three important reasons. First, the federal experiment in Iraq remains unfinished and it is still evolving. Second, usually any assessment of the operation of any kind of institution must be undertaken when the institutions are functioning in normal and stable political, economic and social conditions. As we know, such conditions do not yet exist in Iraq. The new federal institutions of Iraq are operating in a very difficult security situation, a very fragile social union among the Iraqis, a critical economic situation and with no previous democratic and federal culture. Third, as we identified in the introduction to this chapter, there is no yardstick that we can apply to assess the operation of any federal system because each federal experiment is unique. However, this should not prevent us from admitting and recognising that there is a political crisis and an institutional crisis in Iraq that requires an examination of the causes of the crisis. The Iraqi federal system lacks *functional realities* despite its democratic appearance - elections and political parties as Hanaa Edwar has described (Beaumont, 2013, p. 11). It is experiencing frequent crises because of a number of factors that have a negative impact. The author interviewed a series of senior Iraqi political elites in Iraq and Jordan in August and September 2012 who expressed this opinion and highlighted a number of reasons for the weak functioning of the federal system. These were the Constitution, the competition among the Iraqi political groups, the absence of a federal and democratic culture, the unbalanced relationship between the federal and the regional governments, insufficient human resources mainly in the governorates and regional interventions (AL-Mutluk, Al-Rayss, Ibrahim, Masom, Al-Fuluji, Al-Attia and Ottman). These reasons will be examined first in the next section of this chapter and then we will consider other reasons for this weak federal system which mainly arise from the actual operation of the federal institutions.

One of the most important reasons, underlined by the politicians interviewed, for the weak functioning of the Iraqi federal system is the 2005 Constitution. In any political system and especially in federal systems, the constitution should enjoy legitimacy and supremacy as an essential element for the origin and formation of the system and for the distribution of competences within the system. What is happening in Iraq is because

of the circumstances that surrounded the constitutional process and the unfinished and ambiguous constitutional provisions. Together with the failure of the amendment process in addressing the demands of the Sunnis due to the difficulty of reaching a political compromise among the political groups in 2006, this has meant that the Iraqi Federal Constitution has not yet gained this supreme position. Indeed, in January and February 2013 demonstrations in AL-Anbar, Salahaldin and Mosul have explicitly expressed a desire for the Constitution to be suspended because of the dissatisfaction with the current division of powers (some of the demonstrators were joined by *Parliamentary members*). In fact, being a Member of Parliament (MP) and demanding the abolition of the key basis of state formation indicates a real existential problem that needs to be solved otherwise these kinds of threats to the new political process will continue. Moreover, this position of the Iraqi Constitution is aggravated by the weak constitutional and political culture and the state of distrust among the main political groups, as Chapter Five has explained. As a result, the process of constitutional amendment has been blocked, as well as the possibility of building a real political compromise on the governance and political reforms among the main Iraqi political leaders. The MP, Nada Ibrahim, argued that Iraq would have had an effective federal system since 2007 if the 2005 Constitution had been drafted completely from the beginning and over a longer period (Ibrahim, 2012). The nine-month period that it took to form a government in 2010 is a clear indication that there is a defect in the governing system that must be addressed. Clarification of the ambiguous constitutional articles, completion of the unfinished articles and amendment of the disputed and contradictory ones are essential to unblock efforts to strengthen the Constitution as the supreme power in the new federal Iraq. This leads us to another crucial reason that contributes to the weak functioning of the federal governmental institutions which is the political leadership.

As explained earlier, most of the Iraqi politicians were part of the Iraqi opposition with all its problems and differences and only now have they started adhering to democratic political culture practices. Some of them are corrupt and implement regional agendas. As a result, the approach of including the leaders of different Iraqi groups in the political process and sharing the governmental posts among them has not resulted in channelling the politicians' differences towards enhancing the rule of law and the role of the government institutions. The political leaders are not acting as a national coalition

government that should aim at preserving the state, maintain its political system and implement government policies. Instead, political competition and squabbling is rife among the Iraqi political groups and this puts stress on the political process and threatens the stability of Iraq. The process of distributing authority among the different Iraqi groups and the approach of political inclusiveness, which should satisfy all the political groups and generate citizens' confidence as Watts argues (Watts, 2008, p. 135), has instead encouraged the political groups to escalate their demands and interests that have complicated the process of making federal decisions and challenged the status of government institutions. For example, the Kurds blocked throughout 2012 the formation of the Dijla Operations Command<sup>23</sup> that the federal government formed. Moreover, at the end of 2012, the Kurdistan government stopped Iraqi Army troops entering the region for the purpose of controlling the borders with Syria necessary for preventing members of al-Qaeda from entering the country. Furthermore, during demonstrations in the Sunni governorates after the arrest of the guards of the Minister of Finance, the demonstrators refused to have federal government employees and members of the Federal Police and Army in their governorates. Consequently, the role of government institutions in solving and channelling political disputes is complicated because it is mainly based on political compromises among the political elites. Political compromise is an efficient approach to avoiding the state of stalemate in the political process but it should not be a constant approach for every decision made in the executive and legislative authorities. These authorities should enjoy a high degree of effectiveness in federal decision-making in order to win citizens' loyalty and confidence but they are not effective. For example, the failure of the Parliament to enact the Law on the Supreme Court means that this important institution is not yet formed and the existing Court is a legal continuation of the Constitutional Court that was formed according to the TAL. This failure is also true of the formation of the Federation Council because a political compromise has not yet been reached among the political leaders. Consequently, within the unfinished constitutional framework, the Parliament that is designed to be a democratic institution has been weakened when it comes to undertake responsibility in legislation and checking cabinet performance, as Makiya and Fantappie argue (Makiya, 2005, Fantappie, 2013). The Cabinet also struggles to implement its

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<sup>23</sup> The Federal government in Baghdad formed this military force at the end of 2012. It is based in Kirkuk to oversee the security issues in Kirkuk, Salahaldin and Diyala governorates which all include disputed areas with Kurdistan that has called for its dissolution. This has resulted in a political crisis between Baghdad and Kurdistan.

policies and decisions whenever its members follow the instructions of the political leaders of their political parties. For example, following the Sunni demonstrations in early 2013, the ministers of the al-Iraqia List withdrew from the Cabinet; the Kurdish ministers and representatives withdrew from the Cabinet and the Parliament because of the approval of the national budget; and then the ministers of the al-Sadr party withdrew to support the other two groups.

In fact, ineffective federal decisions end up being made by the leaders of the political groups and this not only undermines and paralyses the federal institutions but also impacts on the role of the constituent units and the degree of decentralisation in policy-making. The clear evidence of this is the Law of Governorates Not Incorporated into a Region and the approach of the Kurdistan government which challenges the Federal government. The LGNR limits the role of governorates in the federal decision-making process and in some respects creates a relatively centralised federation. This, as we explained earlier, contradicts the Constitution which gives the governorates wide administrative and financial authorities (Art.122, no.2). Therefore, the governorates are *not participating* in making decisions at the federal level and also they are *not free* from the control of the federal government in terms of using their wide scope of jurisdiction in finance and administration. Governorate budgets depend on federal allocations determined by the size of the population in each governorate. Moreover, the implementation of governorate plans and projects in all fields depends on the federal ministries. Consequently, there is not in practice a wide administrative and financial decentralisation in Iraq, as the Constitution envisages, in terms of the relationship between the Federal government and the governorates.

On the other hand, Kurdistan, with its extensive decentralised authorities that has an asymmetrical relationship with the Federal government and virtually no effective relationships with the rest of the governorates, continues to strengthen its autonomy. Again all the Iraqi politicians interviewed agreed that the federal system is effective only in Kurdistan. It applies the 2005 Constitution and violates it at the same time to assert its interests and control over the region's affairs and prevent the Federal government from having any effective role in the issues of the Kurdistan borders, Kirkuk and the control and management of oil resources. This unbalanced and challenging intergovernmental relationship contributes to constant crisis between the region and the

Federal government and also undermines federal institutions like the Parliament, Cabinet and the Iraqi Army. For example, the national federal budget of 2013 has been delayed for nearly three months because of the Kurdish representatives' insistence on including payment for the foreign oil companies (both verified and not verified by the Federal government) that work in the Region, as well as the 17% share from the federal budget, while the Federal government has insisted on including in the budget only the verified payment. As a result, the Kurdish MPs and ministers have boycotted the sessions of the Federal Parliament and Cabinet. This clearly indicates that the relationship between Baghdad and Kurdistan remains unclear and there is a need for fair and clear jurisdictions. For example, there is an important need to enact the Law on Oil revenues that should preserve Federal government control. Moreover, an agreement between the Federal and the Regional government over the disputed areas and Kirkuk should be reached but without provoking identity issues among the diverse people inhabiting those places. The role of the Iraqi Army in defending and protecting the state must be respected. The Federal government and Kurdistan must agree on concurrent jurisdictions in order to prevent the repeated conflicts of authority among them for the purpose of efficient intergovernmental relationships.

In reality, constitutional issues and the political leadership problem, which both impact on the role of the constituent units and their vertical relationship with the Federal government, also influence the problem of political parties in Iraq. Yet the law on the political party system has still not been enacted. There is no real and clear evidence about the political parties' programmes and financial resources. The number of political parties that have been registered for the 2013 governorate council elections has reached 265 political groups which consist of 50 political coalitions that will compete to control the governorate councils, according to the Independent High Electoral Commission. The same political parties that are operating at the federal level are operating at the local level - regional and governorates levels – with each taking a share of the positions within the governorate councils. In other words, the party system is centralised so that there is no distinction between the national and the local parties. Therefore, there are no local political parties which aim and desire to play an effective role in the federal decision-making process and thereby support the role of the governorates at the federal level, with the exception of the two Kurdish political parties. In addition, there are no real national or local parties which aim to serve as interregional

bridges. Consequently, the same political squabbles and competition that characterise the Iraqi political process in the centre have been transferred to the periphery - the governorates. This has created two important issues. First, it undermines the public's attitude towards decentralisation and federalism as the new governing system in Iraq because of the continued political crisis that contributes to the problems of corruption and patronage which have led to a shortage in services and insecurity. For example, in late 2008, the Basra provincial council and its former governor, Wail Abd-al-Latif, organised a petition drive coordinated by the Independent High Electoral Commission to win 10 per cent of the governorate's eligible voters, which is nearly 140,000 votes, in order to form a Basra federal region (International Crisis Group, 2009, p.8). However, the attempt failed and the population expressed their willingness to maintain the status of their existing governorate and its relationship with the Federal government. Second, the fact that there are no local political parties represented by the local politicians and representing local politics is compounded by other problems on the governorate level like corruption, political inexperience, insufficient resources, limited jurisdictions and security challenges (mainly in the period between 2005-2009), that undermined the effectiveness of the governorate councils. This problem intensified with the Sunni boycott of the 2005 elections because it produced, specifically in the mixed governorates, unrepresentative and illegitimate governorate councils. In practice, the governorate councils depend on the support of the Federal government to respond to the people's essential needs such as health, security, jobs and education which are crucial to strengthening the councils' governance and their legitimacy. This reality has been translated in the LGNR that boosts the role of the Federal government in managing governorate affairs. Once again, these problems associated with the capacity of the governorate councils to govern are intensified at the federal level with the absence of the Federation Council as a necessary federal institution that would ensure the representation of the Iraqi governorates in the Federal government. Consequently, this institutional gap means that there is no effective role or a guarantee for the governorates in the federal decision-making process.

Moving away from the political and constitutional factors, there are other factors that impact negatively on the effectiveness of the Iraqi federal government in making decisions which arise from the design of the system. For example, the parliamentary system is bicameral in which the first elected council (the Council of Representatives) is

very powerful and represents all the different Iraqi groups while the second council (the Federation Council) should be established by a law enacted by the first Council. This is, according to Brown, absolutely extraordinary for the Federation Council that is an independent council of the parliament because it would give the Council of Representatives an absolute authority over the other (Brown, 2005, p.8). However, because of political and leadership factors the Council of Representatives cannot use its powers to take responsibility for legislation and it has failed to enact the law on the Federation Council and other important legislation. Moreover, according to the Iraqi Constitution, the Council of Representatives should approve the appointment of each minister individually and if one minister fails to get parliamentary approval this would mean that the *whole* Council of ministers would have failed to gain the confidence of the Council of Representatives. According to the political experience after the December 2005 and March 2010 elections, this issue complicated and delayed the formation of the Cabinet; the clear evidence for this was the nine months that it took to form the Cabinet which in 2010 was without the Ministers of Defence and Interior because the political groups did not agree on the nominees for these positions.

In reality, this problem is also linked to the main political principle that the Iraqi political process is built on which is the consociational approach. Although the representativeness within the federal institutions of the internal diversity is crucial to winning citizens' confidence in different units and providing the glue to hold the federation together (Watts, 2008, p. 135), political inclusiveness has not supported the formation of national consensus in the Council of Representatives and the Cabinet. Instead, and as many warned, it intensifies the problem of ethnic and sectarian division within the governmental institutions and within society. This division has been exploited by the political leadership to support their thrust for power. Consequently, it is the principle of political compromise, which is in any case very limited, that governs the federal system in Iraq and not the institutions that do this.

The Executive authority in Iraq also has its design problems. The Executive authority is a hybrid presidential-parliamentary form of federal executive<sup>24</sup> (McGarry and O'Leary, 2005, p.692, Burgess, 2012, p.15). The President of Iraq or the Presidency Council (the

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<sup>24</sup> Russia, South Africa and Pakistan are examples of this federal system. For more information about this federal system see Watts. 2008. *Comparing Federal systems*, p.137.

President and his two vice presidents) are elected by a two-thirds majority in the Council of Representatives and with one list. That means again the need for political bargaining and consistency. Then, the President should nominate the head of the majority bloc to form the government (Arts.70&138, nos.2&76). Although the Constitution does not specify that any particular ethnicity or sect should form the Presidency Council, the political custom that has developed in the last two elections indicates that the Council should represent the three major Iraqi groups and the President of the Republic should be a Sunni. The embedding of an inclusiveness approach increases the risk of intensifying the problem of sub-national identities among the Iraqis. Practically, the two-thirds majority in the Council of Representatives has proved to be very difficult to obtain in the multi-party parliamentary system. Therefore, this has facilitated political coalitions among the political groups, mainly those which gain more than a third of the parliamentary seats, to elect the Presidency Council. The same political coalitions have been reflected in the formation of the Cabinet and in that respect it is not a majority Cabinet. However, the danger in such an institutional strategy, as Dawisha argues, is its extension beyond the top-level positions allowing it to become a settled way of staffing the new state (Dawisha, 2008, p.222). Nonetheless, this strategy is extended to other positions in the state and it has not facilitated the functioning of the main federal government institutions and other state institutions.

In addition, although the Iraqi federal system is parliamentary - which means that the executive is responsible and linked to the Parliament and can be dismissed by it - the Iraqi Constitution gives the Prime Minister, with the agreement of the President, the right to dissolve the Council of Representatives (Art.64, no.1) which diminishes the role of the public will. Furthermore, as we explained earlier, the Presidency Council has the right to veto Parliamentary legislation (Art.138, no.5). These two issues have mainly impacted on the powers of the legislature and executive authorities in a way that aims to strike a balance between them. In other words, it aims to balance the role of the parliamentary majority (Shiaa) and the minorities in the government (the Sunni and the Kurds). This balance creates a very complicated political formula that political experience in practice demonstrates is an obstacle for the operation of the federal system. Although the Federal Constitution incorporates the principle of the separation of powers, neither the executive authority nor the legislative authority has *completely separate powers* from the other. This situation is aggravated by the fact that no political party in the December

2005 and March 2010 elections was able to gain a majority of seats in Parliament. Consequently, political coalitions became necessary for a parliamentary majority to be formed which means more political bargains which depend on political party gains.

With the design of the executive power there is also the issue that powers are concentrated in the person of the Prime Minister. This has led to political competition and even conflict among the political groups to hold this position. Because of the importance of the position of the prime minister, the Constitution gives the President of the Republic the right to succeed the Prime Minister in the event that the latter is unable to carry out his duties (Art.81, no. 1). However, this is unprecedented in a parliamentary system because usually the prime minister is responsible to the parliament while the president is not and usually the prime minister's deputy would succeed the prime minister. The reason behind this is to balance the relationship between the three governmental positions which is in fact between the main three Iraqi groups.

In reality, the federal arrangement with a hybrid presidential - parliamentary system and power-sharing in the Cabinet has proved to be very complicated and it has undermined the three main federal institutions - the Council of Representatives, the Cabinet and the Presidency Council. They have so far failed to create a national consensus among the political groups or at least a commitment to effective and continued operation. Therefore, reforms are important to make the Iraqi federal system more functional. Currently, the Iraqi federal system is fragile and not fully functioning.

However, is there any sign of optimism that this system will operate effectively in the future? In fact, there are signs that this system can operate effectively in the future. One of these signs is the function of the judicial authority. This federal institution demonstrates a distinct role in the new federal democratic experience in Iraq. This authority, which functions only through Iraqi legal experts despite the weak culture of rule of law and the poor history of independent judicial power, acts in a very professional, neutral and independent way to counter the political disputes in the Parliament and the Cabinet and in very controversial and difficult situations. Although some efforts have been sought to distort the role of the judiciary authority and its institutions like the High Judicial Council and the Federal Supreme Court (FSC), these two institutions are playing a remarkable role in supporting the rule of law and

moderating undemocratic and unconstitutional government actions through judicial review and decisions binding for all authorities; for example, the role of the FSC in the amendment process of the electoral law in 2009, in clarifying the meaning of the majority parliamentary bloc after the 2010 election, and approving the law limiting the terms of the three members of the presidency in 2013. In 2009, Iraq was in a real political and constitutional crisis after the enactment of the new electoral law that was based on an open list; this was vetoed by the former Vice President Al-Hashimi, who refused to reduce the percentage of compensatory seats to 5 per cent because that would be unfair to the displaced Iraqis at home and abroad<sup>25</sup>. The Council of Representatives requested the FSC to review Mr Al-Hashimi's reasons and whether these were constitutional or not which it did in a very neutral and independent way that preserved the fragile political compromise of the Iraqi political process. The same remarkable role was repeated in 2010 in clarifying the meaning of the majority bloc. According to Trumbull and Martin, the FSC, since its establishment in 2006, has played an integral role in Iraq's nascent democracy, positioning itself as the authority on constitutional interpretation and as an independent, neutral arbiter of intergovernmental disputes (Trumbull and Martin, 2011, p. 388).

The other sign of optimism for a feasible federation lies in the maintenance of the political bargain, which is the essence of federalism according to Riker. The federal bargain that led to the formation of the Iraqi federation is still preserved. This means that the commitment to keep the federal constitution despite its problems and weaknesses is still there. According to Riker, if the central government cannot completely overawe the constituents and if the constituents cannot completely overawe the rulers of the centre, then the bargain may be kept (Riker, 1964, pp. 86-87). The institutional process proves that neither the Federal government nor the constituent local governments in Iraq can override the other but must seek compromise through a very complex formula. All the Iraqi politicians interviewed, except the Deputy Prime Minister, expressed that the new federal system is better than a return to the state of no state like after 2003 and it is better than a return to the authoritarian state like before 2003. This indicates that some politicians have the commitment to preserve the federal system and support the federalisation in Iraq. The Prime Minister's Advisor, Mariam Al-Rayss, has expressed

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<sup>25</sup> The 2005 Electoral Law based on the closed list with 15 percent of compensatory seats and multiple-district system, for more information about this law and all the Iraqi law see <http://www.iraq-ild.org>

this commitment and she stated that “the Iraqi federal democratic experiment will be the ideal for the region” (Al-Rayss, 2012).

The contribution to the evolution of the federal democratic culture by channelling political conflicts and public dissatisfaction towards more institutionalisation is another sign of optimism. The distinctive role of the judiciary authority is a clear example of this. This was clear during the anti-government demonstrations in 2013 that spread in a number of the governorates mainly dominated by the Sunni population. Despite the extreme demands of some of the demonstrators, these demonstrations generally created an atmosphere of revision of the operation of government institutions and reminded the Iraqis that there is no longer one person in charge and that their demands are filtered via a differentiated perspective.

The other sign of optimism is the maintenance of the administrative structure of Iraq that is based on the 18 governorates. This is an important element to control the escalation of the ethnic and sectarian issues and to preserve the historical and territorial character of the Iraqi governorates. Moreover, the maintenance of the administrative structure can contribute to changing the public attitude towards federalism as a tool to partition Iraq. Preserving this administrative structure can reduce the public fear of federalism and consequently support the new federal system to evolve.

Each of the previous factors that impact on the functioning of the Iraqi federal system contributes to the creation of a different environment from the one that led to the formation of the Iraqi federal system. This verifies Riker theory that the factors responsible for creating the federation are not the same as those required for its maintenance (Riker, 1964, p. 49). This means that these factors may in practice direct the unfinished federal system towards an unexpected or a different institutional design from the one envisaged in the Constitution. It also means that the Iraqi federal system and its theoretical basis is not a static system. It responds to the new inputs of the Iraqi environment and in a way that aims to make it more effective. However, the picture is not yet clear enough to predict what the final federal design will look like.

## **Conclusion**

As explained earlier, the federalisation process is continuous in Iraq and the institutionalisation is not yet complete. Therefore, the federal institutions have not consolidated their operations and in the short term there is no simple and clear answer to the question about the functioning of the Iraqi federal system and its continuity. However, the eight years experience of the current institutional structure proves that there remains a problem with the “design” of the federal system that still needs to be resolved in order to correct and avoid the state of paralysis, stalemate and contradictory tensions in the system.

The frequent political and constitutional crises; the problems of political leadership and political parties with no obligation or incentives to make the system function as a part of a national coalition; the ineffective role of the governorates and the imbalanced relationship between Baghdad and Kurdistan; and the ineffectiveness in decision-making of the federal institutions despite the representation of all the different Iraqi groups may lead to extreme scenarios: the division of Iraq or the emergence of a new dictatorship. But, equally they contribute to the way that the Iraqi federal system will evolve and operate. The continuance of the Iraqi federation will depend on manipulating these factors to strengthen the conditions for success.

Despite the frequent crises that the Iraqi federal system has suffered however there are signs of optimism for a workable federation. It is true that neither the political elites nor the Iraqi population are satisfied with the operation of the institutional system. However, they have the tools to modify the current situation: the federal democratic constitution and the federal democratic institutions. These tools may help the Iraqi federal system to operate in a more effective way in the future. However, if they do not do so in the short-term it will be because of the absence of conditions for success. Given that, the challenge for the Iraqi federation is how to create the necessary conditions to operate effectively.

This detailed investigation of the constitutional and institutional structure brings us to the end of the second part of Riker’s empirical focus in the title of his book, namely, the

“*operation*” of the federation, and directs us to address what is the “*significance*” of the Iraqi federal experiment. This is the subject of Chapter Seven.

## Chapter Seven

### The Significance of the Iraqi Federal Experiment

#### Introduction

The previous chapters of this thesis investigated the origins and formation of the Iraqi federation, as well as its operation, for the purpose of understanding this new federal model. The thesis provides empirical evidence that the process of formation of the Iraqi federation cannot be explained comprehensively by classic federal theory. Therefore there is a need to revise and update the theory in order to adapt it in line with the evolution of the international system and the new federal models. Moreover, the thesis proves that the operation of the Iraqi federal system demonstrates that it is not fully federal because of problems with its design and the unfinished constitutional and institutional structures. Therefore, any effort to assess and predict the future of the Iraqi federation, as we mentioned in Chapter Five, is very difficult.

Before concluding this thesis, the penultimate chapter will shed light on the *significance* of Iraq's federal experiment. It will argue that significance has multi-dimensional implications. Alongside the implications for federal theory - because of the new conditions of the formation of federations - our case study highlights the importance of effective political leadership for a stable federal democratic Iraq. The instability and difficulty which has characterised Iraq since its foundation is mainly the responsibility of its leadership. However, the role of the leadership and its determination to support federalisation is nonetheless the main condition for success. Furthermore, our case study underlines the significance of Friedrich's *process* approach in understanding and explaining federalism in general and the new federal models in particular. It also provides insights into the novel features of the latest federal model, Iraq, which can be utilised in comparative studies with other new federal models for the purpose of a comprehensive understanding of the new federal experiments. This in turn points to a fresh insight in our understanding of federalism and federation. Finally, the Iraqi federal democratic experiment is unprecedented in

the region within the Arab states, which could have important implications for these states in the medium and long term and in different ways.

The purpose of this chapter is to assess the significance of the Iraqi federation. The question of significance will be approached from the standpoint of six aspects of the Iraqi federal experiment. These are: the historical legacies, political leadership, regional and international significance, the theoretical significance, the significance of understanding federalism and the comparative significance.

### **7.1 Historical Legacies**

As Chapter One explains, the processes of state–building and national integration in the modern state of Iraq initiated in the early 20<sup>th</sup> century by the British embedded serious problems that have been fossilised in the modern Iraqi state and have contributed directly to its instability. These problems provide the historical context for the development of the Iraqi federation. Because of these historical legacies, it became impossible for Iraq to continue as a unified state without adopting federalism not as the second best solution, as many have argued, but as the only possible solution for the perpetuation of Iraq as a unified state while at the same time accommodating the demands of its complex diversity. In Iraq, as in all other countries in the Middle East, history matters and we cannot explain the current situation without looking at the last ninety years.

The state–building strategy is the main historical legacy that is linked directly to the formation of the federation. Again as Chapter One explains, this strategy was characterised by a highly centralist tendency that did not accommodate the diverse character of the Iraqi communities in terms of religion, ethnicity and language. This centralist approach depended on putting the Sunni Arabs – which represent 20 percent of the Iraqi population - in power. This was because the British did think that the Sunnis were closer to the liberal secular trend in Iraq compared to the Shiaa, who are considered to be more Islamist and have a special relationship with Iran. In addition, the Kurds were forced to be part of the modern state of Iraq and were denied the right of independence that they had been promised. Therefore, the state–

building process was not based on national participation to build a legitimate national governing system.

Consequently, the original imperial bargain of state – building between the British, the French and some Arabs, was a recipe for political conflict and instability. According to Margaret Macmillan, “putting together the three Ottoman provinces and expecting to create a nation was, in European terms, like hoping to have Bosnian Muslims, Croats and Serbs make one country” (Macmillan, 2003, p. 408). The Sunni sought to bring all the Iraqi groups under their rule without any democratic measures. The Shiaa for their part rejected the whole political process initiated by the British while the Kurds fought for the right to self-determination. There was no national consensus about the new political process and its bases. This political conflict, that characterized the political process throughout the modern history of Iraq, was intensified by the problem of leadership, as we will see in the next section, and the ideological struggles which undermined the building of a legitimate and stable political system. The ideological struggles originally started between the Iraqi nationalist movement and the Pan-Arab nationalist movement which both represented a secular trend. Then, after the overthrow of the monarchy in 1958, the struggles incorporated the Islamists, communists and the national Kurdish separatist movement which led to the construction of competitive politics and leadership. The proponents of each ideological trend aimed to influence a particular group of the Iraqi people for the purpose of controlling power. With the rule of al- Baath in 1963, this ideological conflict was suppressed in the political process in favour of the Pan – Arab nationalist movement. However, this conflict was not over and instead it distinguished the opposition parties, which further fragmented Iraqi society. As a result, collaborative or pluralist politics did not exist in Iraq.

Certainly, the impact of these historical legacies could not override the impact of the practical factors that contributed to the formation of the current Iraqi federation but no one can deny that the problems embedded in the state’s structure were aggravated by the subsequent operation of the political system in creating a complex and unstable state. The historical context paved the way for the adoption of federalism and it is one of the distinguishing features of the new federal models, as we will see later on in this chapter.

## **7.2 Political Leadership**

The thesis highlights the importance of the political leaderships' role in the operation and continuity of federalisation. In fact, Iraq has a problem with political leadership. This problem, which has been present throughout the political history of Iraq, has not received enough attention in academic discussion and analysis. Historically, no effective Iraqi political leadership, or any other kind of leadership, enjoyed the capacity to establish a real national leadership that was able to exert influence over all the Iraqi groups to enhance the building of an Iraqi national identity. The diverse Iraqi society became more fragmented and even more complicated with the behaviour of the different leaderships that emerged in Iraq because many of them concentrated on their individual interests based on ethnic, religious and ideological factors. Most of them lacked the vision for a modern Iraq and changed the meaning of the state. Only authoritarian military rulers could provide strong political leadership required to unify the nation and buttress the state. This problem is also clear within the Iraqi opposition parties during al-Baath rule which was characterised by fragmentation and rivalry, as Chapter Five explains.

Today, the problem of leadership remains. Although, the influential role of *some* actors in the political leadership did make compromises in the formation of the federation, these subsequently developed into responsibility for complicating and slowing down the operation of the federation because of the absence of a federal democratic culture and the lack of mutual trust. As we explained in Chapters Five and Six of this thesis, the antagonistic cooperation is directly linked to Iraq's political instability. A positive role for the Iraqi political leadership is an indispensable condition for political stability which is in turn a condition of success for the Iraqi federal experiment. Larry Diamond also emphasises the importance of the role of the Iraqi political leaders for building a democratic Iraq (Diamond, 2005, p. 335). We cannot imagine success without effective cooperation among the political elites in order to avoid stagnation and to promote trust. For Wheare, an effective role for the political elites is a condition of success and in his examination of the factors that generate the desire for federal union formation he argued that "the factor of leadership, of skill in negotiation and propaganda, can make all the difference between stagnation and an active desire for union" (Wheare, 1963, p. 40).

The problem of leadership becomes even more tangible after the difficult political, social and economic circumstances that Iraq has suffered in the last 33 years because of the authoritarian rule. These circumstances have had an effect on the quality of leadership as a sociological phenomenon and impacted on leaders' effectiveness to guide and mobilise Iraqi society. In fact, currently, the growing demands for creating federal regions and for more devolution of powers to the governorates not incorporated in regions is also associated with this problem. In the previous chapter, we referred to the lack of trust among Iraqi politicians, their competition for power, the absence of a national agenda, their individual interests and the new institutional structure within which the Iraqi political leaderships operate as the reasons behind these growing demands which have the purpose of ensuring their share of power. However, in essence, these demands are indicators of the poor quality of political leadership. The current political elites lack the charisma and ability to mobilise and provide coherence among Iraqis. All the existing leaderships have failed to promote a national perspective and to mediate the ethnic and sectarian tension that is crucial to enhancing the processes of state-building and national integration, despite the great challenges that Iraq and the region face. This is reflected in weak governmental performance and the slow institutional process which in turn impacts negatively on Iraqis' attitudes towards the current political leaders and the political process. Therefore, the demands for creating federal regions would ensure narrow areas of control and small groups of population that can be easily governed through narrow sectarian or ethnic agendas.

Without an effective national role for the Iraqi leaderships the prospects of success and continuity of the federal experiment seem bleak. In other words, effective leadership is the main condition for a successful self-sustaining federation.

### **7.3 The Iraqi Federation: Regional and International Significance**

The significance of Iraq's federal democratic experiment for the regional states in the Middle East lies not only in the fact that it is unprecedented in the region but also in its potential political democratic and social impacts on the regional states. Federalism

is a new political philosophy of governance introduced in the Middle East, because the United Arab Emirates is more a confederal rather than a federal state, and it is traditionally a region distinguished by its highly centralised and authoritarian political systems and little experience of liberal democracy. We cannot say that because of Iraq's federal experiment, federalism will spread throughout the region. However, we do believe that the regional states possess the heterogeneity that has given rise to federalism in Iraq. Iraq's federal experiment could provide a positive example for the region in recognising and accommodating the cultural, ethnic and religious differences in a state while maintaining its territorial integrity. This possibility is starting to crystallise in the current negotiations in Yemen as regards an agreement on adopting a federal solution although there is still disagreement on the number of the constituent state regions (ALHayat, 2013). Moreover, there is evidence of federal discussions in Libya, Somalia and Sudan while we must not forget the experiment with consociational democracy in Lebanon.

The political implications of the Iraqi federal experience for the neighbouring and regional states is without doubt due to growing pressures to introduce democratic reforms to deal with their social and political instability that has resulted from cultural, ethnic and religious differences endemic in the authoritarian centralised political systems. The variety and flexibility of federal arrangements – territorial autonomy, minority vetoes, power sharing and the proportional system which all feature in consociational democracy– are intended to provide effective engagement in building social and liberal democratic institutions. Federalisation and democratisation mean a more legitimate ruling system and more legitimacy in state–building that would enhance political and social stability. The recent Arab Spring revolutions - despite the retreat of the liberal movements from them - cannot be explained in isolation from the new developments in Iraq. Therefore, federalism might have a future in the region because the Arab Spring revolutions despite some setbacks reflect a real desire to address the problems arising from cultural, ethnic and religious differences in a liberal democratic way.

Despite the positive impact of Iraq's federal experience in generating democratic changes, it might also have a negative impact because of the high levels of violence and political instability in Iraq. There are two possible hypotheses. The regional

states would avoid federal arrangements believing that they would increase their internal instability and might result in more divisions within states. With the exception of Lebanon, all of Turkey, Syria, Iran, Saudi-Arabia, Bahrain and many of the Gulf States deny the cultural and religious rights of the Kurds and the Shiaa minorities. These minority groups are one of the main causes of instability and violence in these states. These states might adopt any other democratic solution, but not the model of federal democracy, to avoid Iraq's complications and threats to their territorial integrity. Alternatively, the ruling systems of the regional states might reassert authoritarianism, more centralisation, discrimination and assimilation of their minorities in order to preserve the existing political regimes and to maintain territorial integrity by controlling the minority desires for autonomy or independence. In return, the minority groups might push for more recognition of their rights which means more instability. However, the negative impact might not be in the long term. As Bouillon, Rowswell and Malone argue "the level of violence in Iraq since 2003, intended to turn Iraq into a democratic state that could serve as a model to the region, have made a mockery of this objective. Yet this may remain a short-term impression" (Bouillon, et al, 2007, p. 312). In the long term, once the federal structures and culture have developed and matured, stability would be the likely consequence.

In addition to these positive and negative impacts of the Iraqi federal experiment on the regional states, the process of how the Iraqi federation has been formed and its democratic foundations could also have great implications for the regional states if they seek to adopt such a political experiment. The regional states might seek or insist on a comprehensive political compromise among the political parties in the formation of their federations in order to avoid the complications associated with partial political consensus in the origins of the Iraqi federation. They might also follow the Iraqi federal constitution in depending on the territorial element as the basis for the federation in order to reduce the dangers that arise from an emphasis on ethnicity and sectarianism in the process of federalisation. Furthermore, these states might choose to limit the role of the International Community in the formation of their federations. In other words, the future regional federations might form as a result of "coming together" or "holding together" approaches rather than a "forcing or imposing together" approach (Stepan, 2005, p.257-258, Bermeo, 2002, p.108), because of the

dangerous complications and mistakes that accompanied the US role in Iraq which contributed to ethnic and sectarian violence and chaos.

Similarly, the experience of the International Community, represented by the US role in Iraq, limits any future international involvement in imposing regime change. The results of the war against Iraq – the internal violence and the high financial costs – impact on any direct role in imposing democratic change. This is obvious in the limited role of the International Community in the Arab Spring revolutions and its real hesitation in repeating direct military involvement in these countries, as in the Syrian conflict. Furthermore, the US realisation of the importance of the neighbouring states' support in facilitating the federal democratic transformation in Iraq might shape any future international involvement through more stress on regional support rather than on international support. In fact, in the light of Iraq's experience and as the Iraq Study Group led by Baker and Hamilton assert, neighbouring and regional support is one of the essential prerequisites for facilitating the new democratic transformation. Therefore, regional support is a critical condition for the success of the Iraqi federation. It is also a novel condition that is unprecedented in classic federal theory.

#### **7.4 The Iraqi Federation and its Theoretical Significance**

The Iraqi federal experiment exposes the deficiency of classic federal theory in explaining why the Iraqi federation has been formed. This thesis proves the need to update the classic federal theory conditions for the formation of federations in order to offer a more precise explanation of the origins of the new federal models. Iraq's novel factors – the external role of the US and the need for procedural liberal democracy which were explained in Chapter Three - verify the crucial need for that update. However, the unique circumstances and purposes behind the formation of each federal state imply that a comprehensive and single federal theory cannot be formulated.

The *general* theoretical impact of the Iraqi federal experiment is also accompanied by a *particular* theoretical impact. The thesis title is based on Riker's seminal book "*Federalism: Origin, Operation, Significance*", published in 1964, with the aim of

discovering the origin and formation, operation and significance of the Iraqi federation. And in Chapter Two, we sought to highlight Riker's main ideas concerning the subject of the origin and formation of federations. Significantly, the thesis reveals both the strengths and weaknesses of Riker's federal theory about the origin and formation of federations. On the one hand, it proves that Riker's federal bargain, which is based on the rational choice political approach in explaining the formation of federations, is still applicable because it remains relevant in explaining how the Iraqi federation was formed even if the motives and actors involved have changed.

However, on the other hand, the first weakness in Riker's federal theory lies in the basis of the idea of a federal bargain and its assumptions which are not justified. According to Riker, military considerations as well as a state's desire for territorial expansion for economic benefit are *always* present in the federal bargain and each of these is a necessary condition for the creation of federalism (Riker, 1964, p. 13). This thesis demonstrates that these two conditions did not generate the Iraqi federal bargain which was based on different conditions. Two of the parties to the federal bargain, the US and the Shiaa, were motivated by different desires – democratisation, maintaining Iraq's territorial integrity and the fear of another Sunni dictatorship and the desire to prevent it. For the Kurds, the US and the regional rejection of the formation of an independent Kurdish state forced them to accept the federal option. For them, it was only a second preference. Therefore, Riker's conditions were not present in the Iraqi federal bargain that was based not only on the new developments and challenges of the international system and the rise of the US as the main international power but also on the specific circumstances that characterised Iraq. Consequently, federalism was introduced in Iraq *not* because of military threats or out of a desire for expansion. Moreover, Riker's idea that a federal bargain comes from a *voluntary* political will also does not apply to Iraq. Instead, federalism was introduced with the role of the US and from the desire to accommodate Iraq's religious and ethnic diversity and maintain its territorial integrity. This means that the federal bargain in Iraq was *not* based on a belief in federal values or the federal spirit represented by the primary principles necessary for the bargain to work at all, such as mutual trust, recognition, tolerance, consent and respect (Burgess, 2012, p. 120) but because it was the *only* possible solution that would meet most of the demands of *all* the parties to the federal bargain.

This would explain why the operation of the Iraqi federation is complicated and slow as Chapters Five and Six explain. These facts verify another weakness in Riker's federal theory identified by Michael Burgess. According to Burgess, there is a contradiction in Riker's rational approach and his bargain theory (Burgess, 2012, pp. 113-114) because Riker argued at the beginning of his book that the initiation of the federal bargain mainly arises from the idea that the rulers offer and accept to form a federal state which means rationally they all would benefit from it (Riker, 1964, p. 12). However, later on in his book, he concluded that only the minority would benefit from federalism (Riker, 1964, pp. 152-154). This contradiction, according to Burgess, was because "Riker's cost - benefit analytical focus was too narrow and ignored the larger federal context in which such circumstances might arise" (Burgess, 2012, p. 114). Importantly, while the idea of a federal bargain is realistic and appropriate in explaining the origin of a federation – why federations are formed - there is a need to revise its main pillars: a *voluntary* union and the *only* two conditions of military considerations and territorial expansion. Students of federalism must liberate this notion from these two limitations in order to make it more practical in a way that fits with the unique circumstances of each case and the development of the international system. Moreover, updating the concept of a federal bargain would emphasise the virtues of federalism and highlight the liberal democratic side of federalism.

### **7.5 The Significance of Understanding Federalism**

The other significant aspect of our case study focuses on how we should think about and understand federalism. In Chapter Five of this thesis, we investigated the Iraqi constitutional process and its three main phases that indicate that many important features of the Iraqi federation have not yet been agreed upon because of important disagreements among the leading politicians. Consequently, the constitutional structure remains unfinished and is still evolving. Table number two in this thesis shows how the number of constitutional provisions has grown throughout three transitional phases and continues to grow. This fact suggests that it is Carl Friedrich's theory about federalism as a process, an evolving pattern of changing relationships rather than a static pattern or fixed constitutional structure regulated by firm and

unalterable rules (Friedrich, 1968, p. 173), that is the most relevant one among the conventional theories of federal state formation for the Iraqi case study. He stated that:

“Federalism should not be considered as a static pattern, as a fixed and precise term of division of powers between the central and the component authorities. Instead, federalism should be seen as the *process of federalising a political community* ..... what is the peculiar federal aspect which distinguishes federalising from these other processes of governing and deciding is essentially the fact that unity is combined with diversity in such a fashion that there coexist spheres of autonomy for the inclusive community and the exclusive communities. Federalism can be, and often has been, a highly dynamic process by which the emergent communities have succeeded in organising themselves by effectively institutionalising “unity and diversity” (Friedrich, 1962, pp. 514,515, 528).

Given that, to understand federalism in Iraq, it must not be considered solely as a static structure or a fixed constitutional arrangement to replace the previous political system. In fact, it is a continuous process through incremental constitutional reforms designed gradually to build the federal state and to introduce a federal democratic culture for the purposes of developing and organising Iraq’s plural society and controlling the intense political rivalry among Iraq’s leading groups and communities for holding authority. Federalisation in Iraq, and in other new federal models as we see in the next section, is interlinked with both state-building and democratisation and it also has opened the door for constitutionalism. According to Friedrich, ‘true federalism’ is based on constitutionalism which is both a culture of political values and a system of effective, regularised restraints upon governmental action. Constitutionalisation is also the process by which constitutions are made (Friedrich, 1962, pp. 516-517). However, Friedrich’s approach is rooted in Western Christian Enlightenment culture that is not relevant to Iraq. Therefore, Friedrich’s arguments do not fit with the basic premises of the Iraqi case because federalism was not based on a long history of constitutionalism, as we explained in Chapter Five. Nonetheless, the negotiations over the drafting of the 2005 Constitution and over its subsequent implementation and amendment must be construed as contributing to the much larger process of constitutionalisation in Iraq. In short, federalisation is very slowly generating a constitutional culture in Iraq.

However, while it is possible to utilise Friedrich's theory about federalism as an essentially active process evolving very slowly in Iraq, as with Riker's federal bargain theory, his conditions for how and why the federalising process is initiated are not applicable in Iraq. According to his approach, freedom, security and economic advantage were the main reasons for adopting federalism. These conditions derived in large part from his investigation of post-war European integration and were part of classic federal theory in Western countries. Moreover, concerning the conditions of success, Friedrich argued that "unless there exists what we call the federal spirit, that is to say, a firm determination to maintain both unity and diversity by way of a continuous process of mutual adaptation, a federal order cannot last" (Friedrich, 1968, p. 175). However, as Chapters Two and Six of this thesis explain, the classic conditions are inadequate to explain the origin and formation of the Iraqi federation which operates in the absence of these conditions.

We cannot expect that the federalising process identified here will be capable of re-organising Iraqi society in the short term. On the contrary, the process will be slow and complicated in Iraq because of very difficult and challenging conditions, such as the economic reconstruction and development, the role of political elites who lack trust in each other and in their commitment to the federation, and the weak democratic political culture which together are serious obstacles to the success of the federalisation project. The important conditions for the success of a federation, according to Friedrich, were the desire to cooperate and the political will to continue the process, both of which are still in question in Iraq today.

## **7.6 The Iraqi Federation and its Comparative Significance**

This thesis provides detailed investigation into one of the new federal models that appeared after 1990, and the last among them, the better to understand both why and how federalism has been introduced in Iraq. Significantly, this study can also be utilised in a comparative approach for the purpose of explaining the recent revival of federalism and the new generation of federations, as well as the new considerations of federalism. This does not mean that the aim is to reach a generalisation among the new federal models because of the difficulty that arises

from the unique circumstances of each federal case. However, a comparative discussion of the Iraqi federation would be fruitful for an appreciation of the similarities and differences among the new federal models, a recognition of the flexibility of federalism, and how we should think about and understand federalism today. To this end, the Iraqi federation and BiH should be examined from a comparative perspective in order to highlight the factors that can be applied to future federal models. Here I will briefly sketch their comparative significance.

The origin and formation of the Iraqi and the Bosnian federations have been characterised by the involvement of international actors. Although the level of involvement has varied between them, the role of the US was instrumental in both of the federations. In the formation of the Bosnian federation the role of the local powers diminished, and even the role of the European allies in the constitutional and institutional design of the Bosnian state. The US drafted the Dayton Peace Agreement, which included in Annex 4 the Bosnian Constitution, and imposed it on the former warring sides - the Serbs, Croats, and Bosniaks - who all felt coerced into accepting it. Unlike in Iraq, the European states and the United Nations did not have any serious objections to the US efforts to end the Bosnian conflict. This policy of imposition in the formation of the Bosnian federal model confirms that one of the essential elements in the internal *capacity* to operate the federal system, which is so closely linked to the *desire* for a federation according to Wheare's classic federal theory (Wheare, 1963, pp.35-36), was ignored. But this does not necessarily mean that the Bosnian federal model is destined to fail because there was no great desire for federation among the different groups in Bosnia in the first place. It was formed in 1995 as a result of unique post - conflict circumstances and 20 years later it has arguably evolved into a working federal political system, albeit still under the auspices of the international community.

What is important for us to consider here is that in contrast to the conventional understanding of federal state formation, already outlined earlier in the thesis, there is now a new kind of federal model in terms of state-building. But the former conditions identified in the mainstream literature for creating these new states no longer apply; in many respects they do not explain their origins and formation. Consequently the cases of Iraq and BiH suggest that we need to adjust federal

theory in order to accommodate these new federal models. Empirically this thesis has already demonstrated that in Iraq the Kurds and some of the Shiaa political groups supported the idea of federalism which meant that there was, despite its fragility, at least some limited consensus on the likely shape of the new Iraq and its political direction. Therefore, the US did not have to impose federalism on the Kurds and some of the Shiaa groups but it did put pressure on them as regards other issues related to federalism, for example when it pressurised the Shiaa over the subject of Islam and the Kurds as regards Kirkuk. The US had to 'impose' federalism only on the Sunni because they were hostile to it and they sought to obstruct the new political process. Moreover, the pressure of time meant that the selective imposition of a federation became the only way to speed up the political process. In other words, the US did not impose everything on the Iraqis but it put pressure on them to get the job done within a certain time frame.

The reasons behind this approach of imposing federalism by the US in BiH and their holding and forcing approach in Iraq are different. In Bosnia, the state was in a vicious civil war and the US and the EU intervened for humanitarian reasons. It was the concern of the international community to stop the conflict and preserve the territorial integrity of the post-conflict state within the borders of the pre-1992 constituent republic of the former Yugoslavia. The Serb policy of ethnic cleansing in BiH provided the main rationale that legitimised US intervention and its role in imposing its plans on the warring factions with the consent of the rest of the international community. Although the US envisaged control of both military and civilian implementation of post-war Bosnia, the European governments insisted that the civilian aspect of the peace should be overseen by them in the form of a High Representative, and the US accepted this. These circumstances were very different from those pertaining to Iraq. Here, the forcing-holding approach of federalism came as a result of the US desire for regime change prompted by the perceived programme of weapons of mass destruction and the new US security strategy after the events of September 2001, but unlike the case of BiH the US could not bring together the international community to facilitate its interventionist role in order to impose its plans. This lack of international support undermined the legitimacy of the US aims for Iraq which in turn undermined its ability to impose its plans. The US role was also compounded by other difficulties and mistakes related to post-war

Iraq. Thus, the US mission became much more complicated compared to BiH, and in order to contain the Iraqi situation the US needed the participation of the Iraqis for the purpose of creating a legitimate state and in order to overcome the practical difficulties of Iraq.

Other factors such as the history of statehood and the regional environment are also different between Iraq and BiH and also impacted on the degree of US involvement. BiH is a young state which only became independent in 1992. There was therefore no recent history of independent statehood that would have assisted in the development of a state character and sovereignty toward its external environment. Moreover, there was no history of either military conflict or economic sanctions with the US that would create conditions of threat, suspicion and fear by the US. In contrast, Iraq had been an independent state since 1921 and is known as the cradle of the first civilization in the world. Because of the US and the West's position toward Iraq after 1991 and to the Israeli-Palestinian question, the Iraqi public and politicians were very cautious and even suspicious about US aims in designing and imposing the new political system, and al-Sistani's position during the 'Bremer rule' is a good example of this.

Furthermore, the regional environment of BiH in the Balkans is very different to that of Iraq in the Middle East. On the one hand, the BiH regional environment was conducive to the active role of the West and a majority of states were attracted by the idea of being partners in NATO and the EU. This had the effect of enhancing the US position in implementing its political project in BiH. In contrast, the Iraqi regional environment was not promising at all. It subsidized violence among the Iraqi groups and against the American troops for religious and sectarian reasons. The American presence in Iraq also attracted terrorist and extremist Islamic groups which sought to use Iraq as a focus for waging war against the US. This added to the complexity of the Iraqi case and to wider instability in the Middle East. In order to lay the post-conflict foundations for peace and stability in the region, the US had first to address the lack of effective planning and insufficient resources for a post-war Iraq and therefore it needed in its view to play the dominant role in designing their new political system. Given these circumstances, the approach of 'forced together federalism' was more complicated to apply in Iraq than it had been in BiH.

Another important common feature among Bosnia and Iraq is the influence of their historical legacies that contributed to the adoption of federalism. Their historical legacies promoted centrifugal forces and facilitated the formation of highly decentralised federations. As we explained earlier in the chapter, the historical legacies paved the way for the formation of the Iraqi federation and it undermined the centripetal powers within the state. A similar historical context existed in BiH which has a heritage of territorial and cultural autonomy and a socialist federal political culture because of its multi-religious, multi-ethnic, and multi-linguistic realities as an entity, a region or republic within an empire or country before its existence as an independent state. For example, the Ottomans were the first to introduce elements of cultural autonomy which was constitutionally institutionalised in 1910 when Austria administered Bosnia and gave the religious communities self-rule over their religious and cultural affairs. Moreover, the socialist Yugoslavia introduced a process of decentralisation through the adoption of federalism (Keil, 2010, pp. 4-5). This contributed to the development of a multi-ethnic and multi-religious political culture which eventually crystallized into a desire for self-rule.

Consequently, multi-ethnic, multi-religious and multi-linguistic federal models have come into existence but without a real federal or democratic culture. The territorial division in both federations has been largely along ethno-national lines although the Iraqi Constitution states that the Iraqi federation is actually based on territorial realities. In fact, both the Dayton Peace Agreement (1995) and the Iraqi Constitution (2005) have been criticised for institutionalising these ethno-national identities that had never been institutionalised before (Woelk, 2012, p. 116). Nonetheless, these identities existed and they needed to be addressed in a way that would preserve them and provide stability for the new states. Therefore, a form of consociational democracy was adopted in both countries but they are still not fully democratic systems and, according to David Chandler, are just *fake* democratic systems building on the fact of international involvement in decision-making mainly in BiH (Chandler, 2000).

The formation of both these federal models consisted of the re-integration of semi-states, the Republika Srpska and Kurdistan, which had separated from Bosnia and

Iraq (the original states) respectively and could not gain international recognition. The Iraqi Constitution and the Dayton Peace Agreement validated the existence of these semi-states within the federal model (the Republika Srpska and the Federation of Bosnia Herzegovina which itself was divided into ten cantons) and (the Kurdistan region with Baghdad and 18 governorates). Consequently, a federal political system with just two Entities existed in BiH and a federation with just one region and the remaining governorates in Iraq meant an increased likelihood of serious challenges to the federal governments and the probability of producing unstable political relationships, as Watt explained (Watts, 2008, p. 72).

This underlines an important fact in the origin and formation of the new federal models because neither of the federations is comprehensively in Alfred Stepan's terms, "coming together" or "holding together", but a combination of both these two processes, and could also be perceived as "forcing together" federal models, as Nancy Bermeo argued (Stepan, 2005, p.257-258, Bermeo, 2002, p.108). They could therefore be a combination of each of these processes. The Kurds and the Serbs had already separated from the original state, had constructed their own constitutional and institutional structures and sought only international recognition to emerge as independent states. However, the international community rejected the idea of their independence and forced them to return to their original states. Thus, the federations that were created are characterised by *very loose decentralisation* with a certain number of common state institutions and based on the representation of different ethnic and religious groups, making them weak federal systems. Decision-making powers have moved to the periphery and have been heavily influenced by ethnic and sectarian religious interests, while the two centres have been left with quite limited powers. State institutions are based on the proportional representation of the different groups which negatively influences their effectiveness. For example, the Serbs, the Croats and the Kurds are not fully committed to creating strong federal states as long as the BiH Constitution allows the Serbs and the Croats to establish special relations with Serbia and Croatia, and the Iraqi Constitution concedes the superiority of Kurdistan constitutional provisions in cases of conflict with the federal Constitution (Art.115). In both Iraq and BiH the imbalance of shared power between the centre and the entities or the region contributes to the instability of the fragile political process. And this instability and

frailty have a negative impact not only on the effectiveness of the states and their continuity but also on the evolution of a national identity because typically people would look to the subordinate institutions to provide them with what the state fails to give them.

Therefore, the overall situation in these two states remains fragile because it makes it difficult for the central government to function and for constitutional amendments to be introduced. In fact, the way in which the federal models have operated so far demonstrates the need for reforms toward more centralisation but for different reasons: the desire to join the EU in the case of Bosnia and the desire for more effective functioning of the federal government in Iraq.

The formation of a federation in these two states should in theory contribute to the development of a national identity. In BiH the creation of a new federal model could have ensured the development of a new national identity as the overarching political identity uniting all the ethnic and religious identities. However, the young state of BiH, which is only 20 years old, was organised to accommodate the interests of the three main ethnic groups (the former warring sides) to the detriment of the creation of a common identity tied to the state. In the absence of a strong common desire for the post-1995 Bosnian federation (there was no referendum among the people of Bosnia over whether they wanted the new state or not, for example) and with the Dayton Peace Agreement which provided for weak state-level institutions and the concentration of power in the hands of the three main ethnic groups, coupled with a failure to appreciate the importance of developing a vibrant civil society which might have facilitated the creation of a wider identity, a national BiH identity has not yet developed (Askew, 2011). In contrast, in Iraq the formation of the federation has already contributed to a strengthening of the national identity not so much due to an appreciation of the federal and democratic measures but because of two opposing perspectives: a fear of federalism and an approval of federalism. Some of the Shiaa and Sunni publics reject the idea of federalism and consider it as an incentive for Iraq's partition. Both have rejected the calls of some Shiaa and Sunni politicians for the formation of federal regions on the basis of sectarian identity: so-called "Shiaastan" and "Sunnistan". The publics prefer to preserve the administrative relationship between their governorates and

the central government in Baghdad and they have demonstrated on many different occasions that they want to be Iraqis first and Shiaa and Sunni second. This confirms that the religious sectarian identity in Iraq, which the western and regional media often present as the main problem of Iraq, was not until recently a problem in Iraq, as Reidar Visser argued<sup>26</sup>. It was the desire to possess political authority which lay behind the exploitation of all subordinate identities and which undermined Iraqi national identity after 2003. Despite their fear of federalism, then, it might serve to strengthen Iraqi national identity and is reluctantly supported among the Shiaa and the Sunni as a way to protect Iraq's territorial integrity.

On the other hand, the Kurds' approval of federalism should contribute to the making of a state that they want to be part of and that would supersede all ethnic and sectarian agendas. The federation has preserved the existence of Kurdistan and the Kurdish identity but it has also compelled the Kurds to stay within the Iraqi state. However, the reality of the Kurds' desire for independence and their separation from the central government in 1991 have further weakened the roots of the Iraqi national identity for the Kurdish people compared to the Shiaa and the Sunni communities that continue to be ruled by Baghdad government. This could undermine the development of a national identity among the Kurds especially with the superior position of Kurdistan in the 2005 Constitution and it could also obstruct it if enhanced cooperation does not develop between Baghdad and Erbil.

The federal process is nevertheless persistent in these two states and if the Bosnian and the Iraqi politicians are willing to cooperate to make their states work and to balance the relationship between the centre and the region(s), more space would be created for all ethnic and sectarian identities and this would support the formation of a (multi) ethnic identity in the long term. Both of the states have faced the same problems and challenges in implementing their new form of federalism such as the challenge of democracy and legitimacy, building a national consensus on the federal idea and the interference of neighbouring states. Furthermore, both

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<sup>26</sup> In his article "*Ethnicity, Federalism and the Idea of Sectarian Citizenship in Iraq: a Critique*" Reidar Visser demonstrates that centripetal forces have always attracted the interests of Iraqis of all sects and ethnic groups. This can be seen above all in three factors: the endurance of Iraq as a concept of territorial identity, the persistent view of sectarian as an ugly political force imposed from outside, and the survival of the concept of a "national identity" as the paramount aspiration. See the article in: *International Review of the Red Cross*, Vol.89, No.868, December 2007.

need the same conditions in order to have any chance of producing a fully operational, self-sustaining federal model, such as effective political elites committed to cooperation and the promotion of mutual trust and the need for regional support.

In both the Bosnian and the Iraqi federal models, federalism is more likely to be understood as a process, as Friedrich emphasized, rather than a fixed constitutional structure which interlinks and directs other processes such as state-building, constitutionalisation and democratisation. Our consideration of federalism should lead us to understand federalism not only as an instrument to manage internal conflict and to maintain territorial integrity and diversity but also as a political ideology to build a political system with particular features. Federalism, in the new federal models, is a process to re-build previously undemocratic centralised states on democratic and decentralised bases. It is true that the federal process is slow because of the difficult circumstances in these states. However, the process is continuous, through the constitutional amendment process, with the hope of building effective federal democratic states that do not belong to their past.

This short comparative survey highlights the similarities between the Iraqi and BiH federations that contribute to the construction of similar constitutional and institutional structures. On the other hand, the differences between them broaden our understanding of the reasons for and the aim behind the formation of these federations as well as the specific problems that confront them. These findings might shed light not only on future federal models but also on other new federal models that appeared after 1990 with the intervention of the international community, such as Ethiopia and Cyprus, or without it like Russia. The only way to discover if this is true is through more comparative studies among the new federal models that would support our understanding of the new revival of federalism and federal state formation and what is the “new” in the new federal models (Burgess, 2012).

## Conclusion

This chapter has strongly identified the multi-dimensional theoretical and practical significance of studying the Iraqi federation which is significantly linked to the main question of this thesis of why and how Iraq became a federal state. Elazar argued that “every good theoretical question must have a practical dimension and vice versa” (Elazar, 1987, p. xi). That means that every good practical question must have a theoretical dimension. This applies to the main question of this thesis and its theoretical dimension represented by the key novel conditions that help us to understand the evolution of federal theory and the empirical revival of federalism. Indeed, some of them are *key* conditions for success – the role of the political elites and the support of the regional states. In fact despite the relative meaning of the concept of “significance”, as with the concepts of “success” and “failure”, the novel theoretical and empirical dimensions of our case study prove that it is an important one. Moreover, our case study links three interesting subjects - federalism, Iraq and the Middle East – in contemporary world politics, which require more research and study.

Accordingly, the question that arises is will federalism find fertile ground in Iraq and can the Iraqis provide the commitment to federalisation and democratisation? Or in Riker’s terms “Is federalism worth keeping in Iraq?” (Riker, 1964, p. 137). To answer these questions, I have utilised from Eric Davis’s explanation of Iraqi’s understanding of democracy in his article “*History Matters: Past as Prologue in Building Democracy in Iraq*”. He states that:

“When asked about their vision of the future, Iraqis have stressed three values or issues above all in poll after poll: first and foremost, a desire for security; second, regular employment and a decent standard of living; and third, a democratic form of government. Thus, in keeping with the use of the term by the Iraqi nationalist movement before the first Baathist regime suppressed it in 1963, the term “democracy” means self-determination (i.e., no foreign domination of Iraq), social justice, and anti-sectarianism (social tolerance). Elections and representative institutions are not the critical first issues that come to mind when democracy is mentioned. In Iraq, what is really meant by democracy is “social democracy,” a form of democracy that implies much greater state involvement in a society’s political economy than the neoconservative model would allow. It also emphasizes a desire to promote processes and institutions that fight, rather than promote,

sectarianism. It is this strongly felt desire that Iraq never return to the sectarianism of the Baath that offers the greatest hope for a pluralist Iraq and ultimately a respect for democratic institutions” (Davis, 2005, pp. 240-241).

Here Davis focuses mainly on democracy but I would argue that the Iraqis would aim for the same thing from federalism. The federal experiment has laid the foundations of a liberal democratic state<sup>27</sup>, national elections have been introduced, a permanent written constitution has been drafted and ratified and the political process today has changed fundamentally compared to 2005-06. Today, the politicians and national leaders, as Kenneth M. Pollack has described, represent a new political culture:

“(They) have been forced to embrace democracy, no more schemes to kill their rivals, but to outvote them. They can no longer intimidate voters; they have to persuade them. And the smart ones have figured out that they must deliver what their constituents want, namely, effective governance, jobs, and services such as electricity and clean water.”(Pollack, 2010)

However, the current socio-economic and political circumstances are still very difficult for Iraqis. What is really meant and intended by federalism is the maintenance of Iraq’s territorial integrity and the provision of social justice. For the present, federal institutions by themselves do not matter and federal culture by itself does not matter. What matters is the state’s central role in achieving these two aims. Therefore, federalism may find fertile ground in Iraq if it succeeds in achieving these two goals and then the Iraqis would find a commitment to federalism because it would then be worth keeping.

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<sup>27</sup> See the index of political freedom published by: <http://Brookings.edu.org>.

Israel 8.20, Lebanon 6.55, Morocco 5.20, Iraq 5.05, Palestine 5.05, Kuwait 4.90, Tunisia, 4.60, Jordan 4.45, Qatar 4.45, Egypt 4.30, Sudan 4.30, Yemen 4.30, Algeria 4.15, Oman 4.00, Bahrain 3.85, Iran 3.85, United Arab Emirates 3.70, Saudi Arabia 2.80, Syria 2.80, Libya 2.05.

Each country is scored on a 10-point scale, with 1 being the lowest score and, 10 the highest. Indicators of freedom include election of head of government, election of parliament, fairness of electoral laws, right to, organise political parties, power of elected representatives, presence of an opposition, transparency, minority participation, level of, corruption, freedom of assembly, independence of the judiciary, press freedom, religious freedom, rule of law and property rights.

## **Chapter Eight**

### **Conclusion**

In this thesis I have answered the following question: Why and how did Iraq become a federal state? This explanatory analysis makes a strong intellectual contribution to federal theory as concerns the subject of federal state formation. The originality of the thesis derives from it being the first study to investigate in detail classic federal theory in light of the Iraqi federal experiment as the one of the new federal models that have appeared since the end of the Cold War. The thesis has revised and updated this theory in order to explain fully the formation of the new federal models. This is why the title of the thesis is based on William Riker's book title *Federalism: Origin, Operation, Significance* as one of the main pillars of classic federal theory: it bridges the gap between classic federal theory and new explanations of the formation of the new federal models. Given that, I have based the structure of this thesis on investigating these three Rikerian aspects in the Iraqi federation: its origin, its operation and its significance.

To start with the first part of this thesis title, the origin of the Iraqi federation, and for the purpose of understanding why federation has been introduced in Iraq, Chapter One (Iraq: Imperial and Historical Legacies) investigated the historical legacies of the state-building and national-integration processes which encountered serious problems that negatively impacted on the stability of the state. As the chapter demonstrated, the origin bargain of the state formation lacked national consensus and failed to accommodate the diversity of the Iraqi society. The five pillars of British policy that Iraq was built on – the political elites, the 1925 Constitution, the incorporation of the tribal leaders, the incorporation of the Kurds and the administrative system- left contradictory legacies and a complex state. This short chapter underlined and demonstrated the importance of the historical context in which the Iraqi federation was formed and which is an important – but not sufficient - factor in explaining the introduction of federalism in Iraq.

Building on the historical context, Chapter Two (The Origins of Federations) revisited classic federal theory on the origins and formation of federations. The chapter was

based on an investigation of the contribution of four federal theorists to the subject of why and how federal states are formed. Those scholars were chosen because they are the *only* scholars who contributed to the specific subject of the origin and formation of federations and whose work is still used in federal studies. However, their contributions, as the chapter showed, are currently inadequate to explain completely the origin and formation of the Iraqi federation and how the desire for unity and regionalism developed in Iraq. The classic conditions that existed in Iraq were insufficient to provide a comprehensive and precise explanation of the origin of the Iraqi federation. What relevance they possessed was limited and could provide only a partial explanation. Consequently, the thesis addressed and revised these conditions and classic federal theory in the light of contemporary international circumstances in general and the specific internal challenges in Iraq.

Accordingly, in Chapter Three (Justification for the Adoption of Federalism in Iraq), the thesis has provided an examination of the Iraqi conditions for the formation of a new federation. I have classified the Iraqi conditions as a combination of classic and novel conditions in order to clarify and explain the reasons as well as the unique aims and obstacles confronting the formation of this new federal model. Furthermore, the chapter has demonstrated that despite the importance of both the classic and novel factors for the formation of the Iraqi federation, there were within them what I would call 'necessary factors' that impacted the formation of the federation such the role of the Iraqi political leadership and the role of the US. These factors have clearly highlighted the bargain context in which the Iraqi federation was constructed. Therefore, the Iraqi federation is not an 'imposed' federation enforced by the US on Iraqis as many argued. These first three chapters address the first part of the thesis – why the federation was formed – providing the crucial background to an investigation of the second half of the thesis question.

For the second part of the question, how Iraq became federal which can be interpreted as how a federal bargain was initiated, we argue in Chapter Four (Iraq's Reconstruction: Actors, Pressures and Challenges) that the reconstruction process and the work on its four main pillars – governance and participation, security, justice and reconciliation and economic development - contributed to the enhancement of the bargaining approach in the new political process that directly influenced the

federal bargain. As I have argued in the chapter, the work on the reconciliation process should have had the priority over security in order to build the national consensus on the new political process. However, this did not happen and therefore the contest over political authority among the Iraqi politicians has intensified. Moreover, the approach of the Coalition Provisional Authority (CPA), that combined both centralisation and decentralisation because of the challenges and pressures that confronted the reconstruction process contributed to the fracturing of political power and the reshaping of intergovernmental relations through the creation of central and local powers which could not be ignored. Further, for the purpose of an unproblematic political transition and to legitimise it as well, a federal bargain was reached as the only possible political bargain in the light of the complications in the reconstruction process which would guarantee the power-sharing.

The first four chapters combine to explain the first part of the title of the thesis - the *origin* of the Iraq federation - and provide a complete and clear answer to the thesis question of how and why Iraq became a federal state. In the next section of this thesis I investigated the *operation* of the Iraqi federation through a detailed examination of the constitutional and institutional structures. These two chapters explained the second part of the thesis question of how the federal bargain was put into practice. Chapter Five (The Constitutional Process, the Constitution and Constitutionalism in Iraq) examined the constitutional process and its three phases. It underlined the combined outcomes of the constitutionalisation – political instability, the federal democratic system and constitutionalism itself. Federalism was officially adopted as a key structural feature of the new Iraq, distinguished by a very loose decentralisation and a formal recognition of its multi-ethnic, multi-lingual and multi-religious diversity.

Chapter Six (The Institutional Structure of the Iraqi Federation) focused on the federal institutional structure itself as a necessary complement to understanding the operation of the Iraqi federal system. The chapter confirmed that Iraq is an incomplete federal state because the institutional structure remains unfinished. The Iraqi federation is still very much a work in progress. It will take a long time for it to consolidate and mature but federation was the only possible path. Many important issues, such as the Kirkuk question and the oil and gas law, will seriously affect the

future of the federation and remain to be resolved. Together Chapters Five and Six reveal the slow and complex operation of the Iraqi federal system because of problems in the federal design that is as yet unfinished. However, these structures are evolving and there are signs of optimism for a workable federation represented by the functioning of the judicial authority, the maintenance of the administrative structure of Iraq, the evolution of the federal democratic culture and the preservation of the federal bargain. These chapters demonstrate that federalism should not be construed only as a political ideology to build a particular type of political system and nor as an instrument to end internal conflict and to provide territorial decentralisation. Federalism must also be understood as a comprehensive process, as Friedrich argued, to rebuild the state on a legitimate and liberal democratic basis because it is linked effectively and directly with democracy and legitimacy. Both the constitutionalism and institutionalism in Iraq aim at broadening national consensus through democratic approaches to legitimising the new structures of the state. These two chapters bring us to the end of the second part of the structure of this thesis that is based on Riker's empirical focus in the title of his book, namely, the *operation* of the federation.

Finally, Chapter Seven (The Significance of the Iraqi Federal Experiment) focused on the last part of the thesis title which was devoted to the *significance* of the Iraqi federal experiment and its theoretical and empirical importance. We have argued that, despite the relative nature of the concept of "significance", the Iraqi federal experiment has a multi – dimensional significance concerned with the following five aspects: the importance of understanding the historical context in the formation of the new federal models; the importance of the role of the political elites not only for the introduction of the federal bargain but also for sustaining it; the importance of regional and international impacts; the theoretical importance and the need to revise and update federal theory and not least Riker's "bargain theory" conditions of the origins of federations; how we should think and understand federalism in the light of contemporary aims and problems of the new federal models; and finally the broader comparative implications for understanding the recent revival of federalism. After all, the theoretical and empirical significance of the Iraqi federal experiment is crucial for a comprehensive understanding of this revival, and of the impacts on it as a normative theory. We cannot expect that federal theory, even after updating it in the

light of Iraqi federation formation, would provide us with a comprehensive explanation of every federal state formation. From a theoretical standpoint federalism is very flexible. But it is not a universal panacea and cannot be expected to resolve every problem of state-building and national or multi-national integration. It can be implemented in many different ways; it is not a guaranteed success. Therefore, its answers will always be partial.

Together, the three parts of the thesis provide a comprehensive examination of the Iraqi federation that answer precisely the question of the thesis. The empirical evidence in this thesis has updated federal theory, especially the bargain theory related to federal state formation for the purpose of understanding the recent revival of federalism. It is with this contemporary relevance that I want to bring our conclusion to the thesis to an appropriate close. It is an original contribution to federal theory in the subject of the origin and formation of federations in particular and to political science in general.

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