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# Communitisation of Iraqi society after 2003: *Impacts on the political and institutional system?*

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## Contents

<b>Executive Summary</b>	<b>7</b>
<b>In the name of “democratic conversion”</b>	<b>9</b>
<b>I. An attempt to reshape Iraq based on an imported pluralistic political approach</b>	<b>13</b>
1. A fragile institutional/community balance introduced in the name of social pluralism	13
2. A climate of permanent conflictiveness encouraged by the introduction of constitutional pluralism	18
3. A Constitution at the heart of political debates	20
<b>II. A drift to authoritarian constitutional practices</b>	<b>23</b>
1. Community clientelism rather than pluralism	23
2. Denial of pluralism and domination of the executive power by the Shiite majority	24
<b>III. Community practice of constitutional pluralism</b>	<b>29</b>
1. An explosive community context	29
2. Towards a breakup of Iraq as a consequence of pluralism?	30
<b>Conclusion</b>	<b>35</b>
<b>Bibliography</b>	<b>37</b>
<b>Biographies</b>	<b>39</b>



*This article belongs to a series of case studies prepared by the International Network for Reflection and Proposals on a Plural Approach to Constitutions (INC)<sup>1</sup>, a project of the Institute for Research and Debate on Governance (IRG). The INC argues that the challenge faced by constitutions is their ability to give life to the social contract and flesh out complex political, social and normative dynamics. In their production, in the definition of their terms and in their implementation, constitutions are called upon to integrate widely differing conceptions of power. Novel approaches to constitutions are urgently required given the current international crisis in political legitimacy.*

*For the INC it is very important to share and compare concrete experiences from around the world – such as those presented in these case studies – in order to contribute new thinking to current debates on the subject.*

*This study was written by Arthur Quesnay, Doctoral candidate in Political Science (Paris-1, Panthéon-Sorbonne) and member of IFPO-Iraq, and coordinated by Professor Emilio Dabed and Marion Muller, Associate Experts to the IRG. It was first published in French in December 2014.*

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1. <http://www.institut-gouvernance.org/diversity.html>



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# EXECUTIVE SUMMARY

## Subject

This study focuses on the Iraqi Constitution adopted in 2005 with the objective of building a new federal political system representing the diversity of Iraqi society. The study questions the ability of the Constitution to create the conditions necessary for rebuilding the Iraqi social contract on the basis of the legal recognition of this diversity.

## Content

Following the invasion of Iraq in 2003, the international coalition led by the United States pushed the Iraqi government to reform its institutions. The first step towards this reform was the drafting of a new Constitution. However, given the security situation of the country and the need to stabilise it as quickly as possible, the constitutional process was neither inclusive nor participatory. On viewing the legal recognition of Iraq's diversity through this international and security prism, a new balance was created between the elements of this pluralism: religious diversity was established although Islam was given special status; community diversity was also set out but the historical balance of Iraqi communities was turned around; etc. It is clear that this did not necessarily work towards the pacification of society and the strengthening of the legitimacy of the Iraqi State, but as the author points out, it was a political scenario based on the communities at the expense of recognising citizenship.

In several of its articles, this Constitution recognises religious freedom, condemns discrimination based on gender or ethnicity, and even guarantees the right to receive education in the mother tongue (which may be Arabic, Turkmen, Syrian or Armenian). To ensure respect for religious pluralism, the Constitution establishes a Federal Supreme Court whose mandate has been severely criticized from the outset: while it must ensure harmony between the norms of the *sharia'a*, democratic principles and fundamental freedoms, it must also respect Islam as the official religion of the State and pillar of law. Its dual role and the incompatibility of its two missions were seen as promoting confessionalism and the violation of human rights.

Far from fulfilling its role in pacifying community and religious tensions within Iraqi society, the study shows that the recognition of pluralism enshrined in the

Constitution was used as a vehicle for the legitimisation of the political power in place, as regards both the international community and the identitarian, community and separatist claims in its territory.

Gradually, the political regime is now shifting towards authoritarianism while political power is becoming less legitimate. The Shiite community is extending its control over state institutions, increasingly marginalising the Sunni minority, among others. The Constitution, which was to embody the rebirth of the Iraqi social contract in respect of its plural identity, finds itself caught between different community, territorial and religious claims, not to mention the ambitions, especially international ones, over natural resources.

### Issues and Results

Because of circumstances in Iraq, the constitutional process was conducted without citizen participation, and under significant pressure from the international community to achieve quick results. Here lies perhaps one of its first problems: written without the citizens, pressed for time, the Constitution certainly recognises pluralism, but less in terms of social regulation than for security objectives and political negotiation. In addition, regarding the community principle, competition is the only mode of interaction contemplated, thereby accentuating divisions rather than appeasing them, ensuring that the Constitution interacts constructively in defining peaceful coexistence. Moreover, the State is gradually sinking into authoritarianism and society is breaking up a little more each day.

Rigid Iraqi pluralism as transcribed by the Constitution inevitably led to the communitisation of political and social life. State institutions, the practices of power and public action are no longer guided by the objective of creating a peaceful and harmonious social contract, based on the values and norms shared by all of Iraqi society and embodied by the authorities in power. Each community fights for its own interests, increasing the number of sectarian clientelist practices and dividing Iraqi society a little more every day, even at the risk of fragmentation of the whole country.

The refounding of the Iraqi social contract should not be limited to the mere recognition of the intrinsic pluralism of its society. Without interaction among the diverse groups, the recognition of pluralism is no more than a juxtaposition of disunited claims, rights and guarantees. To create convergence and synergy, these diverse groups must be able to talk with each other and hybridise to recreate themselves around shared values and norms embodied by the new authorities.



# IN THE NAME OF “DEMOCRATIC CONVERSION”

## The end of the Ba’athist era

Iraq has experienced several types of political regime and the return to democratic pluralism in 2003 was nothing new. Iraq was created in 1920 by the British who established a monarchy. Then in 1958, the Republic of Iraq recognised the existence of political parties and a freedom of expression that allowed political life to flourish<sup>2</sup>. This was until 1963 when the Ba’ath party took power, banned all other political parties and established an authoritarian regime that hardened when Saddam Hussein came to power in 1967. The intervention of the US-led international coalition in 2003 introduced a new parliamentary system based on the principle of community representation that purported to be equitable. However, in practice, the nature of this political system was still undefined. The constitutional pluralism that it intended to introduce soon led to a violent inter-community conflict that split Iraqi society. In this context and in a situation beyond its control, the occupying power chose to back the Shiite majority, which accounted for about 54% of the population, and seek support among the Kurdish minority, 24% of the population, to stabilise the new institutions<sup>3</sup>. This introduction of a new political-community balance implemented a system that discriminated the Sunni Arab minority, 22% of the population, while consolidating a political scenario based on the communities at the expense of individual recognition of citizenship. In the name of promoting social pluralism, the partiality of the United States encouraged an already significant communitisation in society<sup>4</sup>. As from 2003, social, ethnic and religious balances were disrupted, shaking the country to the core at the same time. The United States pulled out of Iraq in 2011 with no guarantee that the Shiite majority in power would choose to play the game of constitutional legality. Iraq thus found itself in a situation of uncertainty as to the future of its political system. While all players referred

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2. Faleh A. Jabar, «L'Irak de l'après-guerre : un État-nation en attente», *Confluences Méditerranée*, 2004/2, n° 49.

3. These estimates of community populations are provided by the United Nations (World Food Programme), following the census of the Oil-for-Food program.

4. Faleh A. Jabar, Dawood Hosham, “Tribes and Power: nationalism and Ethnicity in the Middle East”, British Library, London, 2003.

to the State and used the constitution to acquire legitimacy, the political game actually evolved according to community practices that reflected the strategies of each group. In this context, the issue was to understand how constitutionally recognised social pluralism was practiced by actors who could either use it as a defense strategy or divert it to assert themselves politically. In fact, there were no well-defined constitutional practices and the forms of articulation of constitutional pluralism remained subject to various interpretations.

### A hasty political transition

In 2003, the Coalition Provisional Authority (CPA) was created under the leadership of Ambassador Paul Bremer in a totally improvised manner and without any prior planning. Nevertheless, the CPA came to the fore as the final arbiter of Iraqi power and took the lead in the political transition. But the decisions made by the CPA (dissolution of the Iraqi army, de-Ba'athification of the country) reflect the lack of preparation of the process. The occupying power failed to take into account the sudden emergence of a myriad of social and economic forces put on hold by half a century of one-party military rule. A total lack of vision for a unified Iraq was evident. Ethnic and confessional, regionalist and religious particularisms outweighed the national interest and public good<sup>5</sup>.

*“Instead of promoting a national citizen project, partisan and categorical considerations prevail in the new political arrangement promoted by the United States. For its part, the debate on the Constitution reveals how deep the divergence is between Shiites and Kurds, while Sunni Arabs are marginalised.”*<sup>6</sup>

### A constitutional model imposed from outside

The drafting of the Iraqi Constitution is presented as a central act intended to solve collective problems and serve as a point of reference and arbitration for the population<sup>7</sup>. The Constitution is supposed to be a common means of interpretation allowing actors to anticipate the actions of their interlocutors and respond to them through the institutions. However, the imposition of a new constitutional regime by a foreign regime was characterised by a serious lack of legitimacy for the new Iraqi political actors.

Firstly, the American will to change the Iraqi regime was based on a Manichean and overdetermined model of action. It was an attempt at the “*democratic*

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5. Bruce Ackerman, Oona Hathaway, «Limited War and the Constitution: Iraq and the Crisis of Presidential Legality», Faculty Scholarship Series, paper 3690, Yale Law School, 2011.

6. Interview with the head of a Turkmen NGO at Kirkuk, conducted in February 2011.

7. Jamal Benomar, «Constitution-making after conflict: lessons for Iraq», Journal of Democracy, Volume 15, Number 2, April 2004.

*conversion*” of a society deemed ‘archaic’. This model is based on a neoconservative ideology external to Iraq which distorted the perception that the United States had of local forces. But the failure of this strategy of “democratic conversion” was to force the United States to engage in the short-term administration of Iraq and ongoing reviews, the final orientation of which opposed the initial political goals<sup>8</sup>.

Secondly, whether the goal was the creation of a democratic State or the restoration of functional state institutions, nation building was left to questionable social engineering. The analyses of colonial transplantation and the study of development also established the difficulty, or even the illusory nature, of this approach<sup>9</sup>.

Finally, foreign intervention raised the question of redefining the relationship of forces in Iraq. The promotion of constitutional pluralism with mechanisms of proportional representation by quotas profoundly redefined Iraqi politics and strengthened the dynamics of ethnic and religious segmentations within Iraqi society.

### Writing the Constitution under pressure

In May 2005, when the constitutional process began in Iraq, it was meant to be both inclusive and deliberative in order to bring together all political actors and quickly stabilise the country. But in fact, this process was neither inclusive nor deliberative. Faced with the haste of the United States, it took place rashly and in an improvised manner. As a response to spreading insurrection, the occupying power sought to prevent the insurgents from taking advantage of the political vacuum left by a prolonged transition. Furthermore, it was also necessary to quickly hand over power to the Iraqis in order to begin withdrawing US troops. However, two obstacles arose: the under-representation of Sunni Arabs and the inability to obtain national consensus on the constitutional text in such a short period.

Firstly, the absenteeism of Sunni Arabs resulted in their under-representation in the new national assembly and, therefore, in the resulting constitutional committee. To compensate for this numerical under-representation among the 55 members of the drafting committee, 15 non-elected Sunni Arabs were incorporated in July 2005, even though discussions had already begun. This arbitrary decision

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8. Zachary Elkins, Tom Ginsburg, James Melton, “Baghdad, Tokyo, Kabul: Constitution Making in Occupied States”, *William and Mary Law Review*, vol. 49, 2008.

9. Yash Ghai, Mark Lattimer, Yahia Said, “Building Democracy in Iraq”, *Minority Rights Group International*, 2003.

further discredited the legitimacy of the constitutional committee without convincing the Sunni Arab population. Moreover, in the following month, the most sensitive issues were not addressed by the committee but by an informal grouping of party leaders who gathered within political groups or at the leaders' homes without inviting the Sunni Arab drafters, who were again excluded from the drafting process at the beginning of August. Finally, about a month later, a constitutional text was presented to them, although they had been unable to collaborate in the drafting, especially of the key points. Sunni Arab representatives decided to reject the text, which they deemed unacceptable for the fundamental interests of their community. In the process, they threatened to boycott the constitutional referendum scheduled for 15 October 2005.

Secondly, the United States established a tight schedule for the writing of the Iraqi constitution, setting 15 August 2005 as the deadline, with the option of a single extension of six months. The objective stated by the United States was to end the transition period and maintain the date of parliamentary elections scheduled for 15 December. The drafters barely had a month to complete their work. No one sought the opinion of the population or attempted to inform them of the procedure and the commitments made. The drafters who were opposed to writing the text in such a short time, as they considered it an impossible task, were removed from the process. Pressed by the occupying power, the national assembly decided not to exercise the option of the additional six months and was faced with the obligation of approving a full draft on 15 August. Although the final text was only adopted by the Shiite and Kurdish parliamentary blocs in mid September, there was no public discussion of its contents. The text was nevertheless put to a referendum on 15 October 2005, and subsequently adopted. In this paper we analyse to what extent this constitutional text, born out of a desire to reshape Iraq along pluralistic lines (Part I), was quickly overtaken by the context and a slide towards authoritarianism by the Executive (Part II). The introduction of social pluralism in institutions was thus perceived as a risk of domination by the Shiite majority and a risk that Iraq might split into different communities (Part III).

# I. AN ATTEMPT TO RESHAPE IRAQ BASED ON AN IMPORTED PLURALISTIC POLITICAL APPROACH

## 1. A FRAGILE INSTITUTIONAL/COMMUNITY BALANCE INTRODUCED IN THE NAME OF SOCIAL PLURALISM

Political pluralism is an ambiguous constitutional concept that the new Iraqi Constitution tried to use to accommodate all communities. It recognises the ethnic and confessional pluralism of Iraqi society. However, indirectly it allows for insurmountable contradictions, the arbitration of which depends on the political majority in power. Since one community was a demographic majority that held power, how could the other minorities be integrated? The Constitution provided no answer to this question. It is thus incomplete, leaving a large part to compromise and political interpretations. For example, on the religious level, it provides for the coexistence of the two rules of law: positive law and religious law. It is a problematic coexistence, the details of which are not mentioned in the text. These ambiguities are found both on the confessional and legal levels and in the definition of the nature of the Iraqi state.

As from 2004, the nature of the new Iraqi state has been the subject of much debate among representatives of each community. The recognition of Iraq as an Islamic State was eventually included in the text, though this does not appear in Article 1, as Shiite representatives would have liked. As the demographic majority, Shiites were in favour of an “*Islamic*” State, but this name was rejected by Kurds and the lay clergy during the drafting of the constitution. So the term “*Republic of Iraq*” was selected and incorporated into Article 1. However, Article 3 also states that Iraq represents “*a part of the Islamic world*” and that “*the Arab people of Iraq*” are part of the Arab nation. Thus, even though the constitution does not formally recognise the Islamic character of the State, it introduces a confessional frame of reference. Since it was written, this article has been the subject of much debate, opening the question of what role should be granted to religious pluralism. It is often cited as the prelude to a partition of the country along confessional lines.

On the confessional level, the constitution protects “*the religious rights to freedom of religious doctrine and practices*” of all individuals. Christians are mentioned

by name, as well as the Yazidis and the Mandaeans-Sabaeans<sup>10</sup>. On the other hand, it is said that holy places have legal personality because of their “*religious and civilisational*” nature. The Iraqi State guarantees and protects these places and the free practice of religion (Article 10). Article 39 provides that in matters of personal status, Iraqis are free to abide by the rules of their respective religions, faiths, beliefs and choices. Every individual enjoys freedom of thought, conscience and doctrine (Article 40). The followers of religions are free to practice their religious cults and can manage their properties and institutions.

In legal terms, the fact that Article 2 recognises Islam as a fundamental source of legislation represents a compromise between the drafters, who wished Islam to be *one* of the sources of law, and those who wanted Islam to be *the* source. Article 2 is thus the subject of much debate, with certain politicians seeing it as the beginning of a theocratic State<sup>11</sup>.

Since the Constitution is unable to resolve the matter, the impact of this article on the law should be measured in practice. The nature of its application depends largely on who is considered to be an authority in interpreting the Constitution. In fact, the use of Islam as a source of law allows men of religion, particularly Shiite clergy, to informally influence the Shiite political parties in power. In this way, political actors can make a religious reading of the Constitution and challenge the interpretation made by the Federal Supreme Court.

Religion thus plays an important political role. The Constitution recognises “*the Islamic identity of the majority of the Iraqi people*.” However, the Constitution goes further by prohibiting the enactment of laws that would be opposed to the “*constants and precepts of Islam*” (Article 2), but it also adds a degree of moderation with “*the principles of democracy, rights and fundamental freedoms contained in this Constitution*.” Article 2, however, is quite clear as to the weight of Islam in the Constitution, making it “*the official religion of the Iraqi State*” and “*a main source of legislation*.” In addition, it is stipulated that the Federal Supreme Court should be composed of judges and experts in “*Islamic jurisprudence*” (Article 87) and law. Its statute must be set by a law passed in Parliament by a two-thirds majority. In particular, the Federal Supreme Court must express its opinion on the constitutionality of laws and the interpretation of the provisions of the Constitution. It is thus difficult to know what interpretation the Court can offer, given the constitutional balancing act between sharia, democracy and human rights. For many Iraqi

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10. Joseph Yacub, “La marginalisation des chrétiens d’Irak”, *Confluences Méditerranée*, 2008/3 n° 66, pp. 83-98.

11. Haider Ala Hamoudi, “Ornamental Repugnancy: Identitarian Islam and the Iraqi Constitution”, *Legal Studies Research Paper Series, Working Paper n° 2010-35*, October 2010.

political actors, such a clause implies the risk of encouraging the rise of confessionalism, ultimately undermining civil liberties and human rights.

Regarding the form of the Iraqi State, the Constitution is vague and attempts to strike a balance between the wishes of autonomisation and the centralisation of power. Its preamble is deliberately imprecise in order to leave several avenues of compromise open between the various ethnic or religious communities. The text introduces the possibility of secession by a community and refers to the concept of "*ittihad*", a term that means "union" or "federation". However, Article 13 states that the Constitution is the supreme law for the whole country. This is to counter any desire for autonomy, such as in the legislation produced by the Parliament of Iraqi Kurdistan (created in 1992), or attempts at making the religious law produced by the Shiite clergy supreme.

The multiethnic nature of Iraq is recognised by Article 3. It was firmly rejected by the Sunni Arabs who advocated the recognition of Iraq as an Arab state, something unthinkable for the Kurds. The compromise that was found was to recognise Iraq as a member of the Arab League without referring to it as an Arab country. In order not to anger the Arabs, the Kurdish ethnic minority is recognised only in Article 4, which states that both Arabic and Kurdish are official languages. While the new Constitution remains ambiguous, the introduction of pluralism through the proportional representation of communities, introduced a new political domination: by both Shiites and Kurds. The de-Ba'athification policy initiated in 2003 by the United States veered towards the de-Sunnification of the country's political institutions.

In general, the communitisation of politics was accentuated by the foreign occupation of the country. From 2003 to 2011, the fact that a non-Iraqi supreme authority existed in Iraq required each player to negotiate with it in the name of community interests, instead of engaging in the search for national consensus. As seen during the English occupation of 1920, communitarianism is the corollary of foreign occupation, except that in 2003, the Americans did not address the Sunni Arabs in order to stabilise their power but those excluded from the system established by the British: the Shiites and the Kurds.

By giving an opportunity for a plural representation of Iraqi society, the 2005 Constitution profoundly redefines Iraq. It is a complete reversal of power in favour of the Shiites but also the Kurds, who were asked to become the main protagonists in the political reconstruction of the country. It started on 13 July 2003 with the proclamation of an interim government council by the US consul in Baghdad. This was a reversal of a century-old alliance. The former opposition to Saddam Hussein's regime, composed of anti-imperialist Shiite parties

close to Iran and Hezbollah, Kurdish parties, Communists and representatives of other ethnic and religious communities, were welcomed as full partners by Paul Bremer, while Sunni Arabs were largely marginalised.

But unlike the Sunnis, Shiites are demographically and politically predominant, so much so that they risk crushing the other communities. They make up 54% of the population, enjoy an independent religious leadership of States (the *marja'iyya*) and see themselves as the spearhead of Iraqi identity and guardians of its independence. From the beginning, Shiite leaders demanded the return of sovereignty and independence for the country. For their part, the Americans were frustrated by this annoying ally, yet they were obliged to deal with the Shiite personalities in order to stay in Iraq, as the Kurds alone were unable to act as an ally.

In this context, the communitisation of politics was encouraged. With the choice by the occupying power of ethnic and religious political representation, a community conception of power was introduced. Instead of promotion according to their political opinions or skills, individuals were forced to position themselves according to their sense of belonging in the community. However, the community one-upmanship involved in such a reconstruction of power prevented the occupying power from satisfying all the population. The reconstruction of Iraq was therefore to block the vagaries of one community over the other (Arabs against Kurds, Shiites against Sunnis, Turkmens against Kurds...). A mechanism of potential community conflict was thus created, promoted by the very drafting of the Constitution.

The most frequently cited example is Grand Ayatollah Sistani, regarded as the supreme religious authority by Iraqi Shiites and backed by Iran. In 2003, he emerged from his quietism and moved closer to the Iraqi Shiite parties. He seemed to support the idea that if Saddam's regime could only be brought down by outside intervention, efforts should then be made to reconstruct a new regime. By becoming involved, he helped blur the lines between the demographic majority and the religious majority. Sistani thus used his religious authority to dub the new political system, a position that was greatly misunderstood by non-Shiites. In exchange for his support, the Grand Ayatollah forced the Coalition authorities to compromise on the constitutional process in which the role of Islam was reaffirmed. As a consequence of this policy, on 22 September 2005 the Ayatollah called for a "yes" vote in the constitutional referendum.

However, irrespective of his will to stabilise the country, "the right to a majority" that he was demanding condemned Shiites and Sunnis to opposing each other. To prevent domination by a majority (even though democratically elected) and to protect the fragile ethnic and confessional balance introduced by the



Constitution, an attempt was made to set up a quota system. The positions of responsibility in government and public service were distributed among the communities according to a distribution system claiming to be fair.

The Iraqi Constitution reflects a liberal form of consociationalism, a political system that establishes power-sharing between all groups and beyond any majority logic<sup>12</sup>, which is supposed to take all communities into account<sup>13</sup>. It seeks to promote plural representation within the executive branch and public service, and it allows for the development of territorial autonomies that can be administered by local communities. To respect the self-determination of each community, it introduces a flexible state model that can be transformed into a federal system. Article 121 states that communities are considered administrative units as well as ethnic categories. Article 122 adds that the Constitution guarantees the administrative, political, cultural and educational rights of the country's different nationalities, such as Turkmens, Chaldeans, Assyrians and all other components of the population.

Article 14 declares that all forms of ethnic or religious discrimination are against the law. Article 4 officially recognises the Turkmen, Assyrian and Armenian minorities and grants them the right to speak and teach their languages. The protection of minorities is rather vague and depends on region-specific constitutions. Article 12 refers to the Christian calendar, and this may be regarded as official recognition of the status of Christians. Although religiously neutral, Article 10 acknowledges the holy sites in Iraq and may be interpreted as a symbolic recognition of Shiite religious leaders. Despite Article 40, which recognises individual freedom of thought and conscience, the main problem is that the recognition of confessional rights is for the benefit of the community and not of the individual. By limiting the distribution of power to negotiations between ethnic and religious groups, the Constitution and the jurisprudence that is later applied take part in communitising Iraq's political life.

Moreover, the choice of an administrative division following the 18 governorates has the effect of dividing ethnic groups and communities among different territories with the risk of condemning some local minorities to a second-class rank within their province. The decentralisation process introduced creates the problem that it allows a community or ethnic group to dominate a local minority and, as such, could facilitate not only national but also local communitisation.

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12. Arend Lijphart, "Democracy in Plural Societies: A Comparative Exploration", Yale University Press, New Haven, 1977.

13. John McGarry, Brendan O'Leary, "Iraq's Constitution of 2005: Liberal consociation as political prescription", International Journal of Constitutional Law, vol. 5, n° 4, 2007.

## 2. A CLIMATE OF PERMANENT CONFLICTIVENESS ENCOURAGED BY THE INTRODUCTION OF CONSTITUTIONAL PLURALISM

The Constitution is thus written in a context in which sectarian discourses had become the norm, as much for the countries interfering in Iraq as for local actors. This had the effect of polarising the public space and resulted in a situation of potential conflict fundamentally determined by two factors.

Firstly, neither the United States nor their local allies took responsibility for the political reconstruction of the country, and this led to the development of long-lasting practices that extended beyond the legal framework provided by the Constitution.

Secondly, the improvisation of the United States and the lack of collective consultation in the establishment of new institutions led to years of political “tinkering” with the Constitution adopted in 2005. An increase in crime accompanied the comprehensive dismantling of the structures of the old regime and the reconstruction of a political system based on a sectarian conception of power. In addition, the exclusive promotion of former politicians out of touch with society and the behind-the-scenes negotiations on a Constitution that reflected an agreement between Shiites and Kurds at the expense of the Sunnis finally discredited the new political system.

In 2005, despite the strong turnout in the elections, the introduction of constitutional pluralism failed to create a strong and popular new leadership, and put the country on the path to sectarian violence and civil war. The 2005 elections also confirmed the breakup of communities, with each person voting for his own. The drafting of the Constitution was fully in line with this process of communitisation of the Iraqi political scene. Against all social reality, political actors as a whole were tempted to make a confessional or ethnic interpretation of the country. All events involved in the constitutional process contributed to the institutionalisation of the community divisions: the American legal experts who drafted the provisional Iraqi Constitution in February 2004, the Sunnis who boycotted the legislative elections of 30 January 2005, the constitutional referendum of 15 October 2005 that adopted federalism, or even the second legislative elections of 15 December 2005. Therefore, at the institutional level there was a cycle of community confrontation that the first attacks merely made worse.<sup>14</sup>

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<sup>14</sup>. On 29 August 2004, an attack leaves 83 people dead in Najaf, including Ayatollah Muhammad Bâker al-Hakim, and marks the beginning of a Sunni-Shiite confessional war. On 23 November 2006, an attack kills more than 200 people in Sadr City, the largest Shiite neighbourhood of Baghdad.

From 2006, the spiral of inter-community violence slipped from the grasp of all the actors involved.

However, the brutal introduction of pluralism and the remarkably rapid liberalisation of political and economic institutions did not solve the situation. On the contrary, the Constitution wavered in a situation in which it was considered illegitimate.

Facing the risk of a massive boycott by Sunni Arabs of both the constitutional referendum and the parliamentary elections, and fearing that this could strengthen the insurgency, the United States arranged a last-minute agreement between the parties in early October 2005. The main result was the insertion in the Constitution, which had already been printed and circulated, of a clause ordering a review after the December elections. In exchange, Sunni Arabs agreed to participate in the referendum (in accordance with the provisional electoral law, the Constitution would be passed provided it was approved by an absolute majority of voters in the country and was not rejected by a two-thirds majority in at least three governorates). In fact, it was widely endorsed in the Shiite and Kurdish areas and rejected in the Sunni Arab areas. Nevertheless, Sunni Arabs managed to exceed the threshold of two thirds in two governorates, Anbar and Salahaddin, failing by only 85,000 votes to achieve the required number in a third governorate, Ninewa. Sunni Arab leaders immediately denounced what they saw as an injustice, saying that fraud had prevented the rejection of the Constitution, which the Iraqi independent electoral commission denied, claiming that the Constitution had been ratified by the approval of the population.

In short, the constitutional process accentuated the gaps between communities that it was supposed to bridge and ignited an insurgency that it was supposed to calm. It also encouraged ethnic and sectarian violence through a text that contained the seeds of future conflicts in its ambiguity, contradictions, dissents and numerous gaps. In addition, it was a weak document, as it was not the result of consensus and had been approved by only two of the three main Iraqi communities. For many Iraqi political analysts and actors, the text opened the way for the dissolution of Iraq, when it was supposed to bring national understanding<sup>15</sup>. The referendum of 15 December 2005 took place in a highly polarised country that was sinking into violence. The population went to the polls for the third time that year. The electoral system was then adapted to introduce proportional representation on the basis, not of a single district for the whole country, but of eighteen provincial districts. Therefore, Sunni Arabs participated in the elections, realising that

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15. Interview with elected Sunni Arabs of the Governorate Council in Kirkuk.

following any boycott or any other form of absenteeism, they would be deprived of a large number of seats in the governorates where they formed the majority. Thus, given the pre-referendum agreement on the revision of the Constitution, there was no call for a boycott by the Sunnis. Instead, according to testimonies, the insurgents encouraged Sunni Arabs to register and vote. Participation was again high, even among Sunni Arabs. But, perhaps even more than in previous elections, Iraqis voted for their own community: Kurds, Shiites or Sunni Arabs (although some other minorities still won a seat)<sup>16</sup>. Iraqis confronted a lack of national unity while the Constitution symbolised the divided nature of the country. Despite the expected effects of the introduction of democratic mechanisms, the first months of the new constitution came up against the local structuring of the political field. It seemed that the power that resulted from the polls had only limited control over society.

The Constitution provides for proportional representation rather than majority representation (which could give a truncated result of reality). However, the proportional system encourages a process of fragmentation that divides the political class, as do inter-ethnic or inter-religious relations.

At the security level, the US occupation of Iraq unleashed a spiral of unprecedented violence, with several wars that fed into each other. The US plan to make Iraq a showcase of democracy in the region quickly slid into an inter-community conflict. As from 2005, the Americans began to lose control of the “state building” process that they had intended to support.

### 3. A CONSTITUTION AT THE HEART OF POLITICAL DEBATES

However, a model of governance has been exported and is central to Iraqi political life. Since 2005, parliamentary and provincial elections have shaped the balance of power that the Iraqi government must put to the vote. Constitutionally-speaking the achievements were several, such as the recognition of federalism, freedom of expression, especially for the media, freedom of association, freedom of religion and the rights of minorities. These rights may be perceived as derisory in the prevailing context but they are still an asset in promoting a pluralistic expression of society. Thus, despite its ambiguities, the Constitution remains central to political debate.

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**16.** The civilian “center”, represented by Iyad Allawi, of the Iraqi National List (INL), almost disappears. The United Iraqi Alliance, which includes the movement of the religious populist Muqtada al-Sadr, won 128 seats out of the 275 in the National Assembly. The Kurdistan coalition (this time without the Kurdistan Islamic Union) comes in second with 53 seats. The Iraqi Consensus Front, a coalition of Islamic Sunni Arab parties, is third with 44 seats.

Paradoxically, the many contradictions in the constitutional text, and the fact that the majority of actors can refer to it in asserting their rights, lent a central role to the Constitution. It was also at the heart of political debates and was regarded by politicians as a national framework for negotiations.

Thus, a previously unseen political culture gradually spread during the 2005 and 2010 elections. For example, respect for certain regulations under the rule of law, a spirit of conciliation, the search for compromise, the rights of minorities... For the first time, Iraq experienced practices unknown until then. The political class threw itself into strategies to combine alliances between different groups in Parliament and within the provincial councils. For example, the inability to form a government after the legislative elections of 7 March 2010 finally resulted, after months of negotiation, in the return of Nûri al-Mâliki as Prime Minister. Electoral rules tended to become the reference for political parties which, until that time, had referred mainly to Islamic law.

However, many problems remained unsolved. The hasty withdrawal of the United States in 2011 occurred before any revision of the Iraqi Constitution as regards the most sensitive issues could be completed. The issue of the territories disputed between Kurdish, Arab and Turkmen communities was suspended, as were the allocation of resources, the relationship between the central government and the provinces, the prerogatives of the Prime Minister, the institutionalisation of counterpowers, the internal organisation of the Parliament, the control and structure of the repressive apparatus...

Therefore, everything was subject to negotiation as there were no standardised, well-defined, institutionalised and publicly known constitutional practices. This indecisiveness was fully internalised by the actors who opted for a strategy of extending the political crisis and blocking debate in order to perpetuate their power. In this context, it should be noted that partisan interpretations of the Constitution have produced many instances of authoritarian drift.



## II. A DRIFT TO AUTHORITARIAN CONSTITUTIONAL PRACTICES

### 1. COMMUNITY CLIENTELISM RATHER THAN PLURALISM

The 2005 elections established a new balance of power in favour of Shiites and Kurds. New political actors appeared and attempted to develop their political bases within their respective communities. Locally, clientelist strategies and the use of ethnic and religious identitarian references were seen as tools of mobilisation and redistribution of potential resources. The legitimacy of Shiites and Kurds came from their historic opposition to Saddam Hussein, and their experience and resources allowed them to dominate the communities in which they developed social and political control networks from the top down.

In the case of the Kurds, their two main political parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), have shared Northern Iraq since 1991. Equipped with their own institutions, they manage their territory autonomously with their own Parliament, law-enforcement forces, diplomatic networks, etc. The fall of Saddam Hussein in 2003 allowed them to become true regional actors. As allies of the United States, they emerged as key players for Baghdad, where they positioned themselves as pivotal actors, able to make or break coalitions in power. Their control over several ministries and the position of President of the Republic, which came from their quotas, also allowed them to play a central role in the operation of the state apparatus. In the elections of 15 December 2005, the coalition of Kurdistan came second with 53 seats in the National Assembly out of 275; the Shiite parties grouped under the United Iraqi Alliance won 128 seats, while the Sunnis in the Iraqi Consensus Front took third place with only 44 seats.

These results led to deadlock. Since two thirds of the votes are required to form a government, no list can impose its will, thus forcing the parties to forge alliances to obtain the majority needed to rule. But the parties were unable to form a coalition and by the end of April 2006, there was still no government. The main obstacle was the opposition of a group of parties against the United Iraqi Alliance (Shiite) to the choice of Prime Minister, who was generally regarded as incompetent. The Kurds saw him as opposing any attempt to attach the oil-rich city of Kirkuk to Iraqi Kurdistan.

For Sunnis, their systematic marginalisation made it difficult for their parties to emerge on the political scene. As they are more dispersed, they have fewer resources to maintain a coercive role in their community. Iraqi politics were thus structured into three community groups: Shiite, Sunni and Kurd. It was only for the second elections of December 2005 that Sunni forces regrouped for the first time in political coalitions. Sunni political actors were aware that increased fragmentation of their voices only accentuated the impasse in which they found themselves. The most influential Sunni coalition that formed at the time was the Iraqi Accord Front, an Islamic-nationalist alliance led by the Iraqi Islamic Party, an offshoot of the historic Muslim Brotherhood movement in Iraq. This Front intended to end the occupation, work towards the formation of a national government and abolish the system of ethnic and confessional quotas established in Baghdad in 2003. The other great alliance, born out of its refusal to join the Accord Front after the Islamic Party decided to support the Constitution, was the Iraqi Front for National Dialogue, led by Saleh al-Moutlak, a former member of the Ba'ath Party. He became known particularly for his ardent nationalism and his opposition to confessionalism.

As of 2005, the situation became explosive, according to political-community groups. However, the representative system introduced by the Constitution seemed to work in that no political group was able to gather enough votes to exercise power alone. In the parliamentary elections of 7 March 2010, the issue of the formation of the government arose again. Split into two rival coalitions, the Shiite parties were at the bottom of the Sunni Arab list. The situation remained blocked for several months before a compromise could be found between the two Shiite lists, the Kurdish bloc and certain elected Sunni Arabs. Until that time the government's stability had depended on a delicate balance of alliance between these parties. In this context, the Shiite demographic majority tended to impose itself as a political majority.

## **2. DENIAL OF PLURALISM AND DOMINATION OF THE EXECUTIVE POWER BY THE SHIITE MAJORITY**

The introduction of constitutional pluralism established a political system based on community affiliations. However, the dynamics of violence quickly destabilised the fragile ethnic-confessional balance introduced by the Constitution even further. Prisoner of the dynamics of community conflict, the Iraqi population had reached an impasse where all attempts at short- or medium-term stabilisation were impossible.



Faced with the impotence of the new political elite to reach consensus in order to make the new institutions operative, new non-elected actors tended to prevail. This is particularly the case of the Shiite clergy that sought to position itself as arbiter by influencing any interpretation of the constitutional text. Grand Ayatollah Sistani, the highest Shiite religious leader in Iraq, became a symbolic icon whose interventions in politics forced an alignment of Shiite parties. But the interventions in politics of the Shiite religious sphere remained limited. Religious jurists were in no hurry to get involved in political affairs, even if under Articles 2 and 92 of the Constitution sharia remained a source of inspiration.

Moreover, the symbolic power of the *Marja* at the end of the civil war should not be confused with the actual practice of power. Sistani was not seeking to become involved in political decisions. The fact that they took a sectarian stance was partly due to the decisions of the political elite to use religious identity as a propaganda tool.

In fact, Shiite parties were particularly involved in rebuilding the Iraqi State<sup>17</sup>. Mindful of their numerical superiority, they attempted to dominate the State's centralisation process. Thus, Prime Minister Nouri al-Maliki, in power since 2006, sought to assert himself by controlling the state apparatus. This allowed him to stabilise his power vis-à-vis other community and political groups.

Nouri Al-Maliki thus managed to establish himself as the strong man in the country though he had to deal with many detractors. As he tended to dominate the Iraqi political scene in an authoritarian manner, he became increasingly isolated. Without a majority in Parliament, he was weak in contrast with the Kurds, who could make his a minority administration by leaving the government coalition. In addition, the dynamics of violence prevailing in Iraq forced Maliki to play a sectarian game even though the Shiite community base was divided. As he could not afford to use only the Shiite card to stay in power, Maliki attempted to play the card of Iraqi nationalism so as to distance himself from his opponents, who used various strategies to seek to project themselves beyond the confessional divide. Maliki used in turn the control of state resources, the inability of his opponents to agree on a successor, and the US and Iranian agreement on the primacy of stability in Iraq.

However, Maliki also resorted to the Constitution to reinforce his power and stop his opponents in the name of State security. Article 7, which rejects the old pro-Saddam Ba'athists, enabled him to discredit any of his Sunni opponents

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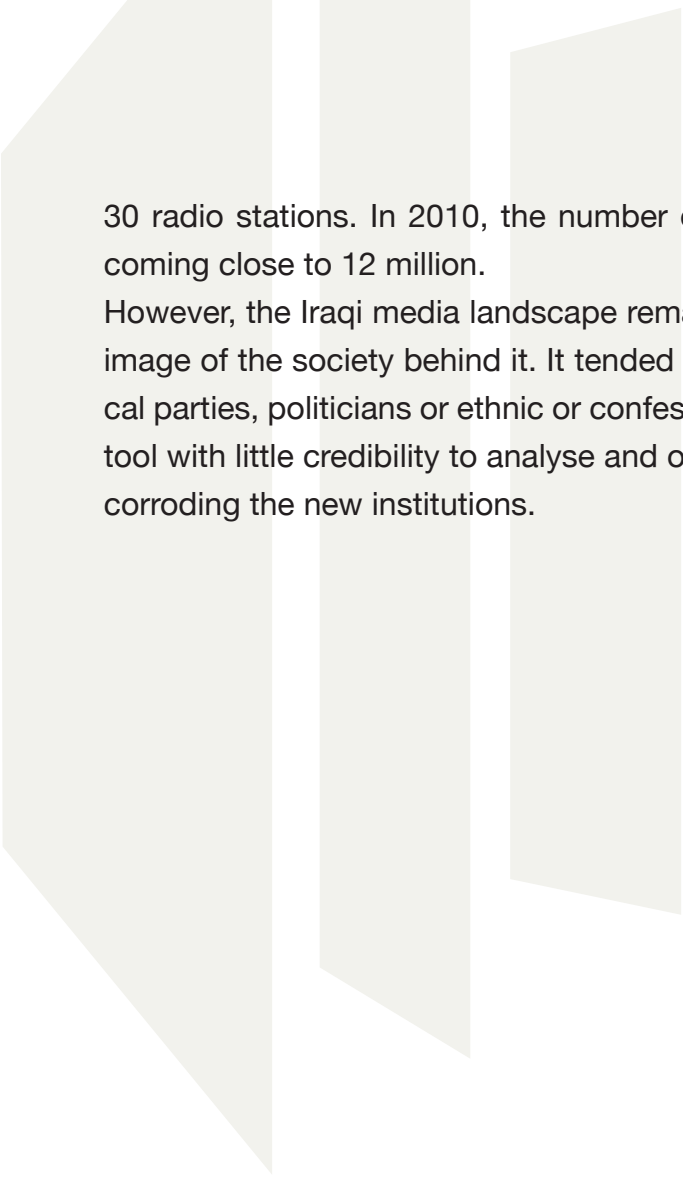
17. Jean-Pierre Luizard, «La communauté Chiite en Irak sous le coup de l'implosion générale de la société», Hérodote, 1 May 2008.

by branding them as former pro-Ba'athists. This is reinforced by Article 4 of the anti-crime law that allows the Executive "*to detain and interrogate individuals suspected of terrorism.*" This article grants the right to issue an arrest warrant on the basis of mere suspicion. Its paragraph 2 is the subject of particular debate as it allows for the arrest and sentencing to death of individuals who "*cooperate*" with "terrorists". Now this article is open to broad interpretation and the Executive uses it for its own reinforcement. It does not hesitate to sentence its political opponents on grounds of "terrorism", as in the case of the Vice President of Iraq, Tarek Al-Hachemi. In 2012, when the last US troops had just completed their withdrawal, Iraq sank into a new political crisis when the Shiite Prime Minister Nouri Al-Maliki issued an arrest warrant for Vice President Tarek al-Hachemi, also demanding the removal of his Deputy Prime Minister Saleh al-Moutlak, two Sunni figures who belonged to the Iraqiyya opposition bloc, presently the second political force in the country. These direct attacks against Sunni Arab representatives pushed this community to stick together and present a common front against the Prime Minister. Since 2011, there has been a proliferation of protests by Sunnis against the political power held by the Shiite political elite.

However, in the system of proportional representation introduced by the Constitution, no party was really strong enough to counterbalance Shiite power. Even if Article 2 warns against the passage of laws that violate democratic principles and the rights of citizens, this fuzzy recommendation has led to imprecise control over the Executive's actions. Furthermore, Article 36 establishes very weak protection of the freedom of speech, the press, the right of the people to assemble in public and to demonstrate peaceably to petition for their rights. This article also prohibits offences against morality or public order. Such restrictions left the field open to authoritarian tendencies in the Iraqi political system.

Freedom of expression was also restricted and communitised. The various reports on freedom of expression in Iraq indicated that despite the new constitutional framework, it was difficult for the media to speak freely about sensitive topics. However, faced with a corrupt political class unable to restore security, Iraqi society was also engaged in an unprecedented movement to ensure free speech. The overthrow of Saddam Hussein's regime gave rise to an unprecedented proliferation of media of all types (television, radio, newspapers, magazines, websites) in Iraq. Instead of three or four official media strictly controlled by the Ba'athist regime, Iraqis now had the choice of hundreds of publications and scores of radio and television stations.

When the constitutional debate began in 2005, there were already more than 200 titles being published regularly in Iraq, with over 15 satellite channels and



30 radio stations. In 2010, the number of Internet users in Iraq exploded too, coming close to 12 million.

However, the Iraqi media landscape remained chaotic and communitised in the image of the society behind it. It tended to be divided among the various political parties, politicians or ethnic or confessional communities. Therefore, it was a tool with little credibility to analyse and objectivise the community drift that was corroding the new institutions.



# III. COMMUNITY PRACTICE OF CONSTITUTIONAL PLURALISM

## 1. AN EXPLOSIVE COMMUNITY CONTEXT

At the time of Saddam Hussein's fall in 2003, Iraqi society was still reeling from the violence of the dictatorship and the effects of the embargo that had isolated the country since 1991. Identitarian tensions were then at their height. The United States only served to reinforce them by promoting the creation of institutions relying on an identitarian architecture. While they had also suffered under the old regime, the stigmatisation of Sunnis as supporters of Saddam Hussein had the effect of uniting them against the new Iraqi State<sup>18</sup>.

This rudimentary vision of Iraqi society had a performative effect and encouraged an interconfessional civil war that reached its peak between 2006 and 2008. There was an ethnic homogenisation of the territory. State institutions were overshadowed by particularistic symbols (Kurd, Shiite flags...) while the after-effects of the civil war continued to traumatise the population. Iraqis were prisoners of a political system shaped by American imagination and strengthened by regional divisions. In this context of latent civil war, the sharing of national resources was an issue that maintained the inter-community conflict with a rise of regional players demanding autonomy in their energy policies. The issue of resource sharing was thus a subject of conflict between the central and regional authorities.

While Article 110 states that the federal government remains the sole arbiter, this power is limited by several other articles. On the one hand, Article 111 provides that *“oil and gas are owned by all the people of Iraq, in all regions and governorates.”* On the other hand, Article 115 recognises the sovereignty of the regions, considering that any power that is not exclusively federal belongs to the regions, and in the event of a dispute with the central government, the decisions taken by the region prevail. Furthermore, Article 112 states that *“the federal government—with the governorates and producing regions—(should) take the necessary measures for the management of the oil and gas extracted from current fields.”* On the basis of this statement, the government of Iraqi Kurdistan

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18. Hamit Bozarslan, Dawod Hosham, «La société irakienne : Communauté, pouvoirs et violences», Karthala, March 2003.

considered that the Constitution referred strictly to deposits exploited at the time of its adoption in 2005.

The issue of resource sharing became highly confrontational. In February 2007, an agreement seemed to be found on hydrocarbons but the text was rejected by the Iraqi Parliament. However, an annex to the agreement provided that if the text was rejected, the Kurdistan Regional Government (KRG) was authorised to sign its own contracts. Based on their own interpretation of the Constitution, Kurds tried to negotiate directly with companies without going through the central government. The conflict went a step further when in the summer of 2011, the GRK, bypassing Baghdad, signed exploitation agreements with four foreign companies (Exxon Mobil, Chevron, Total and Gazprom).

In response to what it considered to be a violation of the Constitution, the Iraqi government decided to stop paying the oil dividends owed by Baghdad since May 2011. To this, the authorities at Erbil (capital of the Kurdistan region of Iraq) replied in turn with a threat to suspend the shipments of hydrocarbons extracted in their territory in 2012.

## **2. TOWARDS A BREAKUP OF IRAQ AS A CONSEQUENCE OF PLURALISM?**

The issue of the breakup of the country into several community territories is subject to different positions taken by the Iraqi political actors. The Constitution provides for three levels in the federal organisation—central government, regional governments and provincial governments—and Article 70 recognises the right of governorates to become autonomous as long as the process is overseen by the federal government. Article 115 provides that the creation of a region may also be a local initiative, approved by referendum. In addition, if the governorate councils of three Iraqi provinces vote in favour, a constitutional reform may be requested. This motion particularly allows the three Kurdish provinces to retain a veto right to amend the Constitution. However, it is unclear whether this federalism is the end point of the current political system or the starting point for a new state structure. In the current uncertainty, the future of the country's institutions depends on the willingness of community stakeholders to reach a consensus. In this context, the application of the constitutional pluralism introduced in 2005 is seen as representing a risk of breakup of the country.

Thus, though the Constitution provides for regulation of power between the central State and the provinces, some of these are already clearly engaged in a process to gain autonomy. This is the case of Iraqi Kurdistan and certain Sunni regions.

In 2003, the Sunni Arabs were fundamentally hostile to federalism, which they saw as a danger to Iraq's national unity. During 2011, the Sunnis began to consider the option of secession as a way of escaping their fate of becoming a beleaguered minority. This unexpected change had potentially wide-ranging consequences. It began when the Sunni Oussama al-Noujaifi, current spokesman of the Parliament, stated that a de facto separation of the Sunni Iraqi provinces to form an independent region would be an acceptable horizon if the central government continued to discriminate against Sunni political actors.

Since then the configuration of Iraq has evolved and federalism is no longer seen by Sunnis as an attack on the integrity of the country, but as a serious means of putting pressure on the central government to regain the power that, they say, the United States and their allies have taken away from them. Although very divided on ideological and political levels, the Sunnis were united by a resentment of the political regime imposed by the occupier and were faced with possible exclusion.

Unlike the Sunni Arabs, Kurds were perceived by the United States in 2003 as natural allies, which reinforced their inclination to gain autonomy and their claim to the disputed territories. Kurdish politicians were the strongest supporters of decentralisation while seeking to be involved in central government. Although they had run their territory autonomously since 1991, in 2003 they decided to engage in the construction of the Iraqi political system as long as it recognised their autonomy. Kurds therefore voted overwhelmingly in favour of the Constitution, which generally favoured them, and over which they had a veto right in the event of a potential constitutional reform.

However, this commitment to the constitutional process could not be taken for granted. Kurds were initially opposed to the form of federalism envisaged by the November 2003 agreement ("Agreement of 15 November" between the Coalition Provisional Authority and the Interim Governing Council), which was based on an Iraq comprising the 18 existing provinces (three predominantly Kurdish), leaving some territories with a Kurdish majority, such as Kirkuk, out of their control. Only a series of negotiations allowed a compromise to be reached on the Transitional Administrative Law signed on 8 March 2004. This resulted in the recognition of a Kurdish region equivalent to that run by the Kurds semi independently since 1991 (without Kirkuk), raising Kurdish to the rank of an official language (with Arabic), and the promise of a census in Kirkuk before any final decision on the city could be made (this census was expected to reveal the number of people claiming to be Kurd, Assyrian-Chaldean, Arab or Turkmen). All these Kurdish demands were accepted or imposed in the new Iraqi Constitution passed in 2005 with a view to

its comprehensive regulation before 2008. But in fact, the relationship between Baghdad and Erbil increasingly deteriorated, with regular tensions between the army of the KRG and the Iraqi army.

The Kurds maintained an ambiguous attitude. While they played an important role in federal institutions, they claimed to remain independent under Iraqi law by referring to Article 113, which recognises the existence of the Kurdish regional government. On the other hand, they used Article 116, which recognises the responsibility of each region to draw up its own constitution, and Article 117, which stipulates the responsibility of each region over the security of its territory. At the same time, they followed a process of Iraqisation (participation in the construction of the political system, constitutional debates, holding the position of President of the Republic...) but also had their own institutions and were largely autonomous in the management of their territory. Nevertheless, they regularly threatened to leave the Iraqi national system if the Constitution was rendered meaningless.

Since 2009, the president of Iraqi Kurdistan is no longer elected by the Kurdish Parliament but is designated by universal suffrage. This makes him a figure of almost undisputed legitimacy in Kurdistan and allows him to deal as equals with the Iraqi government. The issue of the status of the territories disputed between the KRG and the Iraqi central government remains an unresolved problem and threatens the country's unity.

Since the creation of Iraq in 1920, Kurds and Arabs have both claimed sovereignty over a territorial area with a Kurdish demographic majority but one which is rich in oil<sup>19</sup>. Until 2003, Baghdad had resorted to several military operations to control and Arabise these territories. In 2003, the Kurds offered their full support to the United States, which allowed them to take military control of these areas. The Transitional Administrative Law (November 2003) now recognises the existence of a wider Kurdish region:

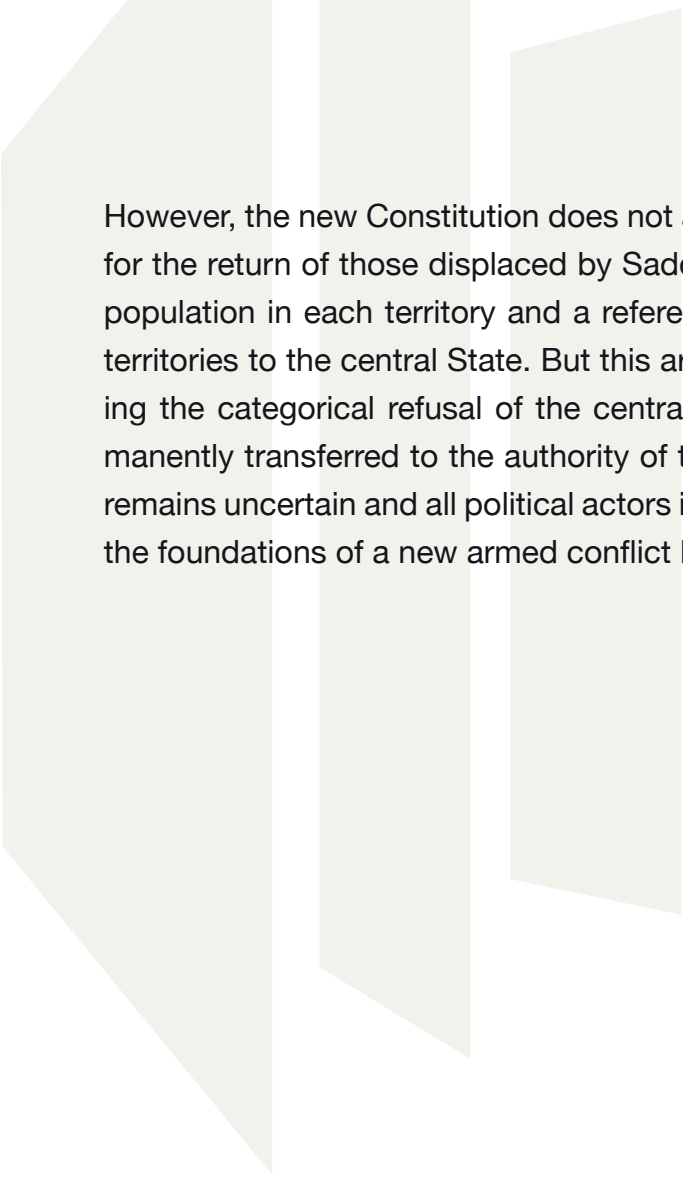
(Chapter 8, Article 53, §A) *“The Kurdistan Regional Government is recognized as the official government of the territories under its control since 19 March 2003 in the governorates of Duhok, Erbil, Suleymanie, Kirkuk, Diyala, and Neneveh.”*

But the passage from Arab to Kurdish domination of these areas has solved nothing. Therefore, the conflict over the sharing of oil revenues and the definition of the status of these territories continues. By posing as the defender of State interests and the protector of national integrity, the Executive can rally the support of the Shiite and Sunni Arab population.

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19. International Crisis Group, “Iraq and the Kurds: The Brewing Battle over Kirkuk”, Middle East Report, 18 July 2008.





However, the new Constitution does not address this issue. Article 140 provides for the return of those displaced by Saddam Hussein's regime, a census of the population in each territory and a referendum to decide whether to attach the territories to the central State. But this article has not yet been enforced following the categorical refusal of the central government to see new regions permanently transferred to the authority of the KRG. The future of these territories remains uncertain and all political actors interviewed see in this territorial dispute the foundations of a new armed conflict between Kurds and Arabs<sup>20</sup>.

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**20.** Liam Anderson, Gareth Stansfield, "Crisis in Kirkuk: The Ethnopolitics of Conflict and Compromise", University of Pennsylvania Press, Philadelphia, 2009.



# CONCLUSION

After having encouraged an inter-community conflagration in Iraq, the United States withdrew their military presence leaving behind many unresolved problems. In practice, the constitutional recognition of pluralism has reinforced community tensions while the system of representation has obstructed the functioning of institutions at the expense of minorities. Here we can see the legacy of decades of ethnic discrimination and a policy of homogenisation of the territory that make it difficult to suddenly introduce a liberal model of cross-community integration. We find the idea of constitutional pluralism in every actor's discourse, but in practice the concept is meaningless.

In fact, Iraq is still going through a period of political transition tormented by the autonomisation of the cycle of violence, incited by the interference of regional powers. In this context, each community tends to seek refuge in identitarian references rather than agree on a national consensus. The most territorialised communities, like that of the Kurds, prefer to look to potential independence rather than try to fit into a fake State. Others like the Sunni Arabs hold an ambiguous position. Formerly dominant, they demand a return of the State not by conversion to democratic values but born out of nostalgia for their former position within it. Other minorities, such as the Turkmens and the Assyrians, are also in favour of a strong and impartial State since they are unable to secure their own territorial space. As for the Shiites, they see in the reconstruction of the State a way to turn their demographic majority into political domination.

However, either with a strategy of opposition or one of integration, the relation to the State is an essential element in the positioning of each community. The new political institutions have nonetheless become places of debate and power. If the functioning of institutions is not yet independent of political parties, it is expected that they will continue to engage in processes of consociationalism and federal arrangement rather than in a brutal resolution of conflicts.

The constitutional practices of each actor are to be observed carefully: executive power sharing, proportional distribution of public sector jobs, constitutional reforms, ethnic and religious discrimination policies. Finally, the pacification of the country is not only based on the enforcement of the letter of the Constitution, but on the will of the different communities to engage in the new institutions. The issue of the articulation of social pluralism has yet to be resolved.



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# BIOGRAPHIES

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