



Identitarian Violence and Identitarian Politics: Elections and Governance in Iraq

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I. INTRODUCTION

Over the past few years, I have observed numerous commentators, pundits, and self-appointed experts of nearly every political stripe describe their views on whether or not the U.S. was wise to have “allowed” early elections in Iraq.¹ Generally the answer to the question tends to lie in the affirmative among defenders of the Bush administration, and in the negative among its detractors. After living in Iraq for nearly four cumulative years following the fall of the Saddam regime, it appears to me that any cogent response to the question is far more nuanced than the yes or no answer it seems designed to solicit.

Nevertheless, I offer this skeletal answer, the basis of which I will seek to explain in this Essay: This is the wrong question to ask. The question, rather, should be, to the extent that early elections take place in Iraq, what is it that the U.S. and the international community might do to limit any civil conflict that might arise as a result, and what are the costs associated with any such policy?

This Essay addresses these questions in three parts. The first part sets forth why the question being asked, the wisdom of early elections, is the wrong one. In fact, the question is not just misplaced, but there is almost a certain postcolonial arrogance associated with its premise. When asked as a policy matter, the answer is expected to

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¹ For a recent, unusually thoughtful example, from a true expert, see Feisal Istrabadi, *A Constitution without Constitutionalism: Reflections on Iraq’s Failed Constitutional Process*, 87 TEX. L. REV. 1627 (2008).

help the U.S., and the broader international community, learn more about whether or not it should have dealt with the situation differently, and what lessons could be drawn from the Iraqi experience that might be applicable elsewhere. What the native population may have wanted, or even demanded, seems almost from the terms of the debate to be unworthy of consideration. In fact, in the case of Iraq, local demands controlled the outcome almost entirely, and the only lesson that might well be drawn from Iraq is that in some cases it is a waste of time to ponder whether or not early elections are a good idea, because those doing the pondering will exercise at most marginal control over the timing.

Context, as always, is everything. In Iraq, a majority Shi'a population was fiercely repressed under one of the cruelest and most totalitarian dictatorships in the contemporary era. It is virtually inconceivable that the leaders of any such population in modern times even casually aware of global trends respecting democratization would not couch their demands for political recognition in democratic terms and demand immediate elections. Once the demands were so couched, with what one must assume was utmost sincerity on the part of the population in question, countering such demands, or even substantially slowing their recognition, was all but impossible.

Part II will show that, as many suspect, the rush to democratic, and indeed constitutional, rule in Iraq was precipitous and destabilizing, even if inevitable. It cemented the notion that power is projected on the basis of parties and institutions based almost entirely on sect or ethnicity, and not on political platform or ideology. This rather poisonous theory now seems nearly impossible to displace in the near term, and indeed is thoroughly assumed in Iraq's institutions of governance, such that the major objectives of the various party lists seems to be increasing their ethnic or sectarian representation in the government rather than in engaging in effective governance. Indeed, effective governance is a rather poor political strategy to ensure continued parliamentary representation once it is conceded that one can only hope to draw votes within an ethnic or sectarian group.

The recent March 2010 elections hardly seem to change this result. While much was made of the fact that Ayad Allawi of the Iraqiya List was a Shi'i who managed to win Sunni support, less discussed was the fact that beyond possibly a secular Shi'i elite that is concentrated in urban centers, Allawi's list seems to have fared extremely poorly among the Shi'a themselves. Thus, in the nine Shi'a dominated provinces (Babil, Basra, Dhi Qar, Najaf, Karbala, Maysan, Muthanna, Qadissiya and Wasit), Allawi managed only twelve of 119 available seats.² That the leader of what has become the Sunni list is a Shi'i is of course noteworthy and suggests that identitarianism in Iraq does not reach the level of vitriol that is often seen elsewhere in the globe. Nevertheless, it does nothing to demonstrate the existence of a political

² See Hannah Fairfield & Archie Tse, *The 2010 Iraqi Parliamentary Elections*, N.Y. TIMES, Mar. 26, 2010, available at <http://www.nytimes.com/interactive/2010/03/11/world/middleeast/20100311-iraq-election.html?ref=middleeast>.

realignment in favor of broad-based nonsectarian parties, given the sectarian nature of support offered to Allawi's coalition.

Having shown in Part I that questioning the wisdom of early elections serves no purpose, and having shown in Part II that nevertheless, early elections can foment civil division, Part III will address the proper question; namely, what might well be done by the international community about such division if early elections are held? In Iraq, the answer was clear: a great deal. While ethnic or sectarian *division* was and is reality in Iraq, ethnic or sectarian *violence* has not been the rule for most of the post-Saddam era. Iraq went through a horrific spasm of identitarian violence that will not soon be forgotten, but has thankfully righted itself from such horrors. In Baghdad, company and project offices such as our own—in which Christian, Shi'i, Sunni and Kurdish Iraqis work together—are not uncommon at this time, even if it is clear where the loyalties of the respective members of our staff will lie in the voting booths. U.S. policy has something to do with this salutary result. Nevertheless, the price paid for such avoidance of violence, even if worth its value, is steep indeed. In order to placate every identitarian based constituency, a form of consensual politics has begun to reign in Iraq, and no action of even the slightest significance is undertaken without the approval of each constituent group. The result, all too often, is that nothing is done, and a barely functioning, incompetent and ineffective government has taken root, one with which Iraqis are thoroughly disenchanted and one which seems entirely disconnected from the realities of their lives. Or rather *had* taken root, prior to the March 2010 elections. As of this writing, Iraq's historic demand for some form of consensus has made it impossible to even form a government, and American desires to ensure that neither Sunnis, nor Shi'is, nor Kurds are shut out of the process only seem to cause the process to drag out even longer. Again, American policy may well be correct, as the exclusion of one or another identitarian groups may well lead to some form of genocidal catastrophe. But it does contribute to the pervasive problems with effective governance herein described.

II. "THE TYRANT WILL SOON BE GONE, THE DAY OF YOUR LIBERATION IS NEAR"³

The year 2003 seems a rather distant memory to many of us who have been deeply engaged in Iraqi law and politics over the past half decade, given how much has transpired since then. It is easy to forget that the rush to electoral, democratic and constitutional rule was not preordained, and was not the preferred outcome under U.S. policy at the time of the U.S. invasion in April of that year. Media reports suggested that the Bush administration believed that the postwar occupations of

³ President George W. Bush, Television Address, Mar. 17, 2003, *available at* <http://www.cnn.com/2003/WORLD/meast/03/17/sprj.irq.bush.transcript/>.

Germany and Japan were considered to be the most appropriate model for reconstruction,⁴ where elections were not held for years following surrender.

The initial calls for elections did not emerge from the U.S., but rather from Iraq's majority Shi'a population, and they occurred only weeks after Saddam's statue famously came crashing to earth in Firdous Square. On June 4, Iraq's highest Shi'i cleric Sayyid Ali Sistani, operating from Najaf, Shi'ism's spiritual center, publicly proclaimed that the constitution needed to be drafted by an elected assembly.⁵ The swiftness with which the call for elections followed the downfall of Saddam is not often put into its proper perspective. Grand Ayatollah Sistani, for example, had spent the better part of four decades of his life under circumstances where to speak publicly against the government was to court the severest forms of official retribution imaginable. Sistani was in Najaf in 1980 when the Ba'ath abducted, tortured and killed the most eloquent Najaf-based clerical voice opposed to Ba'ath rule, that of Muhammad Baqir al-Sadr, along with his sister.⁶ He was also in Najaf when the savage, government-organized murder of a second cleric from the Sadr family, Muhammad Sadiq al-Sadr, was carried out during the latter stages of Ba'ath rule.⁷ Through these and countless other acts of ruthless savagery, the Ba'ath had succeeded in squelching any form of political advocacy, much less intervention, on the part of the clerical classes. That Grand Ayatollah Sistani, by reputation a Quietist who does not believe that it is the role of the clerical classes to rule the state,⁸ was willing after decades of such unspeakable repression to voice an opinion respecting the necessity of early elections, one sure to dismay the American occupiers at the time, is extremely telling of the extent to which the Shi'i elite had formulated at the earliest possible stage their demands for political power within the democratic ethos that permeates our contemporary global culture.

While the timing of the call for elections was spectacularly accelerated in light of the dizzying transition from dictatorship to occupation, the Shi'a calls should hardly come as a surprise. The general post Cold War global trend toward democracy had not gone unnoticed, even in a nation as isolated as Iraq. The Shi'a have constituted a majority in Iraq since 1919,⁹ yet have never governed the nation and indeed have been the object of pervasive and systematic repression on the part of numerous, previous Sunni led governments. It seems not only natural, but indeed virtually inevitable, that the Shi'a would demand not only recognition of political equality but the right to rule, and that they would use their majoritarian status to justify this right.

⁴ David Sanger, *Bush's Next Role: Mediator in Disputes in Post War Iraq*, N.Y. TIMES, Apr. 8, 2003, at B9.

⁵ LARRY DIAMOND, SQUANDERED VICTORY 48 (2005).

⁶ CHIBLI MALLAT, THE RENEWAL OF ISLAMIC LAW 18 (1993).

⁷ PATRICK COCKBURN, MUQTADA: MUQTADA AL-SADR, THE SHIA REVIVAL, AND THE STRUGGLE FOR IRAQ 105-06 (2008).

⁸ *Id.* at 50; but see Haider Ala Hamoudi, *Between Realism and Resistance: Shi'i Islam and the Contemporary Liberal State*, 11 J. ISL. L. & CUL. 107, 112 (2009) (describing Sistani as "Semi-Quietist").

⁹ COCKBURN, *supra* note 7, at 26.

The dangers of precipitous elections were well known to the U.S. at the time, and the principal U.S. figures of the Iraqi occupation would have been keenly aware of both legal and policy-oriented scholarship on the topic. Yet despite American misgivings, and the collective wisdom about problems inherent in advancing democracy without strong government institutions, there was little that the U.S. could do to resist the demands.

This is not to say it did not try. Paul Bremer, the U.S. viceroy for Iraq after the invasion, resisted Sistani's call for months. As late as September of 2003, Bremer announced a timetable for election for an Iraqi government that was to be held *after* the naming of a "Governing Council" of Iraqis handpicked by the U.S., *after* its naming of a constitutional preparatory committee, *after* ministers were selected to run the government (all of which had already transpired by that time), *after* the constitution was in fact written, *after* broad public debate on that constitution was undertaken, and *after* that constitution was approved by popular referendum.¹⁰ The notion of an election before the ratification of the constitution was specifically rejected by Bremer. The efforts of Bremer and his cohorts at the Coalition Provisional Authority ("CPA") responsible for administering Iraq at the time were thus to *justify* delays in elections in the face of Iraqi demands, not hold them. That early elections might be a threat to "democracy and peace" was certainly one of the principal factors militating in favor of American policy at the time, according to one of the CPA's senior advisers.¹¹

Ultimately, however, the Shi'a demands carried the day. Large demonstrations were held throughout Iraq's south, and the Shi'a grew demonstrably restless, demanding the right to vote. Having lost its credibility for justifying the Iraq venture on the basis of weapons of mass destruction, the Bush administration turned to an alternative justification for war, the liberation of the Iraqi people from the tyrant Saddam Hussein. With this, any hope of an election delay necessarily evaporated. Having spent so much time and effort describing Saddam's well documented abuses of power and of human rights, and having rested the credibility of the entire Iraq operation, with its mounting casualties and massive costs, on his removal and the subsequent liberation of his people, an ounce of legitimacy to American rule would not have remained if the Iraqi domestic demand to vote had been denied. Ultimately, in November of 2003, the U.S. relented, and accepted a schedule of advanced elections to be held by the start of 2005.¹² Political legitimacy in Iraq would

¹⁰ This entire process was laid out by Ambassador Bremer in an editorial in the Washington Post. L. Paul Bremer, *Iraq's Path to Sovereignty*, WASH. POST, Sept. 8, 2003, at 21.

¹¹ DIAMOND, *supra* note 4, at 48.

¹² In his work, Feisal Istrabadi, a senior adviser to one of Iraq's leading Sunni politicians, argues that in fact after an initial period of reluctance, the U.S., following Sistani's pressure, forced elections over the objections of "virtually the entire political class in Baghdad." Istrabadi, *supra* note 1, at 1635, 1639-40. This is certainly not my view, as it seems to me rather clear and difficult to dispute that the parties which ultimately won the plurality of seats in these elections, namely the religious Shi'a parties, clamored ceaselessly for these elections to proceed, with support from Kurdish allies, reducing, to my mind, the opposition to at most 30 to 35 percent of Iraq's current political classes. That the opposition to the elections

thenceforth be determined on the basis of electoral results, a reality which has only been fortified over time.

Thus, the question of whether or not elections in any given political context are premature can often be beside the point, as it certainly was in Iraq, because conditions can make holding elections a necessity. Experts, academics, and the foreign authorities influenced by their opinions, whether the U.S. or the U.N, may be able to exert marginal control if they find that early elections would be a threat to “democracy and peace.” Ultimately, however, to the extent that local elites are confident in their ability to project greater power through the ballot box than they might under alternative mechanisms, they are likely to urge elections sooner rather than later. In support of that effort, they are likely to be able to articulate successfully a moral basis for the exercise of power that is not easily thwarted. It perhaps should come as no surprise to advocates of democratic politics that domestic constituencies wield decisive power as concerns domestic elections. Yet, somehow the view stubbornly persists that whether an election should or should not be held is a matter to be debated among policy experts, rather than a matter determined in fact by domestic constituencies on the basis of their own political interests.

III. IDENTITARIANISM GONE WILD

A. THE ELECTION LAW AMENDMENTS OF 2009 AND THE MATTER OF KIRKUK

Yet even if one concedes that the U.S. and the U.N. could not have delayed elections much longer than they did, one might well ask whether the elections have produced salutary results in the form of institutions of effective governance responsive to the domestic population, or whether they have led to greater forms of civil conflict. In the case of Iraq, there is little doubt that ethnic and sectarian conflict has risen as a result of democratic politics, with the concomitant reality that parties in Iraq project power, not on the basis of policy and effective governance, but rather ethnicity and sect.

Any number of examples may be offered to describe the manner in which democratic practices have managed to foment ethnic and sectarian divisions and thwart effective governance. Perhaps none is more apt, and more demonstrative of the stubborn persistence of this type of identitarian politics, than the Election Law

constituted the majority of the political class *before* the elections, and that the Shi'a parties constituted by far the largest bloc *after* the elections only goes to demonstrate my central claim. Domestic constituencies that stand to gain from early elections will demand them, and will be able to articulate a normative basis for them that will, in many cases, prove impossible to resist by the international community. Much as the international community might have favored Iraq's smaller secular nationalist coalitions, these coalitions proved not nearly as representative of Iraq's population, at least at the time of the first postwar elections, as anyone might have hoped.

Amendments of 2009 and the crisis generated thereby, in which I and others on a U.S. Embassy grant given to the University of Utah S.J. Quinney School of Law played something of a role.¹³ This section describes the crisis, little reported in the Western press, yet deeply demonstrative of the identitarian pathologies afflicting Iraqi politics today. Paradoxically, such pathologies persist, even as Iraq's population simultaneously grows disenchanted with the ineffective, incompetent, and unprofessional governance that naturally result from them.

When the issue of amending the election law first arose in the Council of Representatives in the late summer of 2008, the primary issues appeared to be those that would attend any electoral system in a developing democracy. Questions arose as to how nominees would be selected: whether they would be selected by using a ballot that allowed voters to choose between a single party list (the so called "closed list") or one that would permit a voter to select a candidate on a party list (the so called "open list"). Other questions, such as whether voters would select representatives from a particular region of Iraq, or from the entire nation, also emerged. None of this was surprising; and, to the extent that there was disappointment among Iraqis and internationals alike, it was in the fact that these issues were being decided so close to an election, scheduled by constitutional mandate to be less than six months away. It is true that the Kurdish contingent tended to favor the closed list while the Shi'a factions, prodded by the clerical leadership in Najaf, expressed their strong desire for an open list, but this hardly seemed to portend some sort of profound ethnic conflict. No serious person would believe that open and closed lists were the stuff of which civil wars are made, even in Iraq. Every indication within Baghdad was that these matters would be voted on, that the Kurds would probably lose the vote on the open list issue, that this was not so central to the Kurdish authorities to elicit such a strong objection from them (in fact individual members of their delegation made clear they supported the open list notwithstanding the official Kurdish rejection of it), and that the election law would be amended.

This changed nearly overnight as the Committee to Review the Election Law (the "CREL") neared the end of its work. Two of the Arab members of the CREL from Kirkuk, Omar al Jibouri and Mohammad Tamimi, demanded that the vote in Kirkuk not be apportioned on the basis of the 2009 census because, they claimed, the results had been distorted by groups of Kurds descending into Kirkuk like "locusts," in Tamimi's memorable incendiary (and deeply offensive) phrase.¹⁴ Al Jibouri and

¹³ The primary electoral expert within our own organization providing support on these amendments was Jaye Sitton, who attended every meeting of the Committee to Review the Election Law, and who offered helpful comparative advice when requested by the Committee. I am deeply indebted to her for much of the information concerning the amendments, as well as to the support and invaluable guidance of Professors Chibli Mallat, Wayne McCormack and Dean Hiram Chodosh in all of our Iraq endeavors together throughout 2009. Any errors set forth herein are mine alone.

¹⁴ As one close to those who participated directly in the CREL, I have heard the Tamimi remarks from more than one source who had attended the particular meeting at which they were made. As for the nature of the dispute more generally, and the particular personalities involved on either side, it suffices to say that the issues of the electoral law consumed Iraqi

Tamimi argued that these Kurds had to be excluded, and forced to vote wherever it was that they had come from, not in Kirkuk. Ethnic politics had returned, gone were notions of electoral mechanisms and back was the idea that the purpose of the election was to maximize electoral representation of one's own ethnic or sectarian community. Naturally, the Kurds vigorously opposed the proposal, arguing that any change in voter rolls was on the basis of legitimate repatriation permitted by the Iraq Constitution. The election law stood idle for months at this impasse, until finally some sort of compromise was reached. Under the compromise, the 2009 census would be used to determine the voter rolls in Kirkuk. In addition, a committee formed of the electoral commission and all major constituent communities, with the support of the U.N., would review the voter lists based on series of factors within one year. This would be about nine months after the elections of March 2010 had been held. The number of Kirkuk representatives would ultimately equal the number assigned on the basis of the 2009 census, minus the number of members disqualified by voter list infractions identified by the committee.¹⁵

Even this compromise, however, assumes ethnically based electoral representation. How precisely is the "subtraction" demanded by the law supposed to occur if the election has already taken place and the validity of the voter rolls has yet to be finally determined? That is, Kirkuk has twelve representatives from its province selected by the most recent 2010 election. Six representatives were from the Sunni Arab nationalist list and six from the Kurdish list. If the commission determines that the proper number of representatives should have been ten, which two representatives should lose their seats? The law does not specify, and one is left to speculate. Surely it would not be the two with the least votes, as there would be no evidence to suggest that those who had cast their ballots illegally in Kirkuk had voted for representatives with the least votes. The only seemingly viable option, at least to the Arab representatives with whom I have spoken, would be to reduce the number of Kurdish representatives by the amount of tampering discovered, on the theory that it is the Kurds who have largely repopulated the city, and Kurdish people vote for Kurdish representatives. The fact that at least some of the drafters formulated a solution that assumes ethnically based electoral results, and that the Council of Representatives voted for this arrangement, is quite telling. "Subtraction" of representatives will almost certainly not occur, since the Kurds compose a healthy proportion of the seats on the commission and are virtually certain to find no tampering with the rolls, even as the Arab and Turkmen constituencies find evidence of widespread fraud. The compromise does, nevertheless, demonstrate a rather

television and print media for the better part of two months, during which countless interviews and reports were provided.

¹⁵ A version of the original proposed amendment, obtained from the Legal Committee of the Iraqi Council of Representatives at the time, is on file with the author. The particular article concerning Kirkuk remains in place as Article 6 in a revised, and currently effective, amendment to the Election Law. QANUN RAQM 26 LI SANAT 2009, TADEEL QANUN AL-INTIKHABAT RAQM 16 LI SANAT 2005 [LAW NO. 26 OF 2009, AN AMENDMENT TO THE ELECTION LAW NO.16 OF 2005], *available at* <http://www.parliament.iq/dirrasd/law/2009/26.pdf>.

pervasive tendency on the part of lawmakers to view electoral politics solely along identitarian lines.

B. THE HASHIMI VETO AND IDENTITTARIAN JOCKEYING

Our story does not end there, however. The proposed amendment was vetoed by one of the three members of Iraq's Presidency Council, the Sunni Tariq al-Hashimi, who demanded more seats for expatriate Iraqis who are, predictably, overwhelmingly Sunni. The Council of Representatives responded by increasing Kurdish representation and sending the law back to him. Frantic negotiations occurred behind the scenes to implement the law through regulation in a manner that would take placate Hashimi and give him much of what he wanted so as not to inspire a second veto. However, this began to anger the Kurds, and of course the majority Shi'a were not willing to part with their representatives either. Every sphere of influence in Iraq—the three primary domestic communities, the U.S. and the U.N.—descended upon the electoral commission to negotiate the representation of each province in Iraq in the next Parliament through regulations implementing the law.

Finally, in an embarrassing spectacle, ten minutes before time theoretically ran out on Hashimi's opportunity to veto a second time, the Council of Representatives on national television decided by "consensus" (in fact the show of hands demonstrated something considerably less than that, but the Speaker declared it "consensus" anyway and did not count the votes) on the distribution of seats on a province by province basis. This decision effectively endorsed a regulatory compromise, which the electoral commission had already reached. The deal was struck when the Kurds agreed in the final hour to receive three additional seats rather than the five they had been demanding.¹⁶ This resolution was achieved, of course, by doing no more than increasing the number of representatives in Kurdish provinces. While it is true that redistricting is not unfamiliar in the U.S., the notion that three ethnic and sectarian communities would until the last hour expend months of effort to maximize voting power in provinces based solely on their ethnic and sectarian composition assuming (with good reason) almost uniform voting along Sunni, Shi'i or Kurdish lines, and in the process ignoring all other responsibilities of lawmaking, demonstrates the extent to which identitarian politics reign supreme over effective governance in contemporary Iraq.

C. THE END OF GOVERNANCE

Nonetheless, disturbing as the parliamentary machinations may have been, as a strategic matter, it did seem to be rather sensible politics to focus exclusively on maximum representation over effective governance in order to ensure reelection. After all, there is one major Kurdish list, which very large majorities of Kurds can

¹⁶ See, e.g., Marina Ottaway & Danial Kaysi, *Sunnis in Iraq, 6 Years after Saddam*, Carnegie Middle East Center, Dec. 10, 2009, available at <http://www.carnegie-mec.org/publications/?fa=24292&lang=en>.

reliably be expected to vote for, even as virtually all other Iraqis will vote for another slate. Thus, there is but one way for the party list to increase its numbers in the next Council of Representatives, and it is by increasing the numbers of representatives in the Kurdish provinces. The articulation of good policy is not only beside the point, it is, in terms of pure political interest, an entire waste of time, as it will not lead to the garnering of any greater number of votes.

The March 2010 elections may have caused some easing of this phenomenon, not because of the rise of nonsectarian broadly based nationalist groups, which do not exist any more now than they did prior to March of 2010, but rather because within the identitarian groups, splits have begun to develop that do give voters something of a choice between parties. Thus, there is a (considerably) smaller Kurdish list, the Gorran party, for example, which Kurds might feel free to elect given sufficient disenchantment with the dominant Kurdish list.¹⁷ More notably the Shi'a have two lists with significant support, though the two seem to have reached some form of tentative alliance between themselves. All of this suggests that there might be some competition on the basis of policy if such choice within the identitarian groups becomes more firmly established. As yet, however, it is too early to tell whether this will be the case. Certainly, as discouraging as the stubborn persistence of identitarian politics has been, it is encouraging that voters have recently been willing to consider alternative choices within their respective identitarian groups.

In any event, the cementing of identitarian politics has led to some level of disconnection on the part of Iraqi politicians from their constituencies. Whereas legislatures in other nations avoid paying themselves lavish salaries or drawing attention to pay raises, which are often hidden in the details of broad omnibus bills, in Iraq the situation is quite different. In 2009, the Council of Representatives, blithely unconcerned about electoral consequences, voted itself a salary and associated benefits of approximately \$26,000 per month and life-long retirements benefits of approximately \$8,000 per month, in a nation where the per capita monthly income is less than \$300 per month.¹⁸

Even more poignant for this particular story is the timing of the latest pay raise. Toward the end of 2009, the deadlock over the amendments to the electoral law had started to become intractable, and it became apparent that dissatisfaction with the performance of the Iraqi Council of Representatives was nearing an all time high within Iraq. Friday sermons included long diatribes against the government, and radio call-in shows, television interviews, and newspaper editorials seemed to show broad levels of frustration with the government's inability to agree on even a sensible electoral mechanism, let alone a host of other important legislative initiatives. It was at precisely this time that the Iraqi Council of Representatives amended the law concerning their benefits to include, among other things, diplomatic passports for themselves, their spouses, and their children for the entire period of their legislative

¹⁷ See Sam Dagher, *Bloc Takes On Entrenched Kurdish Parties in Iraq*, N.Y. TIMES, Mar. 6, 2010, available at <http://www.nytimes.com/2010/03/07/world/middleeast/07kurds.html>.

¹⁸ See AFP, *Iraqi MP Expenses Scandal Triggers Religious Outrage*, Nov. 6, 2009, available at <http://www.france24.com/en/node/4919336>.

tenure, and eight years following, along with the distribution of prime government land to such members free of charge. As I roamed the halls of the Council of Representatives afterwards, I detected not an ounce of hesitation or regret at the raise itself, but rather anger at the media for having widely publicized a matter of such supposed sensitivity.

Equally important, no real attempt at justification for these salaries and benefits was made, difficult as such justification may have been. A Council of Representatives member, particularly one not serving on the Foreign Affairs Committee, would have a hard time explaining precisely why her son might need a diplomatic passport eight years after his mother had last served in the Council of Representatives. Still, it was rather disturbing that I could not find a member who cared enough to find a need to explain. In the end, it did not seem relevant to them. In an electoral space where voting loyalty is defined by ethnic or sectarian identity, the decision about whether to remove any given parliament member does not really lie with the voters.

IV. VIOLENCE AND INCOMPETENCE

A. THE SAMARRA' AFFAIR

While the story I have told is a rather depressing one in any number of respects, it could have been much worse. Throughout this Essay are examples of ethnic and sectarian politics, ineffective governance, and selfish legislative disregard of constituency, but no examples of violence. Indeed, Iraq has been rather fortunate in this context.

This turn away from violence was hardly preordained. As identitarian politics began to take hold in Iraq as described in the previous sections, ethnic and sectarian tensions mounted throughout 2004 and 2005. Sunni leaders never came to terms with the demographic realities of their minority position, and opposed virtually any actions taken by the new government, from constitution drafting to election timetables to the establishment of a sovereign government. The Sunni heartland became the safe haven of Al Qaeda and its leader Abu Musab Al Zarqawi, and the base of operations for organized attacks against American soldiers and the broader Shi'a population alike, in the case of the latter, targeting them at their holiest sites and on their holiest days.

Still, Sunni disaffection can hardly be blamed entirely on Sunnis, as—irrespective of Sunni motivations—the Shi'a and the Kurds displayed little interest in genuine cooperation and dialogue with the minority community that had historically ruled Iraq. To provide one illustrative example of Sunni recalcitrance, and corresponding Shi'a and Kurdish resistance to Sunni participation, in 2005, Sunnis boycotted the elections that led to the creation of a constitutional committee. In response, the Shi'a and Kurds seemed perfectly happy to proceed in drafting the constitution without substantial Sunni input of any kind, which is remarkable, given that Iraq is 25 to 30 percent Sunni Arab. Substantial Sunni participation was finally achieved due, in large part, to American intervention; however, participation in the constitutional process

did not lead to widespread Sunni acceptance of the final document, mostly because the Sunnis who participated, and predictably objected to large portions of the document, were entirely ignored.

In February 2006, tensions that had arisen from these events burst into the open, and wide-scale internal violence began in earnest. This occurred in the predominantly Sunni town of Samarra, where two of Shi'a Islam's most revered figures were buried. The mosque housing the sacred tombs was bombed, causing severe damage. In response, for days afterwards the Mahdi army, a group of black-shirted Shi'a thugs led by firebrand Moqtada al Sadr, began to roam Baghdad streets, seeking reprisal against the Sunni population that was presumed to have allowed this to happen by permitting the insurgency to flourish in its midst. The Mahdi army dragged people with Sunni names from their cars and shot them in the open street. Sunni areas reacted with similar fury, and a spate of sectarian-based murders and kidnappings followed. Sectarian relationships during most of the following two years were characterized by violence.

The U.S. does deserve some credit for helping to ease the tension. Part of this was achieved through the well-known "surge" in American troop levels, which not only flooded troubled areas with American soldiers who had no real stake in the identitarian violence, but more importantly, delivered a desperately needed signal to the Iraqi authorities that America's role in the crisis would be robust. Also central was America's engagement with the Sunni tribes in the Sunni heartland of Anbar that secured their cooperation with the U.S. The U.S. also played a widely-reported role in encouraging Prime Minister Maliki to act decisively against the Shi'a extremist Mahdi army in Basra and the Sunni extremist Al Qaeda groups in Anbar province, and to restore government control in both areas.

As is usual in Western media accounts, the desires of Iraqi stakeholders were unfairly minimized in importance relative to the interests of the U.S. and the international community. It seems clear that Maliki was interested in projecting strength, and indeed made the two military ventures in Basra and Anbar the centerpiece of his campaign in the 2008 provincial elections. He renamed his party "the Rule of Law Coalition" and promised to further advance security gains. The Iraqi population's support for this security-based platform was amply demonstrated by Maliki's extraordinary performance in the polls in the provincial elections of 2009 and his strong showing in the national elections held in March, 2010. Likewise, Sunni tribes were a natural and easy target for the U.S. to win over as allies, as Al Qaeda and other groups like it had proved incapable of governance. These groups delivered little to the citizenry of the towns they had occupied, including Falluja, except a broad and bewildering set of purportedly Islamic rules that the local population found bizarre and extreme.

Nevertheless, while the U.S. is not solely responsible for orchestrating the dramatic turn of events, its role was quite important, and seemingly long lasting. Al Qaeda and other insurgent elements may exist in Iraq, but they remain in the shadows, capable of spectacular bombings from time to time, but unable to control territory in any part of Iraq, and constantly subject to surveillance and arrest. The Mahdi army, and its leader Moqtada al-Sadr, stunned by its losses in the polls in 2008,

appears to have embraced the political process with some fervor, even holding primaries to select its candidates for the national elections just held. Sunni tribes which in early 2008 regarded the U.S. with some suspicion and the Iraqi government with contempt, likewise engaged fully in the national elections.

B. THE PRICE OF CONSENSUAL POLITICS

Thus, the U.S. can claim some level of success in helping to avoid identitarian violence on a larger scale. After Sunni election boycotts, Najaf-led Shi'a demonstrations, and Kurdish votes concerning the right to self determination, it cannot well be denied that a form of consensual politics reigns in Baghdad, that the U.S. has helped achieve this, and that this has something to do with the relative lack of violence between ethnic communities, even as tensions remain high and levels of ordinary street violence are among the most pervasive on earth. In other words, while politics is plagued with ethnic and sectarian maximalism, it remains largely political.

Yet the problem with consensual politics is that it requires consensus. If the Shi'a, or the Shi'a and the Kurds working together, were to ignore their Sunni counterparts and proceed without them, as they did in the drafting of the constitution in 2005, ethnic tensions would undoubtedly rise again. Yet to demand full consensus is, almost by necessity, to settle for ineffective governance. These communities hold widely divergent visions of the public order—of state organization, the role of religion, and the respective powers of center and regions. The result of ineffective, incompetent, and gridlocked government is all but foreordained in a system where power is evenly divided among the different groups—where the Presidency is controlled by a tripartite Presidency Council, where each member has a right to veto, where the Speaker of a legislature has two deputies who, as a matter of custom and practice, have the same power as the Speaker to block a measure from reaching the floor, where not only the Ministers themselves must be carefully balanced by sect and ethnic group, but also (again as a matter of custom and practice) the Deputy Ministers and even Director Generals within each Ministry, where the Prime Minister may not dismiss his own Ministers without legislative approval, and where it is conceded that nothing may be done except by agreement of all relevant factions.

The Council of Representatives has been unable to pass a hydrocarbon law despite the plain material interests, locally and globally, militating in favor of such a law. Constitutional amendments demanded by Iraq's Sunni community await enactment as well. Basic governmental services are astonishingly poor in some areas and nonexistent in others. Government offices, public buildings, and courtrooms are a travesty, even by the rather low standards of the region; at these government buildings, it is common to see large crowds of people standing about for hours, a guard standing in front of the door where the judge, official, or clerk sits, refusing entry without a bribe. Those lucky enough to enter are usually sent away unsatisfied. Stories of couples having spent weeks attempting unsuccessfully to record their marriages in personal status court are not uncommon.

Frustrated Iraqis have nowhere to turn to raise complaints, as there is no clear chain of command within the ministries; instead, they operate by consensus among competing factions. Centralized dictatorships with clear lines of authority, including those of the previous regime, suddenly seem to have developed some appeal: in these regimes at least, a misbehaving soldier would be called to account by a senior officer for harassing neighborhood women (even if the same would not be true for the dictator's son).

Yet with all of these problems, it is hard to know how to remedy the situation. Either government action by consensus remains the norm, even though it results in largely ineffective governance, or a single group takes control over the state apparatus, even though it will inexorably lead to conflict. Until broad-based, pan-ethnic national coalitions develop, a process which might take decades, it is either ethnic politics or ethnic conflict. This is hardly an appealing choice, but it is an unavoidable one, at least for the time being.

V. CONCLUSION

It is a mistake to assume that matters such as the electoral timetables of other nations, even those under foreign occupation such as Iraq, are within the primary control of members of the international community, rather than domestic constituencies who may stand to benefit from the rise of democratic politics. Thus, whether or not early elections in divided societies are a good idea is entirely beside the point. While it may be true, and certainly was true in the case of Iraq, that early elections led to a rise in civil conflict, the role of the international community may only be limited to mitigating the effects of that inevitable conflict, often at enormous expense to themselves and the country under occupation, rather than removing it entirely through electoral delays.

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