STABILIZATION AND DEMOCRATIZATION OF IRAQ
A STRATEGIC ANALYSIS OF THE CONSTITUTION-BUILDING PROCESS

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116 pages.

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that respects Muslim values, democracy, protection of minorities, and human dignity.

ACKNOWLEDGMENTS

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ACRONYMS

AINA	Assyrian International News Agency
BBC	British Broadcasting Corporation
B.C.E.	Before Common Era
BE	Belgium
CALL	US Center for Army Lessons Learned
CARL	US Army Combined Arms Research Library
CFR	Council on Foreign Relations
C.E.	Common Era
CGSC	Command and General Staff College
CGSOC	Command and General Staff Officer Course
CIA	Central Intelligence Agency
CLJ	Constitutional *Loya Jirga* (Grand Council) (Afghanistan)
CNN	Cable News Network
CPA	Coalition Provisional Authority
CSID	Center for Study of Islam and Democracy (Washington, DC)
DIME	Diplomatic, Informational, Military, and Economic
DOA	US Department of the Army
DOD	US Department of Defense
DOS	US Department of State
E.U.	European Union
FIS	*Front Islamique du Salut* (Algerian Islamic Salvation Front)
GWOT	Global War on Terrorism
HRW	Human Rights Watch (New York, NY)

ICG	International Crisis Group
IGC	Iraqi Governing Council
IIP	Iraqi Islamic Party (Sunni Arab)
INA	Iraqi National Accord (Shi'ite)
INC	Iraqi National Congress (Shi'ite)
ITF	Iraqi Turkomans Front
KDP	Kurdistan Democratic Party
KRG	Kurdistan Regional Government
LU	Luxemburg
NATO	North Atlantic Treaty Organization
NYT	New York Times
OEF	Operation Enduring Freedom (Afghanistan)
OIC	Organization of the Islamic Conference
OIF	Operation Iraqi Freedom
PKK	*Partiya Karkaren Kurdistan* (Kurdish Workers Party)
PUK	Patriotic Union of Kurdistan
RAF	Royal Air Force (United Kingdom)
RCC	Revolutionary Command Council (Iraq)
SAIS	School of Advanced International Studies (John Hopkins University, Washington, DC)
SCIRI	Supreme Council for the Islamic Revolution in Iraq (Muslim Shia)
SSI	Strategic Studies Institute (US Army War College)
TAL	Transitional Administrative Law (Iraq)
TRADOC	U. S. Army Training and Doctrine Command
UDHR	Universal Declaration of Human Rights

UK	United Kingdom
UN	United Nations
UNGCI	United Nations Guard Contingent in Iraq
UNSC	United Nations Security Council
UNU	United Nations University
US	United States
USSR	Union of Soviet Socialist Republics
VRT	*Vlaamse Radio en Televisie* (Flemish Radio and Television) (Belgium)
WMD	Weapons of Mass Destruction

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CHAPTER 1

INTRODUCTION

The fall of the Berlin Wall in 1989 marked the end of the Cold War, but was rapidly followed by Gulf War I and the Balkan crisis. Many democratic nations contributed to the stabilization and, in a wider sense, the democratization of nations in conflict, by both diplomatic and military efforts.

The dramatic events of 11 September 2001 added an extra dimension to this international effort. The Global War on Terrorism (GWOT) concept was born. The *National Security Strategy of the United States of America* of September 2002 (NSS) describes this concept. In addition, the NSS states that the US aims "to help make the world not just safer but better."[1] In order to achieve this ambitious challenge, the NSS defines the following goals on the path to progress: political and economic freedom, peaceful relationships with other states, and respect for human dignity.

Operation Iraqi Freedom (OIF) succeeded to free the Iraqi people from Saddam Hussein's totalitarian regime. The next challenge for the US-led coalition is the stabilization of the country and the implementation of a durable democracy. The latter tasks seem to be the most difficult ones because Iraq has never known a democratic government. The country is a mosaic of multiple sectarian and ethnic groups; and Iraq lies within an area of strategic-political, economic, and religious influence of its neighboring countries.

This thesis examines how Iraq's sectarian and ethnic factors interact with the process of building a new permanent constitution that respects democracy and human dignity. Within this scope, it analyzes the aspirations and interests of each of the

influencing ethnic and sectarian groups. Next, the thesis examines the historical case studies of Iraq's former republican constitutions and the Afghani constitution, adopted on 3 January 2004. Further, it attempts to identify permanent constitutional options, compatible with both the NSS and the Iraqi religious-ethnic traditions. Finally, this thesis provides conclusions and recommendations to the US administration and, by extension, the US-led Coalition Provisional Authority (CPA).

After the end of the research period for this thesis, the CPA and the Iraqi Governing Council (IGC) agreed on a Transitional Administrative Law (TAL) (8 March 2004). This agreement laid down the institutional foundations for the Iraqi sovereignty between the transition of political power on 30 June 2004 and the implementation of a permanent constitution no later than 31 December 2005.[2] This thesis emphasizes the permanent constitution of the new Iraq that the Iraqi National Assembly will have to write by no later than 15 August 2005.[3] Further, it provides the US administration with alternative options in case the deadline of 30 June 2004 cannot be kept. In order to maintain this thesis as objective as possible, it does not include the transitional constitutional conclusions of the CPA-IGC agreement of 8 March 2004.

<center>Assumptions and Limitations</center>

For the time being, the Kurdish, Turkoman, Sunni, and Shi'ite people have not manifested their expectations for an independent Kurdistan, Turkomanland, "(Arab) Sunniland," or "Shialand." Accordingly this thesis makes the assumption that no ethnic group will unilaterally proclaim its independence.

Based on a comparison of both CIA and al-Jazeera sources (see chapter 4), the following ethnic or religious groups possess a representation of less than 0.5 percent of

the Iraqi population: Christian Arabs and Kurds; Yazidis, Faily Kurds (Shia), Marsh Arabs (Shia), Druze Arabs, and Jews. This thesis examines their destiny in the new Iraq as a factor related to the protection of minorities, but not as a separate factor of sectarianism or ethnic nationalism.

This thesis focuses on those democratic values which, according to US policy, are indispensable for the implementation of a durable Iraqi democracy: diffusion of power, general elections, protection of minorities, and respect for human dignity.[4] As a result, the constitutional part of this thesis will describe, analyze, and propose flexible options for the implementation of these democratic values in the new Iraq (see chapter 4). Future institutions in domains such as education, health care, economy, mineral resources management, security, and defense are equally vital to achieve stabilization and democratization in Iraq, but are considered being beyond the scope of this thesis.

Operation Iraqi Freedom: the Stabilization Phase

In the aftermath of Operation Iraqi Freedom (OIF), the UN Security Council adopted resolution 1483 on 22 May 2003 and resolution 1511 on 16 October 2003. The first resolution called upon the US-led CPA to stabilize and democratize Iraq. Resolution 1511 provided the legitimate base for the coalition forces. Their key tasks are: the stabilization of the country and the implementation of democracy. For this reason, this thesis does not separate stabilization from democratization. Resolution 1511 leaves no room for other constitution-building processes than the establishment of a new democratic Iraq.

To accomplish this challenge, the constitution-building process started on 13 July 2003, when L. Paul Bremer III appointed a group of twenty-five prominent Iraqis as the

Iraqi Governing Council (IGC). This council created a commission to draft the new Iraqi constitution, which would include the basic foundations of the future state administration and its democratic elections. Resolution 1511 invited the IGC "to provide to the UN Security Council, no later than 15 December 2003 . . . a timetable and a program for the drafting of a new constitution for Iraq and for the holding of democratic elections under that constitution."[5]

Until November 2003, the Bush administration and Paul Bremer promoted the "constitution first, then elections and sovereignty" strategy.[6] Under influence of Shi'ite Grand Ayatollah Ali Sistani, probably the most powerful cleric in Iraq, and international pressure from France, Germany, and Russia, the Bush administration adopted a dual track exit strategy on 21 November 2003.[7] The first track is the security track; the second is a political one. The current political planning foresees first the establishment of an Iraqi Interim Government, then elections for a National Assembly, followed by the drafting of a permanent constitution in 2005.[8]

This thesis asserts that one of the most important keys to successful stabilization and democratization building in Iraq will be the activation of a commonly accepted permanent constitution. It is a universal rule that a nation's constitution must reflect the national character and will, or it stands very little chance of lasting. So in the twenty-first century, it cannot anymore be implemented or enforced by an external political power. Yet, the Iraqi constitutional drafters could find some inspiration in case histories of other postconflict or postrevolution countries.

<u>Ethnic and Sectarian Background</u>

In essence, Iraq has five major religious-ethnic communities: Shi'ite Arabs, Sunni Arabs, Sunni Kurds, Turkomans, and Assyrians. Since the end of the Ottoman Empire after World War I, the Kurdish leadership attempted to take advantage of every opportunity to establish an autonomous, or even an independent, Kurdistan in northern Iraq. This thesis analyzes the aspirations of the Kurdistan Regional Government (KRG), put into effect in 1991 under the protection of the northern no-fly zone, and the related Turkish point of view.

Number XII of US President Wilson's Fourteen Points declaration on 8 January 1918 stated that: "The other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development."[9] Post-World War I leadership of the Kurdish minorities in the Ottoman Empire interpreted this statement as a US guarantee to grant them the right of autonomy.[10] In addition, article 62 of the *Treaty of Sèvres* of 10 August 1920 declared:

> A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia, as defined in Article 27, II (2) and (3).[11]

This treaty, signed by the Turkish regular government of Sultan Muhammad VI at Constantinople, was very humiliating for Turkey. Almost the half of the current Turkish territory became Greek or Armenian. Moreover, article 64 of the treaty even anticipated the possibility of Kurdish independence within the year following its ratification. Their territory, described in the *Treaty of Sèvres*, is depicted on figure 1. Turkish General

Mustafa Kemal, later surnamed *Atatürk* (father of the Turks), formed a revolutionary government in Ankara and rejected the *Treaty of Sèvres*.[12] He signed a separate treaty with the Soviet Union in order to preserve the Armenian part of the Turkish territory. Subsequently, his military victories against the Greeks in the Eastern and Central parts of the country forced the Allies to draft a new treaty. On 24 July 1923, the Treaty of Lausanne overruled the Kurdish provisions stated in President Wilson's declaration and in the *Treaty of Sèvres*.

After World War I, the Kurdish aspirations for more autonomy or even independence were permanently suppressed by the central government in Baghdad. In the aftermath of Gulf War I, both Kurds and Shi'ites attempted to overthrow Saddam Hussein's regime. At the end of March 1991, more than one million Kurds fled into the Turkish and the Iranian mountainous border areas. As a result, the UN Security Council adopted resolution 688 condemning the Iraqi repression of civilians "in Kurdish populated areas, the consequences of which threaten international peace and security in the region."[13]

Consequently, the international humanitarian operation Provide Comfort brought relief to the displaced Kurdish population. Furthermore, the implementation of the northern no-fly zone, the presence of a UN Guard Contingent in Iraq (UNGCI), and US airpower, based in Diyarbakir, Turkey, deterred the Ba'ath regime from any further military offensive in northern Iraq. As a result, northern Iraq became a "safe haven" for the Kurdish (Iraqi) population and this privileged situation provided them a de facto statehood, though without any international recognition. Since 1991, the Iraqi Kurds have established a democratic government. In the presence of forty-six international observers,

the Kurds voted their first supreme leader (minister-president or president), Massoud

Barzani, and the members of the new Kurdish Regional Assembly (parliament).[14]

The Kurdish nationalistic ideologies also inspired the other ethnic minorities

dwelling in northern Iraq, such as the Assyrians. In the seventh century B.C.E. "the first

steps in the cultural unification of the Middle East [were] taken by bringing under

Assyrian rule the diverse groups in the area, from Iran [Persia] to Egypt."[15] From 705 to

612 B.C.E. the Assyrian capital was Nineveh. This city was situated on the east bank of

the Tigris, near modern day Mosul. More than 90 percent of the Assyrian population is

estimated to be Christian: Chaldeans, Syriac Orthodox and Catholic, and Church of the

East (see figure 2). In present-day northern Iraq, both the Kurds and the Arabs outnumber

the Assyrian population. Many more Arabs than reflected in the latest census of 1933

populate the northern Iraq region, since the Ba'ath regime repeatedly moved Arab

families to settlements near Kirkuk, Erbil, and Mosul. This process is called

"Arabization." Based on the *World Factbook 2003* (CIA), the estimate of the number of

Kurds, Assyrians, and Turkomans is between 18 and 25 percent of the Iraqi population.[16]

Arabs are the largest Iraqi ethnic group, divided into two major Islamic sects: the

Sunni and the Shia. Although the Ba'ath was known as being a secular political party,

nearly all of its members were Sunni Arabs. The vast majority of the Iraqi population is

Shi'ite. Despite its majority status, central Iraqi Sunni (Arab) rulers have suppressed the

Shi'ite population since Shia's beginnings. Despite the fact that the shrine city of Karbala

was a "virtual city-state" in the 1820s, each attempt to establish Shi'ite autonomy led to

massacre.[17] Since the Iranian revolution in 1979, the Shia movement has experienced a

strong revival in several Middle Eastern and Asian countries: Lebanon, Bahrain, Iraq, and

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Pakistan. Furthermore, after 11 September 2001, Shi'ite tribes fought along with UK and US forces against the Sunni Taliban regime in Afghanistan.

In 1991 the Shi'ite population in southern Iraq strived to overthrow Saddam Hussein's regime, though, the Shi'ite rebellion was not successful. This was partly due to the fact that the Iraqi army could retain several of its aviation assets as part of the post-Gulf War I ceasefire agreement of 3 April 1991.[18]

Conclusion

It is envisioned that the US-led coalition will have to cope with many obstacles in order to implement the roadmap toward a stable and durable Iraqi democracy. Principally, this is due to the religious, sectarian, and ethnic factors of Iraqi society. This chapter has provided a framework of the Iraqi mosaic of different sectarian and ethnic factions. In addition, chapter 1 established the assumptions and limitations of this thesis. These three elements set the stage for the follow-on analysis of both these factors (thesis) and the historical case studies of former Iraqi republican state models and Afghanistan (antithesis). The purpose of this work is to obtain relevant conclusions and recommendations to the US administration (synthesis). As a result, this thesis has the ambition to provide several pragmatic options that can lead to a acceptable Iraqi permanent constitution-building process. This thesis attempts to extrapolate those constitutional options that respect local religions, and Iraqi traditions, and universal values, such as democracy, protection of minorities, and human rights.

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[1]The White House, *The National Security Strategy of the United States of America* (Washington, DC: Government Printing Office, September 2002), 1.

[2]Coalition Provisional Authority, *Law of Administration for the State of Iraq for the Transitional Period* [Publication online] (Baghdad, Iraq: Coalition Provisional Authority, 08 March 2004, accessed 15 March 2004); available from http://www.cpa-iraq.org/government/TAL.html, p. 25 of 25.

[3]Ibid., p. 24 of 25.

[4]Richard N. Haass, Director of Policy Planning Staff, US Department of State, *Toward a Greater Democracy in the Muslim World* (Washington, D.C.: Council on Foreign Relations, 4 December 2002), 3

[5]United Nations Secretariat, Security Council, *Resolution 1511,* 16 October 2003, 7.

[6]Rajiv Chandrasekaran and Robin Wright, *US Weighs Elections for Iraq's Provisional Government*, *Washington Post*, 28 November 2003, A01.

[7]US Department of State, *Bush Explains Dual Track Strategy for Iraq*, Interview with Al-Sharq al-Awsat newspaper [Publication online] (Washington, DC: US Department of State, 21 November 2003, accessed 30 November 2003); available from http://usinfo.state.gov/xarchives/display.html; Internet, p. 1 of 9; and Larry Kaplow, *Quiet Cleric a Powerful Voice in Iraq, Atlanta Journal-Constitution*, 4 December 2003, C1.

[8]Coalition Provisional Authority, p. 2 of 25.

[9]US Congress, *President Woodrow Wilson: Speech on the Fourteen Points*, 6th Cong., 2d sess., 1918, Congressional Record 55 (8 January 1918): 681.

[10]Michael M. Gunter, *The Kurds of Iraq: Tragedy and Hope* (New York, NY: St. Martin's Press, 1992), 1.

[11]*Treaty of Sèvres* (10 August 1920) [Publication online] (Provo, UT: Brigham Young University, 2003, accessed 21 September 2003); available from http://www.lib.byu.edu/~rdh/wwi/versa/sevres1.html; Internet), art. 62.

[12]Noah Feldman, *After Jihad: America and the Struggle for Islamic Democracy* (New York, NY: Farrar, Strauss, and Giroux, 2003), 104.

[13]United Nations Secretariat, Security Council, *Resolution 688*, 5 April 1991, 32.

[14]Gunter, 91.

[15]Peter BetBasoo, *Brief History of Assyrians* [Book online] (San Francisco, CA: Assyrian International News Agency, 2003, accessed 3 November 2003); available from http://www.aina.org/aol/peter/brief.htm; Internet, 7.

[16]CIA, *World Factbook 2003* [Interactive publication online] (Washington, DC: Central Intelligence Agency, 2003, accessed 2 November 2003); available from http://www.odci.gov/cia/publications/factbook; Internet.

[17]Juan Cole, *Sacred Space and Holy War: The Politics, Culture and History of Shi'ite Islam* (London, UK and New York, NY: I. B. Tauris, 2002), 23.

[18]United Nations Secretariat, Security Council, *Resolution 687*, 3 April 1991, 11.

CHAPTER 2

IRAQ'S SECTARIAN AND ETHNIC FACTORS

> All men dream, but not equally. Those who dream by night
> in the dusty recesses of their minds wake in the day to find that it
> was vanity: but the dreamers of the day are dangerous men, for
> they may act their dream with open eyes, to make it possible.[1]

> T. E. Lawrence, *Seven Pillars of Wisdom: a Triumph*

Introduction

According to the *World Factbook 2003* and the Arabic television station al-Jazeera, about 97 percent of the Iraqi population is Muslim.[2] Therefore, this chapter first examines the influence of the Islamic factor on the Iraqi permanent constitution-building process. Second it depicts the constitutional aspirations of significant religious-ethnic Iraqi factions: the Sunni Arabs, the Shi'ite Arabs, the Sunni Kurds, the Turkomans, and the Assyrians. Finally, this chapter assigns a particular attention to the issue of protection of minorities, such as the Christian Arabs and Kurds; the Yazidis, the Faily Kurds, the Marsh Arabs, the Druze Arabs, and the Jews.

The first section of this chapter attempts to visualize the prospect of an Iraqi Islamic Republic. The first Islamic Republic emerged in 1979, after the Iranian revolution, and is neither a democracy nor a theocracy. In fact, Iran's constitution created a fourth governing branch, the *faqih* (jurist) (from 1979 until 1989: Grand Ayatollah Ruhullah Khomeini) who could intervene in the affairs of the executive, legislative, and judicial branches.[3] Most recently, the Islamic Republic of Afghanistan ended its constitution-building process on 3 January 2004. The Constitutional *Loya Jirga* (Grand Council of 502 Afghani representatives) started its constitutional negotiations on 14

December 2004. According to numerous news sources, the new Afghani constitution was projected to be approved by spring 2004, and directly followed by free and fair elections.[4] On 5 January 2004, President Hamid Karzai publicly announced the adoption of the first democratic constitution of Afghanistan. At least in theory, it is the framework of an Islamic democracy with respect for human dignity. The most critical issues of the constitutional negotiations were: the level of presidential power, the interaction of Islam and justice, and the position of women in the Afghani society.[5]

<p style="text-align:center">The Islamic Factor</p>

Whether the new Iraq will become an Islamic Republic or not is still unclear, though the need for study of the influence of Islam on the Iraqi permanent constitution-building process seems evident. Therefore, the study of the Islamic factor attempts to analyze the possible interaction between contemporary Islam and the new Iraqi state. According to several scholars in Islamic studies, there is no clear distinction between Islam and state.[6] As a consequence, Islamic law (*Sharia*) is not merely religious, but covers several aspects of a Muslim society. The clerics who are allowed to uphold and interpret--within the limits of their Islamic school--the *Sharia* are the *ulama* (those who possess the "knowledge").[7] Ulama (in Persian: "*mullahs*") are professional men of religion who followed a specific curriculum in a school of Islamic jurisprudence.

Islam is an Arabic word and means "submission": the recognition of God's (Allah) ultimate sovereignty.[8] For a Muslim, God is the supreme head of the Islamic state, or of the Muslim society, the "House of Islam" (*Dar al-Islam*).[9] According to historian and scholar in Islamic studies Bernard Lewis, all people and territories outside the Muslim society represent the House of War (*Dar al-Harb*): non-Muslim countries,

<p style="text-align:center">12</p>

unbelievers in Islam ("infidels"), and apostates (Muslims who deviated from the "right [Muslim] path").[10] Lewis further argues that, according to Islamic law, it is lawful to wage war against infidels, apostates, rebels, and bandits.[11] Jihad (in English: "to strive") is a religious obligation that includes war against infidels and apostates.[12] According to Lewis, Islamic law stipulates that the apostate is far worse than the unbeliever. In his most recent book *The Crisis of Islam* Lewis states:

> The unbeliever has not seen the light, and there is always hope that he may eventually see it. In the meantime, provided he meets the necessary conditions, he may be accorded the tolerance of the Muslim state and allowed to continue in the practice of his own religion, even the enforcement of his own religious laws. The renegade [the apostate, in Muslim eyes] is one who has known the true faith, however briefly, and abandoned it. For this offense there is no human forgiveness, and according to the overwhelming majority of the jurists [*ulama*], the renegade must be put to death--that is, if male. For females a lesser penalty of flogging and imprisonment may suffice.[13]

The comparison between Lewis' interpretations of the Sharia and those of James P. Piscatori in *Islam in a World of Nation-States* reveals that Islam does not have the same meaning for all Muslims and is not everywhere the same unchanging religious doctrine.[14] Analyzing Lewis' points of view, the potential exists that Islam, as held by many Iraqis, could form several obstacles toward an Iraqi constitutional democracy which meets international standards. The Islamic laws depicted by Lewis violate the *Universal Declaration of Human Rights* (UDHR). This is particularly the case, for instance, in the domains of equality of men and women; equality of justice, freedom of religion, and freedom to convert to another belief:

ARTICLE 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ART. 6. Everyone has the right to recognition everywhere as a person before the law.

ART. 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

ART. 18. Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.[15]

Further analysis of both Sunni and Shia conservative interpretations and applications of Islamic law would reveal other human rights violations. Therefore, chapter 4 "Synthesis of Islam, Democracy, and Human Dignity," endeavors to explain the reasons behind this phenomenon. It also attempts to find a permanent constitutional resolution acceptable by both the US administration and the Iraqi *ulama*.

According to Noah Feldman, an American assistant law professor and constitutional adviser for both the Afghani and the Iraqi democratic buildup, Islam and democracy are both mobile ideas and, as a consequence, are flexible:

Islam has amply proven its capacity for this sort of flexibility, maintaining its core beliefs while adapting to the languages, family structures, economic systems, and cultural values of peoples all over the world and over an extended period of time. . . . Democracy, too, has shown a remarkable capacity for flexibility in the various contexts in which it has been tried and in the development of institutions to fit the particular conditions of countries from India to Sweden to Brazil.[16]

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Both Lewis' and Feldman's ideas about Islam indicate that Iraq's new permanent constitution will probably pave the way toward adoption of the *Universal Declaration of Human Rights*, but will not contradict basic regulations inherent to Sharia and other religious-ethnic traditions. Therefore, chapter 4 presents a permanent constitutional solution that attempts to synthesize both Islamic law and Human Rights. Just as the Afghani Constitutional *Loya Jirga* had to deal with some major issues that posed conflicts with Islamic law, the Iraqi constitutional negotiations face similar obstacles on their way to democratic progress. The constitutional method that the Afghanis used to synthesize Islam and democracy is the subject of the second historical case study of chapter 3.

The Islamic factor is a common religious, traditional, and social driver for about 97 percent of the Iraqi population. Analyzing the US Department of State. Office of Research survey, opinions are radically different between the Shi'ites of Najaf, the Sunni Arabs of Fallujah, and the Kurds of Erbil (see figure 3). Of the Najaf population, 92 percent (margin of error: +/- 9.70 percent) desire an Islamic state. Of the Erbil population, 66 percent (margin of error: +/- 13.70 percent) prefer a democracy based on human rights. The Fallujah Sunni Arab inhabitants (margin of error: +/- 17.70 percent) are rather divided between the three choices: Islamic state (43 percent), democracy (35 percent), or a mix of both political systems (22 percent).[17] Both the high margin of error and the variety of public opinion demonstrate that the Sunni Arab Iraqis are still searching for a new orientation after the fall of Saddam Hussein. The same report further depicts that only 33 percent of the Fallujah population declared to be Sunni Arab; all the other Muslims identified themselves being "Just Muslim."

The Sunni Arab Factor

The Sunnis are the dominant Islamic sect of the Arab world, but not in Iraq. After the death of Prophet Muhammad, four caliphs in succession led the Muslim community: Abu Bakr, Umar, Uthman, and Ali. After the assassination of the third caliph Uthman, the governor of Syria Muawaiya founded the Umayyad dynasty and claimed the Prophet's succession. The supporters of Ali's (legitimate) caliphate, known as the party of Ali (*shiat Ali*) started a war against the Umayyad dynasty. This was the start of the split between Sunni and Shi'ite Muslims.

The four major schools for Sunni jurisprudence are: Maliki (North and West Africa), Hanafi (Turkic Asia), Shafii (Egypt, East Africa, and South-East Asia), and Hanbali (Saudi Arabia). According to Noah Feldman and Carl Brown, Shafii student Hasan al-Banna, an Egyptian born in 1906, was one of the most influential thinkers of Sunni Islamic modernism. [18] In 1928, he founded the Muslim Brotherhood, an Islamic social and educational organization. In 1939, the Muslim Brotherhood became openly political and emerged as a cohesive political movement opposed to the Egyptian puppet monarchy, which was backed by the British. [19] Today's Iraqi Islamic Party (IIP), led by IGC-member Mohsen Abdel Hamid, is the Iraqi branch of the Muslim Brotherhood. According to Middle East specialist Andrew Terrill, the IIP seems to be relatively moderate and does not oppose coexistence with other religions. Officially this Sunni religious political party renounced violence. [20]

The majority of the Iraqi Sunni Arabs inhabit the central region of the country. The territory with Sunni Arab dominance corresponds roughly to the former Ottoman *villayet* (province) of Baghdad and extends to include the Western deserts of Iraq. There

is a large concentration of Sunni Arabs in what the international media now calls the "Sunni Triangle" (Baghdad-Fallujah-Tikrit). As a consequence of the Arabization process, the presence of Sunni Arab people also increased in the urban areas of Mosul and Kirkuk.

The city of Baghdad has approximately 5,700,000 inhabitants. According to Andrew Terrill, at least two million Shi'ites live in Sadr City and other Shi'ites reside in the more prosperous areas of Baghdad.[21] Hence he argues that the Shi'ites "have thus altered the demographic balance of this traditional seat of Sunni [Arab] dominance."[22] Based on the Office of Research survey, 32 percent of the Baghdadis identify themselves as Shi'ite, only 3 percent as Sunni (Arab), and 62 percent as "just Muslim."[23] These statistics confirm Terrill's arguing that most Sunni Arabs seem to adopt a wait-and-see attitude.[24] Hence, this thesis deduces from the Baghdad sectarian estimates that most of the Sunni Arabs do not openly identify themselves as member of their sect, partly due to their belief that Sunni Islam is not an Islamic sect, but Islam.

In absence of accurate census information, this thesis applies an equal popular distribution to both the Sunni and Shia communities in Baghdad (see also appendix A). Despite the possibility of significant insurgency inside the "Sunni Triangle," Western media and policy makers must be careful not to make dangerous generalizations and associate the insurgents with members of the Sunni (Arab) sect or, even, with members of the Ba'ath party. Andrew Terrill argues that US administrators should be cautious how they use the word "de-Ba'athification" since some Ba'ath ideals are not inherently antidemocratic. It was the party itself that was deeply corrupted by Saddam Hussein.[25]

Furthermore, Terrill states the following policy guideline and recommendation to the US administration:

> "De-Baathification" is a concept borrowed from the post-World War II context of de-Nazification, where the United States sought to uproot an ideology based on race hatred and dictatorship. In the case of Baath . . . some aspects of ideology such as an equality of religions and secularization are not in conflict with basic human values. What is in conflict is the way in which Saddam Hussein used the Baath party as an instrument of social control and a justification for dictatorship. "De-Saddamization" and, if possible, "democratization" are probably more useful words to describe US goals.[26]

Although the great majority of the Sunni Arab population of Baghdad currently does not openly reveal its religious confession, more than 60 percent of the Baghdadis support a participation of major religious groups in the new Iraqi government.[27] Compared to the Shia sect, the Sunni Arab religious parties are underrepresented in the IGC. Six Shi'ite clerics are IGC-members. Four of the five Sunni Arab IGC-members are secular politicians. None of the secular politicians resided in Iraq between the first and the second Gulf War. The Office of Research survey reveals that, except for former foreign minister Adnan Pachadri, none of the Sunni Arab IGC-members has an Iraqi public recognition higher than 15 percent.[28] The highest public recognitions were given to three Shi'ite religious leaders: Abdul Aziz al-Hakim (58 percent), Sayyed Muhammad Bahr al-Hossoum (57 percent), and Ibrahim al-Jafari (54 percent).[29]

The Shia Factor

Taking into account that more than 60 percent of the Iraqi people are members of the Shia sect, its role in the permanent constitution-building process will be critical. Further, the influence of the Shi'ite Islamic Republic of Iran cannot be underestimated. Another important element of the Shia factor is the localization of many Shi'ite religious

shrine cities in Iraq, such as Najaf, Karbala, Samarra, and al-Hillah. These cities are all situated in the modern Iraqi territory of the former Ottoman province of Basra. Before World War I, this Shi'ite dominated province included a great part of modern Kuwait.[30] During the invasion of 1990, Saddam Hussein tried to legitimize his military action by referring to this historical fact. The economical reasons are obvious: Kuwait is an oil-rich country and it would provide Iraq, and by extension, also the Shi'ites of the Basra area, a much larger coastline with high seaport capacity. The actual Shi'ite religious or secular leaders have not yet expressed any claim on Kuwait, but the US administration must be aware that Shi'ite influence through religious channels is expected.[31]

During Saddam's regime, most of the Shi'ite religious leaders were exiled to Iran. Although the Ba'ath party oppressed the Shi'ite population, the central regime was never able to destroy the Shia religious structure. In the aftermath of OIF, two "political" structures were promptly able to communicate effectively with the non-Sunni population, the Kurdish political parties and the Shi'ite religious groups: the Supreme Council of the Islamic Revolution in Iraq (SCIRI), *Daawa*, and, *Hizballah* (Party of God).

Until his assassination on 28 August 2003, Ayatollah Mohammad Bakir al-Hakim led the SCIRI. His brother, Abdul Aziz al-Hakim, is a member of the IGC, and emerges as the political spokesman of Grand Ayatollah Ali Sistani's guidelines.[32] According to Terrill, the Iranian funded and supported SCIRI is a moderate religious group "at least loosely affiliated with the reform movement in Iran rather than the hardliners."[33] While they are seeking power bases in Iraq, it is uncertain if Tehran will continue to dominate SCIRI.[34] *Daawa* originates from *al Daawa Islamiyah* (the Islamic Call). Since 1957, the *Daawa* group has a long history of terrorist actions against the Ba'ath regime, but also

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against Americans and US supporters within the Middle East.[35] The Shi'ite clerics Ibrahim al-Jafari and Ezzedine Salim both represent the *Daawa* in the IGC. The Iraqi *Hizballah* is led by IGC-member Abdel Karim al-Mohammedawi.[36] In the IGC, he represents the Shi'ite Marsh population. In an interview with the *Guardian*, al-Mohammedawi stated that the Iraqi *Hizballah* group has no links with the Lebanese-based organization of the same name.[37] According to the same source, the Iraqi *Hizballah* is not supported by Iran.[38] In April 2003, its militia reached Amarra before the coalition forces. The coalition subsequently permitted *Hizballah* to run this Marsh Arab city.[39]

Analyzing the political events of November 2003, when the Bush administration changed its "constitution first, then elections and sovereignty" strategy into a dual track exit strategy, Shi'ite Grand Ayatollah Ali Sistani emerged as probably the most powerful cleric in Iraq.[40] Sistani is head of the Najaf-based *Hawza al Ilmiya* (Circle of scholars). During OIF, he issued a *fatwa* (Islamic ruling) not to oppose the military invasion. In the aftermath of the second Gulf War, the Shi'ite mosques declared their allegiance to Sistani's Hawza.[41] In light of his influence on the constitution-building process, Sistani issued in November 2003 a *fatwa* calling for general elections to choose a sovereign Iraqi government.[42] As a result, the Bush administration adopted the dual track exit strategy on 21 November 2003 (see chapter 1).

The so-called Sadr 2 movement, led by thirty-year-old Moktada al-Sadr, challenges Sistani's leadership.[43] Moktada is the son of revered Grand Ayatollah Muhammad Sadiq al-Sadr who was killed by Saddam's agents in February 1999. The younger al-Sadr is widely viewed as an anti-American. He attempts to build a following among the poorest parts of the Shi'ite population, but does not receive any support from the actual IGC-members.[44] Despite his young age, the US administration should not underestimate his potentially increasing influence in the near and midterm future.[45]

Another potential danger within the Shia factor is holding general elections too early. The 1992 Algerian experience of general elections in an Islamic country almost brought the fundamental *Front Islamique du Salut* (FIS) (in English: Islamic Salvation Front) into power. As a result the military dictatorship canceled the second round of the general elections. Both the French and the US government acquiesced in the authoritarian decision because they both opposed elections that would provide for "one person, one vote, once."[46] Bernard Lewis argues that the "one man (men only), one vote, once"-strategy is inherent to Islamist electoral policy.[47] Based on historical and religious analysis, the US administration must be aware of this danger and obtain guarantees of all participating parties that the new Iraqi constitution will be democratic and respect human dignity. The existence of an (international) coercive methodology, able to monitor, maintain, and enforce respect for democracy and human dignity in Iraq, is indispensable.

The July 2002 *Declaration of the Shia of Iraq* (later Shia Declaration) compiles the democratic views of SCIRI, *Daawa*, Iraqi *Hizballah*, Shi'ite Faily Kurds, Shi'ite women organizations, and numerous Islamic human rights activists. The Shia Declaration calls for the following key civil rights:

1. Their right to practice their own [Shi'ite] religious rites and rituals and to autonomously administer their own religious shrines and institutions, through legitimate Shia religious authorities.

2. Full freedom to conduct their [Shi'ite] religious affairs in their own mosques, meeting halls and other institutions.

3. Freedom to teach in their religious universities and institutions with no interference by the central or provincial authorities.

4. Freedom of movement and travel and assembly on the part of the higher Shia religious authorities, *ulama* and speakers, and guarantees afforded to the teaching circles--the *hawzas*--to conduct their affairs in a manner that they see fit.

5. Ensuring that the Shia's religious shrines and cities are entered into UNESCO's World Heritage Sites and are thus protected from arbitrary acts of change and destruction.

6. Full freedoms to publish Shia tracts and books and to establish Shia religious institutions and assemblies.

7. The right to establish independent schools, universities and other teaching establishments and academies, within the framework of a broad and consensual national education policy.

8. Introduction of the elements of the *Jafari* [the Twelve-Imam Shi'ite school of jurisprudence] creed and rites into the national educational curriculum, in a manner similar to the way in which other schools of Islamic jurisprudence are taught.

9. Revising the elements of the history curriculum to remove all disparagement of the Shia, and the writing of an authentic history that would remove any anti-Shia biases.

10. Freedom to establish Shia mosques, meeting halls and libraries.

11. Respect for the burial grounds of the Shia.

12. Official recognition by the state of the key dates of the Shia calendar.

13. Repatriation of all Iraqis who were forcibly expelled from Iraq, or who felt obliged to leave under duress, and the full restitution of their constitutional and civil rights.[48]

Analyzing these thirteen points, one can state that there is little correspondence between the Shi'ite claim for civil rights and the *Universal Declaration of Human Rights*. The Shia civil rights do not provide a statement about items such as the "freedom to change his religion or belief"[49] and the equality of men and women.[50] Furthermore, the civil rights claimed in the Shia Declaration are essentially sectarian rights. However, under the condition that the established Shi'ite institutions of justice, education, and information

are meeting the international standards, the Shia Declaration is not incompatible with the

framework of a new Iraqi democracy.

The Shia Declaration also summarizes the sectarian perspective on the new Iraqi

political system in the following nine principal points:

> 1. Abolition of ethnic and sectarian discrimination, and the elimination of the effects of these erroneous policies.
> 2. The establishment of a democratic parliamentary constitutional order that carefully avoids the hegemony of one sect or ethnic group over the others.
> 3. The consolidation of the principles of a single citizenship for all Iraqis, a common citizenship being the basic guarantor of national unity.
> 4. Full respect for the national, ethnic, religious, and sectarian identities of all Iraqis, and the inculcation of the ideals of true citizenship amongst all of Iraq's communities.
> 5. Confirmation of the unitary nature of the Iraqi state and people, within the parameters of diversity and pluralism in Iraq's ethnic, religious and sectarian identities.
> 6. Reconstruction of, and support for, the main elements of a civil society and its community bases.
> 7. Adoption of the structures of a federal state that would include a high degree of decentralisation and devolution of powers to elected provincial authorities and assemblies.
> 8. Full respect for the principles of universal human rights.
> 9. Protection of the Islamic identity of Iraqi society.[51]

These points include, without any restriction, the acceptance of the *Universal*

Declaration of Human Rights. Furthermore, the Shia Declaration favors an Iraqi federal

state consisting of several Arab regions and one "Kurdistan" region.[52] The Shia

Declaration also argues that: "Iraq's federal structure would not be based on a sectarian

division but rather on administrative and demographic criteria."[53] According to the Shia

Declaration, each region would have considerable legislative, fiscal, judicial and

executive powers.[54] However this thesis argues that the implementation of the Shia

Declaration opens the way to two potential dangers:

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1. The appearance of a Shi'ite-Kurdish coalition authorizing each other to assimilate Sunni Arabs, Turkomans, and Assyrians with either Shi'ite or Kurdish people (*Shi'itization* and *Kurdization*). Most probable hotspots are the city areas of Baghdad, Mosul, and Kirkuk (see also appendix A).

2. The establishment of Shi'ite Islamic state-structures in each (autonomous) Arab sub-region. Consequently, the proposals of the Shia Declaration do not seem to provide the necessary guarantees for the prevention of future religious-ethnic assimilation or, even worse, cleansing. Therefore the new Iraqi permanent constitution should also express unmistakably the future political standing of Sunni Arabs, Turkomans, and Assyrians. This thesis recommends the US administration increase political negotiations with Sunni Arab, Turkoman, and Assyrian moderate religious and secular leaders. As a result, the new Iraqi constitution would reflect simultaneously a healthy diffusion of power between Shi'ites, Sunni Arabs, and Kurds, as well as an effective representation of the Turkoman and Assyrian populations. One of the biggest constitutional challenges will be the protection of targets of potential joint Shi'ite-Kurdish coercion, particularly the Sunni Arab, Turkoman, and Assyrian minorities.

<div align="center">The Kurdish Factor</div>

According to Juan Cole, most of the Kurds adhere to a form of Sunni Islam that is heavily influenced by Sufi mysticism.[55] The major Sufi orders (*tariga*) are the Naqsbandi, established by Shaikh Abdul Qadar Gailani in Baghdad in the twelfth century and the Qadiri, originated in the Asian Turkistan region in the fourteenth century.[56] The first order prevails in the Western part of Iraq's Kurdish region. Most of the Iraqi Qadiri followers reside in the Eastern part.

Observing the clothing of the Kurdish IGC-members and analyzing the post-

World War I history of the Iraqi Kurdish population (see chapter 1), one could conclude

that most of the Kurds embrace secular and/or nationalist ideologies. The latter (Western)

perception seems not to correspond with the reality. The Office of Research survey

depicts that 86 percent of the Erbil population and 68 percent of the Suleymania

population (margin of error: +/- 13.7 percent) support governmental participation of

religious groups.[57] This is rather surprising because the city of Erbil is the home base of

IGC-member and leader of the Kurdish Democratic Party (KDP), Massoud Barzani.

Supporters of Jalal Talabani, the leader of the Kurdish Union Party (KUP) dominate the

Suleymania area. In 1963, English historian William Eagleton wrote in his book *The*

Kurdish Republic of 1946:

> Although outsiders sometimes conclude that religion sits lightly on the
> Kurd and that heretical tendencies and pre-Islamic tendencies lie close to the
> surface, it is a mistake to suppose that Islam has no force or influence in the
> region; for though the trend is not in their favour, nowhere else do Sufi Shaikhs
> retain such devoted followers.[58]

KDP-leader Massoud Barzani was born in the Kurdish Republic of Mahabad in

northwestern Iran (see figure 4), which was proclaimed by Qazi Muhammad on 22

January 1946. Massoud's father, "Mulla" Mustafa Barzani, assisted the proclamation

accompanied by about 10,000 of his tribe members as well as several Kurdish Iraqi

officers, and even a Soviet officer.[59] One of the Iraqi officers was the young Colonel

Sayyid Abdul Aziz Gilani, son of the Iraqi Kurdish most revered Shaikh Abdullah

Effendi.[60] Eleven months later, Soviet troops left northern Iran. The Qazi family

members of the Mahabad government were hanged, and Barzani fled with about 5,000

followers to the Soviet Union. Eleven years later, after the Iraqi revolution of 1958, they

returned to their hometown, about 50 miles North of Erbil.

According to William Eagleton, by request of the Soviet Union, Qazi Muhammad

transformed the Kurdish nationalistic political movement Komala (*Komala I Zhian I*

Kurdistan or "Committee of the Revival of Kurdistan") into the Kurdish Democratic

Party (KDP) in November 1945.[61] At that time, the (Iranian) Komala had wide support

from both Iraqi and Turkish Kurdish nationalistic movements.[62]

More than thirty years later, after the Islamic revolution of 1979, the Kurdish

Democratic Party of Iran (KDPI) and the Komala merged under the common leadership

of Shaikh Izz al-Din Husaini. He submitted the following eight-point-program to the new

Islamic Republic of Iran:

> 1. Official recognition of Kurdish autonomy and reference to it in the new Iranian constitution.
> 2. The autonomous Kurdish region to include the four provinces of Ilam, Kermanshah, Kurdistan, and West-Azerbaijan.
> 3. The election of a Kurdish assembly by secret ballot. The council to select a local government to administer economic, social, cultural, and internal security affairs for the Kurdish region.
> 4. Kurdish to be considered an official language in schools and in official correspondence; Persian to be taught in the Kurdish elementary schools after the fourth grade.
> 5. The allocation of a portion of the budget to develop the region.
> 6. Kurdish representatives to be given important positions in the central government.
> 7. The central government to have control over the army, foreign policy, national economy, and long-term economic planning.
> 8. The guarantee of freedom of press, of expression, and of political and religious organization.[63]

Grand Ayatollah Khomeini's constitution does not reflect the Iranian Kurdish aspirations.

On the contrary, by the summer of 1980 government troops occupied most of the Kurdish

towns and the insurgents were forced to operate from the mountains and the countryside

of the Iranian-Iraqi border.[64]

The aspirations reflected in the Iraqi draft constitution of the Kurdish Regional

Government (KRG), led by Massoud Barzani, are very similar to Husaini's eight-point-

program of 1979. Although the Kurdish draft constitution proposes a "Federal Republic

of Iraq," in essence it provides the outline of a confederation with one Arab Region and

one Kurdish Region.[65] Furthermore, it expands and preserves the existing level of

Kurdish autonomy. The Kurdish Region would become twice the size of the territory

under Kurdish control since the implementation of the northern no-fly zone in 1991.[66]

The Kurdish Regional Assembly, currently composed of elected Kurdish deputies

and five Christian selected members, claims multiethnic and oil-rich Kirkuk as the capital

of the Kurdish Region. The confederal nature of the Kurdish draft constitution is reflected

in the following articles:

> ART. 33. The Assembly of the Regions is made up from representatives
> from each of the Arab and Kurdistan regions provided that the principle of equal
> representation is upheld.

> ART. 53. The High Court shall consist of a number of members, persons
> of high integrity, qualifications, and experience, chosen from among the judiciary
> and law professors teaching at universities who have had at least 20 years of
> practice or teaching and each region shall designate half of the members of the
> Court.

> ART. 73. The Regional authorities shall levy the following taxes: i)
> income; ii) inheritance; iii) agricultural land and property taxes; iv) property
> registration fees; v) court fees; vi) license fees; vii) water and electricity charges.

> ART. 82. The structure of the Federal Republic of Iraq and its political
> system as laid out in this Constitution cannot be changed unless through a
> decision by the legislative authorities in the Federal and Regional levels. Action
> contrary to this shall afford the people of the Kurdistan Region the right of self-
> determination.[67]

Through articles 2 and 78, the Kurdish draft constitution also calls for the redressing of

the Arabization effects of the Ba'ath regime:

> ART. 2. The Federal Republic of Iraq consists of two regions: i) The Arabic Region that includes the middle and southern regions of Iraq along with the Province of Ninevah in the north excepting the districts and sub-districts that have a Kurdish majority as mentioned in the item below. ii) The Kurdish Region that includes the Provinces of Kirkuk, Sulaimaniyah and Erbil within their administrative boundaries before 1970 and the Province of Duhok and the districts of Aqra, Sheihkan, Sinjar and the sub-district of Zimar in the Province of Ninevah and the districts of Khaniqin and Mandali in the Province of Diyala and the district of Badra in the Province of Al-Wasit.

> ART. 78. Redress the effects of Arabization and deportations that took place in some parts of the Kurdistan Region. The deported Kurdish citizens from areas of the Province of Kirkuk and from Makhmoor, Sinjar, Zimar, Sheikhan, Khaniqin, Mandali, and others should return to their previous homes in those areas. As well, the Arab citizens who were brought by the authorities into those areas at any time since 1957 should return to their original homes.[68]

For the time being it is very difficult to determine which religious-ethnic group has the

majority in each Iraqi city or town. Nonetheless, the Kurdish draft constitution gives the

US administration a major indication about the critical ethnic regions and the two

flashpoint cities in northern Iraq: Mosul and Kirkuk (see also appendix A).

Another critical constitutional issue is the composition of the Iraqi defense forces.

Article 77 of the Kurdish draft constitution argues that: "The Pesh Merga forces and their

various divisions shall constitute a part of the Armed Forces of the Federal Republic of

Iraq."[69] This is in contradiction with current KUP-leader Jalal Talabani's declarations in

an interview with the London-based Dar-al-Hayat magazine of November 2003: "The

new Iraq will have one army, and this army will be a national army, not the army of one

party. . . . In the new, united, independent, federal, democratic Iraq, their will be no

militia, Kurdish or Arab."[70] In the same interview, Talabani confirmed the desire to build

good relationships with neighboring country, Turkey. He also promised that Kurdistan

would not permit the PKK to use northern Iraq as a breeding ground or as a base to organize anti-Turkish operations.[71]

Turkey is very reluctant to accept the idea of Iraqi Kurdish autonomy, even within a federal republic. It fears a revival of nationalistic struggle among the Turkish Kurds, a population that the Turkish central government called, for many years, the "Mountain Turks."[72] Under pressure from the United States and the European Union, the Turkish government made considerable efforts to provide the Turkish Kurds specific ethnic rights. For instance, in 2002, Turkey allowed education and radio broadcasts in Kurdish, recognizing de facto the existence of this language.[73] Several months after the fall of Saddam Hussein, on 5 August 2003, the Turkish government adopted an amnesty law for Kurdish rebels who have not committed any violent crimes.[74]

Many observers believe that a successful outcome of the Iraqi Kurdish issue depends on the efforts of internal reform the Turkish government is willing to undertake during the constitution-building process of the new Iraq.[75] This thesis makes the extrapolation that a similar Iranian reform will be necessary. The Iranian KDP also struggles for ethnic recognition. For instance, on 12 July 1989, Iranian KDP leader Ghassemlou was negotiating Kurdish autonomy with the central government, when he was assassinated in Vienna.[76]

Six years before, Iraqi KUP-leader Jalal Talabani negotiated with Saddam Hussein's regime about an overall settlement of the Kurdish autonomy issue.[77] Frederick Axelguard's study about the Gulf War I implications on US policy reveals:

Among the provisions reportedly discussed were democratic elections for legislative and executive councils for the autonomous region [of Kurdistan]; formation of a 40,000-member Kurdish defense force to "protect Kurdistan from foreign enemies", expansion of the existing autonomous zone to include larger portions of the Kurdish-dominated areas of Iraq, and allocation of a fixed proportion (20-30 percent) of Kirkuk-generated revenues for reconstruction and economic development projects in Kurdistan.

At one point a compromise was reported that provided for joint Arab-Kurdish-Turkoman administration for the city of Kirkuk and its immediate environs (the seat of Iraq's oldest and largest-producing oil facilities), while the remainder of Kirkuk province would be ceded to the autonomous zone.[78]

Both Massoud Barzani and Jalal Talabani command several thousands of Pesh Merga forces. It is very likely that both leaders will be reluctant to disarm or to dissolve their militia in the new Iraqi army and border forces.

The Kurdish aspirations also conflict with the political goals of both Assyrians and Turkomans with whom they will have to share the same cities and territories. For instance, the Kurdish draft constitution does not provide any guarantee for the protection of the Assyrians residing mainly in the Mosul area and the Turkomans of Kirkuk.

The Turkoman Factor

Besides the fear of potential resurgence of Kurdish nationalism, Turkey also worries about the ethnic and cultural protection of the Turkoman population in northern Iraq.[79] The Iraqi Turkomans Front (ITF) is yet not represented in the Kurdish Regional Government mainly because the KRG electoral threshold was set at 7 percent and the post-1991 Kurdish autonomous region does not include the Kirkuk area.

An example of post-1991 *Kurdization* is depicted in the March 2003 US Department of State record on human rights abuses in Iraq: "Ethnic Turkomans also claimed discrimination by Kurdish groups, including the required use of the Kurdistan flag in Turkomans schools and the assignment of Kurdish teachers to Turkomans

schools."[80] The Kirkuk area is not only rich in oil; it is also a fertile plain providing a

significant deal of the national agricultural resources.[81]

According to Nouri Talabany, probably a Kurdish-oriented professor, the

Turkomans were, in 1957, "the largest single group in the city of Kirkuk," but "far

outnumbered by Kurds and Arabs when taking the whole governorate [province] into

account."[82] A reliable US Army source argued in 1989 that the Kurds have the majority

population in this region.[83]

<center>The Assyrian Factor</center>

Another ethnic and religious minority residing on the Kurdish territories[84] is the

Assyrian population. The Assyrians are considered to be the third largest ethnic non-Arab

minority and the largest Christian group in Iraq.[85] They claim to be the descendants of the

ancient Assyrian empire.[86] Assyrian is a Semitic language and a modern spoken form of

ancient Syriac, a dialect of Aramaic.[87] Yet most Assyrians can also speak Arabic.[88]

The Assyrian's traditional enemies are the Turks, the Arabs, and the Kurds. The

Arab and Kurdish hatred finds its origin in the first years of the Iraqi monarchy. Exiled

from Turkey, thousands of Assyrians joined the *Iraqi Levies*, a British-paid, and British-

officered militia, separate from the regular Iraqi army.[89] In 1928, the Iraqi Levies became

entirely Assyrian and, subsequently, conducted retaliatory operations mainly against the

Kurds. In his book *Republic of Fear* Samir al-Khalil states:

> In July 1933, the Mar Shamun [the Assyrian patriarch] proposed that the
> Assyrians be recognized as a millet [nation] inside Iraq, and not merely as a
> religious community; that a national home in the Amadiya, Zakdo, and Dohuk
> districts of Iraq (populated by their traditional enemies, the Kurds) should be open
> to Assyrians from all over the world; . . . that the districts ceded to the Turks in
> 1925 should be annexed into this national home by the Iraqi government.[90]

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The answer of the Iraqi central government came in August 1933. Under the leadership

of the General Bakr Sidqi--a Kurd--about 300 Assyrians, including women and children,

were killed in the village of Simel (in modern Iraq: Sumayl).[91] In Iraqi Arab and Kurdish

eyes, this event was not merely seen as an ethnic cleansing, but as an action of anti-

imperialism against the British colonialists.[92]

After the Sumayl massacre, the Assyrian tragedy continued. For instance, in the

mid-1970s, the Iraqi government destroyed about two hundred Assyrian villages and

relocated their inhabitants to Baghdad.[93] Even the most recent US Department of State

record on human rights abuses in Iraq mentions that: "Some Assyrian villagers reported

in 2000 being pressured to leave the countryside for the cities as part of a campaign by

indigenous Kurdish forces to deny PKK access to possible food supplies."[94]

<u>The Minorities Factor</u>

What about the non-Assyrian Christians, the Jews, the Yazidis, and the Faily

Kurds who are dwelling among the Iraqi Shi'ite Arab, Sunni Arab, Sunni Kurdish,

Turkoman, and Assyrian populations? Will the new Iraqi constitution include guarantees

protecting minorities that are not able to have a significant representation in both central

(federal) and regional governments? Analyzing CIA and al-Jazeera sources (see table 1 of

chapter 4), each minority, cited above, has an Iraqi population of less than 0.5 percent.

Particular protection will thus be necessary for Iraqi residents who are neither

Muslim nor Judeo-Christian. Islamic law provides protection for Christians and Jews, but

not for other worshipers, seen as pagans. Bernard Lewis even argues:

> For Jews and Christians, followers of religions recognized by Islam[ic] laws, this [religious] status is one of protected subordination, with some but not all of the rights of their Muslim compatriots.--Non-recognized religions--Baha'is in Iran, Ahmadis in Pakistan, African religions in Sudan, the strict application of Sharia law [is] . . . conversion or death (possibly commuted to enslavement).[95]

Bernard Lewis' citation from his book *Islam and the West* reveals, once again, the difficult cohabitation of Islamic law and the respect for human rights. This is one of the many reasons why this thesis recommends the US administration make sure that the principles of the *Universal Declaration of Human Rights* are guaranteed by the drafters of the new Iraqi permanent constitution.

For instance, the US Department of State record on human rights abuses in Iraq argues that the Iraqi constitution of 1990 does not provide for a Yazidi identity.[96] According to al-Jazeera sources, the Yazidi population is little more than 100,000.[97] This group lives mainly in the Sinjar Mountains in northwestern Iraq, near the Syrian borders. Articles 2 and 78 of the Kurdish draft constitution claim this region as part of the Kurdistan.[98] Furthermore, the US Department of State report asserts:

> Many Yazidis consider themselves to be ethnically Kurdish, although some would define themselves as both religiously and ethnically distinct from Muslim Kurds. However, the [Saddam] regime, without any historical basis, defined the Yazidis as Arabs. There are evidences that the regime compelled this re-identification to encourage Yazidis to join in domestic military action against Muslim Kurds. Captured regime documents included in a 1998 HRW [Human Right Watch] report described special all Yazidi military detachments formed during the 1988-89 Anfal campaign [Kurdish massacre with the use of Iraqi WMD] to "pursue and attack" Muslim Kurds. The regime imposed the same repressive measures on Yazidis as on other groups.[99]

Analyzing the Assyrian and Kurdish genocides of respectively 1933 and 1988, both are corresponding with Thomas Friedman's theory about how politics runs in the Middle East. In *From Beirut to Jerusalem*, Friedman argues that Middle Eastern policy is characterized by three traditions: tribalism, authoritarianism, and the concept of the

nation-state.[100] In former Iraq, the Ba'ath party, empowered by Saddam's Tikrit tribe could maintain a despotic stability within the Iraqi nation-state. This nation-state was created through political arrangements between British, French, and, even, Ottoman imperial regimes.

Conclusion

Analyzing the aspirations of the different Iraqi sectarian and ethnic factions, the drafters of a new permanent Iraqi constitution will have to cope with many incompatible aspirations. Implementing a secular Iraqi state model is not supported by either the Arab or the Kurdish factions. Therefore, the new Iraqi permanent constitution will at least have to reflect a regard for Islamic values.

Because of the de facto, but not recognized, independence of the northern Kurdish regions, its population and its political leaders want to seize the opportunity to reinforce a highly autonomous "Kurdistan" within a confederate Iraqi republic. This idea is in contrast with the aspirations of both the Sunni and Shi'ite Arabs. Furthermore, Sunni Arabs fear to loose much of their former political, economical, and military power in the new Iraq. Therefore, Sunni Arab "reintegration" in the constitution-building process will become a major factor in successful Iraqi nation building. The US-led coalition must be aware that focusing on "de-Ba'athification" and destruction of the Sunni political power will more harm than facilitate the Iraqi stabilization and democratization process. Hence, there is a danger of a Shi'ite-Kurdish coalition forming and potentially leading toward ethnic cleansing of Sunni Arabs in the major cities of Iraq: Baghdad, Basra, Kirkuk, and Mosul.

[1]T. E. Lawrence, *Seven Pillars of Wisdom: a Triumph* (New York, NY: George Doran Company, 1926; reprint, New York, NY: Anchor Books, 1991), 24.

[2]CIA, *World Factbook 2003* [Interactive publication online] (Washington, DC: Central Intelligence Agency, 2003, accessed 2 November 2003); available from http://www.odci.gov/cia/publications/factbook; Internet; and al-Jazeera, *Iraq: Country Profile* [Interactive publication online] (Doha, Qatar: al-Jazeera, 2003, accessed 30 November 2003); available from http://english.aljazeera.net; Internet.

[3]Mohsen N. Milani, *The Making of Iran's Islamic Revolution: from Monarchy to Islamic Republic,* 2d ed. (Boulder, CO: Westview Press, 1988, 1994), 156.

[4]Vlaamse Radio en Televisie (VRT) Nieuws, *Loya Jirgah start besprekingen nieuwe grondwet* (*Loya Jirga Starts Negotiations About the New Constitution*) [Article online] (Brussels, BE: VRT Nieuws, 14 December 2003, accessed 14 December 2003); available from http://www.vrtnieuws.net/nieuwsnet_master/default/printvriendelijk/ 1214_Loyajirgah.htm; Internet, p. 1 of 1.

[5]Ibid.

[6]Edward W. Said, *Orientalism* (New York, NY: Random House Inc., 1979), 279; and Carl L. Brown, *Religion and State: the Muslim Approach to Politics* (New York, NY: Columbia University Press, 2000), 42; and Bernard Lewis, *The Crisis of Islam: Holy War and Unholy Terror* (New York, NY: Modern Library, 2003), 26-27; and James P. Piscatori, *Islam in a World of Nation-States* (Cambridge, UK: Cambridge University Press, 1986), 1.

[7]Lewis, 9.

[8]Noah Feldman, *After Jihad: America and the Struggle for Islamic Democracy* (New York, NY: Farrar, Strauss, and Giroux, 2003), 20.

[9]The literal translation of *Dar al-Islam* is "Abode of Islam."

[10]Lewis, 31.

[11]Ibid.

[12]Ibid., 38.

[13]Ibid., 40.

[14]Piscatori, 10.

[15]United Nations Secretariat, General Assembly, *Resolution 217A*, 1948, III.A.810, art. 18.

[16]Feldman, 33.

[17]US Department of State, Office of Research, *Iraqi Public Has Wide Ranging Preferences for a Future Political System (*Washington, DC: Government Printing Office, 21 October 2003), 3.

[18]Feldman, 41; and Brown, 143.

[19]Feldman, 42.

[20]Andrew W. Terrill, *Nationalism, Sectarianism, and the Future of the US Presence in Post-Saddam Iraq* (Carlisle, PA: Strategic Studies Institute (SSI), US Army War College, July 2003), 25.

[21]Ibid., 17.

[22]Ibid.

[23]US Department of State, Office of Research, 6.

[24]Terrill, 24.

[25]Ibid., vi.

[26]Ibid., 36.

[27]US Department of State, Office of Research, 16.

[28]Ibid.

[29]Ibid.

[30]Terrill, 5.

[31]According the *World Factbook 2003* (CIA), 30 percent of the Kuwaiti Muslim people are Shia.

[32]Rajiv Chandrasekaran, *Top Cleric Faults US Blueprint for Iraq: Shiite Cite Need for Citizens' Role, "Islamic Identity," Washington Post*, 27 November 2003, A01.

[33]Terrill, 22.

[34]Ibid.

[35]Ibid., 23.

[36]Ewen MacAskill, *After 13 Years Fighting Saddam, Lord of the Marshes Wants His Country Back: Guerilla Leader Who Became a Legend Emerges from Hiding, Manchester Guardian*, 28 April 2003, 1.

[37]Ibid.

[38]Ibid.

[39]Ibid.

[40]Chandrasekaran, A01.

[41]Terrill, 21.

[42]Anthony Shadid and Rajiv Chandrasekan, *Leading Cleric Calls for Elections in Iraq: Sistani Spells Out Objections to US, Washington Post*, 30 November 2003, A01.

[43]Ian Fisher, *An Anti-American Iraqi Cleric Declares His Own Government*, *New York Times*, 12 October 2003, sec. 1, p. 1.

[44]Ibid.

[45]International Crisis Group (ICG), *Iraq's Constitutional Challenge*, ICG Middle East Report no. 19 (Baghdad, Iraq; Brussels, Belgium: International Crisis Group, 2003), 17.

[46]Feldman, 5.

[47]Lewis, 112.

[48]Iraq Foundation, *Declaration of the Shi'a in Iraq* [Publication online] (London, UK: Iraq Foundation, 15 July 2002, accessed 21 September 2003); available from http://www.iraqfoundation.org/news/2002/gjuly/15_declaration_english.html; Internet, p. 15 of 28.

[49]United Nations Secretariat, General Assembly, *Resolution 217A*, 1948, III.A.810, art. 18.

[50]Ibid., art. 2.

[51]Iraq Foundation, p. 13 of 28.

[52]Ibid., p. 12 of 28.

[53]Ibid., p. 14 of 28.

[54]Ibid.

[55]Juan Cole, *Sacred Space and Holy War: the Politics, Culture, and History of Shi'ite Islam* (London, UK and New York, NY: I. B. Tauris, 2002), 100.

[56]William Eagleton, *The Kurdish Republic of 1946* (London, UK and New York, NY: Oxford University Press, 1963), 20.

[57]US Department of State, Office of Research, 16.

[58]Eagleton, 29.

[59]Ibid., 62.

[60]Ibid., 52.

[61]Ibid., 57.

[62]Ibid., 38.

[63]Edmund Ghareeb, *The Kurdish Question in Iraq* (Syracuse, NY: Syracuse University Press, 1981), 15.

[64]Ibid., 23.

[65]Century Foundation, *Establishing a Stable Democratic Constitutional Structure in Iraq: Some Basic Considerations* [Book online] (New York, NY: Century Foundation, 2003, accessed 30 November 2003); available from http://www.pilpg.org; Internet, 9.

[66]Ibid.

[67]Kurdistan Regional Government (KRG), *Constitution of the Federal Republic of Iraq* (2002) [Publication online] (Erbil, Iraq: Kurdistan Regional Government, 2003, accessed 21 September 2003); available from http://www.krg.org/docs/ Federal_Const.asp; Internet, art. 33, art. 53, art. 73, and art. 82.

[68]Ibid., art. 2 and art. 78.

[69]Ibid., art. 77.

[70]Ibrahim Khayyat, *Interview: Iraqi Kurdish Leader Jalal Talabani* [Article online] (London, UK: Dar-al-Hayat, 9 November 2003, accessed 27 November 2003); available from http://www.worldpress.org/Mideast/1681.cfm; Internet, p. 4 of 5.

[71]Ibid., p. 1 of 5.

[72]Feldman, 102.

[73]Ibid.

[74]K. Gajendra Singh, *Warning Shot for Turkey's Military* [Article online] (Hong Kong, China: Asia Times Online, 9 August 2003, accessed 12 January 2003); available from http://www.atimes.com/atimes/Central_Asia/EH09Ag01.html; Internet, p. 3 of 6.

[75]Century Foundation, 11; and Terrill, 26.

[76]Philip G. Kreyenbroek and Stephan Sperl, *The Kurds: a Contemporary Overview* (New York, NY: Routledge, 1992), 171-192.

[77]Frederick W. Axelgard, *A New Iraq?: the Gulf War and Implications for US Policy,* Washington Papers no. 133 (New York, NY: Praeger Publishers, 1988.), 32.

[78]Ibid., 31-33.

[79]Century Foundation, 11.

[80]US Department of State, *State Department Report Outlines Human Rights Abuses in Iraq* [Document online] (Washington, DC: US Department of State, 31 March 2003, accessed 6 December 2003); available from http://usinfo.state.gov/regional/nea/iraq/text2003/0331hmnrightsrpt.htm; Internet, p. 27 of 29.

[81]John Fawcett and Victor Tanner, *The Internally Displaced People of Iraq,* Brooking Institution, SAIS Project of Internal Displacement (Washington, DC: John Hopkins University Press, 2002), 25.

[82]Nouri Talabany, *The Arabization of the Kirkuk Region* (Uppsala, Sweden: Kurdistan Studies Press, 2001), 68.

[83]US Department of Army, *Iraq: A Country Study* (Washington, DC: Government Printing Office, 1990), 83.

[84]Kurdistan Regional Government (KRG), art. 2 and art. 78.

[85]Fawcett and Tanner, 14.

[86]Ibid., 14.

[87]US Department of Army, *Lebanon: A Country Study* (Washington, DC: Government Printing Office, 1989), 73.

[88]Ibid.

[89]US Department of Army, *Iraq: A Country Study*, 41.

[90]Samir al-Khalil, *Republic of Fear: the inside Story of Saddam's Iraq* (Berkeley, CA: University of California Press, 1989.), 149.

[91]US Department of Army, *Iraq: A Country Study*, 41.

[92]al-Khalil, 172.

[93]Fawcett and Tanner, 14.

[94]US Department of State, *State Department Report Outlines Human Rights Abuses in Iraq*, p. 27 of 29.

[95]Bernard Lewis, *Islam and the West* (Oxford, UK and New York, NY: Oxford University Press, 1993), 145.

[96]US Department of State, *State Department Report Outlines Human Rights Abuses in Iraq*, p. 27 of 29.

[97]al-Jazeera, *Iraq: Country Profile* [Interactive publication online] (Doha, Qatar: al-Jazeera, 2003, accessed 30 November 2003); available from http://english.aljazeera.net; Internet.

[98]Kurdistan Regional Government (KRG), art. 2 and art. 78.

[99]US Department of State, *State Department Report Outlines Human Rights Abuses in Iraq*, p. 27 of 29.

[100]Thomas L. Friedman, *From Beirut to Jerusalem* (New York, NY: Farrar, Strauss, and Giroux, 1989.), 87-98.

CHAPTER 3

HISTORICAL CASE STUDIES

Democracies are more difficult to create. They are also more difficult to destroy.[1]

Bernard Lewis, *The Crisis of Islam: Holy War and Unholy Terror*

Introduction

The first Iraqi constitution of 29 July 1925 confirmed the establishment of a hereditary constitutional monarchy, drafted on the British model. Four years before, Britain had installed their puppet Hashemite monarch, King Faisal I. During the monarchic regime, Britain maintained its control of Iraqi resources. In return, British forces provided security (counterinsurgency) against Arab and Kurdish uprisings. For instance, Kurdish nationalist Mulla Mustafa Barzani, fled in 1945 to Iranian Kurdistan under pressure from the British Royal Air Force (RAF).

On 14 July 1958, the Free Officers Movement, under the leadership of General Abd al Karim Qasim and Colonel Abd as Salaam Arif, overthrew the Hashemite monarchy and put the royal family to death.[2] On 26 July 1958, the new government announced the adoption of a new Interim Constitution.

Iraq's Republican Constitutions

The Interim Constitution of 1958 called for equality of all Iraqi citizens. The government liberated political prisoners and granted amnesty to the Kurdish insurgents. As a result, many exiled Kurds returned to northern Iraq. It is the same year that Mulla

Mustafa, father of current KDP leader and IGC-member Massoud Barzani, reintegrated into the Iraqi political arena after an eleven-year exile in the Soviet Union.

The 1958 constitution laid the basis for an Iraqi Republic in twenty-nine articles. It considered Arabs and Kurds as "[equal] partners."[3] Islam was the state religion.[4] The constitution proclaimed that: "Citizens are equal before the law in their public rights and obligations, and there shall be no distinction between them by reasons of race, origin, language, religion, or belief."[5]

Regarding the form of government, the constitution depicted a three-man Presidential Council consisting of a President and two Members. The first Presidential Council included one Sunni Arab, one Shi'ite, and one Kurd, reflecting the Iraqi society. This council was to carry out the ceremonial tasks of a president collectively. Qasim, as Prime Minister and minister of defense, became actually the new leader of Iraq, while Arif took the posts of Vice-Prime Minister and minister of interior affairs. According to the interim constitution, legislative powers were exercised by a Council of Ministers, subject to the approval of the Presidential Council.[6] Furthermore, the 1958 constitution stated that judges were independent and that they were "not subject to any authority, save that of the law."[7] No authority or individual could violate the independence of judiciary affairs.[8]

The 1958 constitution set the conditions for Iraq to head toward a democratic republic. Five years later, the Ba'athists assassinated Qasim and overthrew his government. The Bonn Agreement of 5 December 2001 revived the 1964 Afghani constitution in order to establish the Transitional Islamic Republic of Afghanistan.

Similar to the Afghani experience, the 1958 Iraqi Interim Constitution could form a

potential basis for future negotiations about the new Iraqi permanent constitution.

In 1968, the Ba'ath regime issued a new constitution giving its party a prominent

political role. Saddam Hussein enhanced the role of the Ba'ath Party in the 1990 Interim

Constitution. The latter constitution is called "interim" because its related referendum

never took place. Many of the 1958 constitutional articles regarding, for instance, the

state religion, the use of the Kurdish language, and the respect for civil liberties were

maintained in the 1990 Interim Constitution:

> ART. 1. Iraq is a Sovereign People's Democratic Republic. Its basic objective is the realization of an Arab State and the build-up of the socialist system.

> ART. 2. The people are the source of authority and its legitimacy.

> ART. 4. Islam is the Religion of the State.

> ART. 5. (a) Iraq is a part of the Arab Nation. (b) The Iraqi People are composed of two principal nationalisms: the Arab Nationalism and the Kurdish Nationalism. (c) This Constitution acknowledges the national rights of the Kurdish People and the legitimate rights of all minorities within the Iraqi unity.

> ART. 7. (a) Arabic is the official language. (b) The Kurdish language is official, besides Arabic, in the Kurdish Region.

> ART. 13. National resources and basic means of production are owned by the People. They are directly invested by the Central Authority in the Iraqi Republic, according to exigencies of the general planning of the national economy.

> ART. 19. (a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion. (b) Equal opportunities are guaranteed to all citizens, according to the law.

> ART. 25. Freedom of religion, faith, and the exercise of religious rites, is guaranteed, in accordance with the rules of constitution and laws and in compliance with morals and public order.[9]

However, under the Ba'ath regime, these and many other constitutional articles relating

to essential human rights remained a dead letter. Persecution, torture, Arabization, and

genocide were some of the widespread deeds inside Saddam's Iraq.[10] Chapter IV of the

1990 Interim Constitution provided the Revolutionary Command Council (RCC), embodied by the Ba'ath Party, both executive and legislative powers.[11]

Analyzing the 1990 Interim Constitution, this thesis asserts that only a small number of its articles can remain unchanged in a new Iraqi constitution. The drafting of the new Iraqi constitution would need radical modifications in order to enable the introduction of a pluralistic political culture and an open-market economy. The case study of the post-1958 Iraqi republican constitutional experience demonstrates two major considerations:

1. The Iraqi people have, within their young heritage as an independent nation-state, several constitutional models that, with modifications, can be revived in order to establish a transitional (Islamic) Republic of Iraq. The 1958 constitution is more appropriate because it does not empower a one party political system.

2. The introduction of a new Iraqi permanent constitution that describes a democratic republic with respect for Islamic identity and human dignity does not provide sufficient protection against later dictatorship, regional instability, and, by extension, denial of access to Iraq's mineral resources.

The post-OEF Afghani experience provides us with a recent example of a democratic constitution-building process in a Muslim country that has a Shi'ite representation of about 15 percent of the population.

The New Afghani Constitution

The Bonn Agreement of 5 December 2001 called upon the constitutional *Loya Jirga* (Grand Council) to draft a new constitution within eighteen months. This agreement stated that the basis for the new Afghani constitution should be the 1964

constitution.[12] According to the *World Factbook 2003*, 15 percent of the Muslim

population is Shi'ite.[13] The Afghani constitution, adopted on 3 January 2004, recognizes

the jurisprudence of the Shia sect by stating:

> ART. 131. Courts shall apply Shia jurisprudence in cases dealing with personal matters involving the followers of Shia Sect in accordance with the provisions of the law. In other cases as well, where no provisions of this constitution and other laws apply and both sides of the case are followers of the Shia Sect, courts shall resolve the case according to laws of this Sect.[14]

The first three articles of the new Afghani constitution set the stage for an Islamic

Republic:

> ART. 1. Afghanistan is an Islamic Republic independent, unitary, and indivisible state.
> ART. 2. The religion of Afghanistan is the sacred religion of Islam. Followers of other religions are free to perform their religious rites within the limits of the provisions of law.
> ART. 3. In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.[15]

As laid down in article 2, this constitution recognizes freedom of religion "within the

limits of the provisions of law."[16] At least on paper, this phrasing cannot hinder an

Afghani citizen to change his or her religion because article 7 of the constitution

sanctions the principles of the *Universal Declaration of Human Rights*:

> ART. 7. The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights. The state prevents all types of terrorist activities and production and smuggling of narcotics.[17]

The constitution of the Islamic Republic of Afghanistan is also democratic:

> ART. 6. The state is obliged to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights and realization of democracy and to ensure national unity and equality among all ethnic groups and tribes and to provide for balanced development in all areas of the country.

ART. 61. The President is elected by receiving a majority of more than 50% of the votes cast through free, general, secret, and direct voting . . . The elections for the post of the President shall be held under the supervision of the Independent Electoral Commission for Supervising Elections. This commission shall be established to supervise all types of elections and referendums in the country, in accordance with the provisions of law.

ART. 83. Members of the *Wolesi Jirga* [parliament] are elected by the people through free, general, secret, and direct elections.

ART. 141. The mayor and members of the municipal councils shall be elected by free, general, secret, and direct elections.[18]

With the implementation of this constitution, Afghanistan becomes the first Islamic Republic that formally respects democracy and human dignity.

Regarding the Afghani state-structure, the new constitution describes a unitary state recognizing all the different ethnic groups.[19] The legislative power is exercised by a bicameral National Assembly, encompassing the *Wolesi Jirga* (parliament) and the *Meshrana Jirga* (senate).[20] The President nominates his or her ministers, with the approval of the Parliament.

In order to balance the presidential power, article 60 of the Afghani constitution establishes the office of two Vice-Presidents.[21] The draft constitution, submitted to the constitutional *Loya Jirga* on 14 December 2003, stipulated only one Vice-President.

Article 116 states that: "The *Stera Mahkama* (Supreme Court), as the highest judicial body, heads the judiciary of the Islamic Republic of Afghanistan."[22] This Supreme Court is composed of a mix of nine judges having "a higher education in (secular) law or in Islamic jurisprudence.[23] However, the Afghani constitution does not specify how many secular and Islamic judges will take office on the Supreme Court.

According to the draft constitution of December 2003, the Supreme Court had the authority to interpret the constitution, laws, and decrees.[24] The Afghani constitution, adopted on 3 January 2004, restricts this competence stipulating:

> ART. 121. The Supreme Court upon request of the Government or the Courts can review compliance with the Constitution of laws, legislative decrees, international treaties, and international conventions, and interpret them, in accordance with the law.[25]

Indeed, prior to the adoption of the constitution, on 6 August 2003, *Reporters sans Frontières* (Reporters without Borders) gave an account of two Afghani journalists being sentenced to death for blasphemy. According to this report, these journalists had published an article asserting that Islam, as practiced in Afghanistan, was still reactionary.[26] Further, they criticized the political use of Islam by conservative leaders.[27]

Even if the new Afghani constitution may not be perfect, at least it sets the conditions for free and fair elections in 2004. These elections will be one of the major challenges for the NATO forces, including one US brigade, currently in charge of the stabilization and nation building in the post-Taliban Afghanistan.

The case study of the Afghani constitution-building process reveals four major considerations:

1. Although the Bonn Agreement stipulated an eighteen-month period between the designation of the Constitutional Grand Council and the adoption of the final draft of the Afghani constitution, more than two years went by. The Iraqi situation is completely different because a transfer of sovereignty to an interim government is planned for 30 June 2004.

2. While Afghanistan is also a multiethnic and multisectarian country, the aspirations of ethnic and sectarian groups are not comparable with those of the Iraqi

Shi'ites and Kurds. In Iraq, the Shi'ite faction represents more than 60 percent of the population and, in addition, Kurds enjoy a de facto, though internationally not recognized, autonomy since 1991. Their leverage in the Iraqi constitutional negotiations is far much higher than any non-Pashto ethnic or sectarian group in Afghanistan.

3. As Afghanistan has few oil resources, the constitution does not handle this matter. The Iraqi oil resources are primarily situated in Shi'ite and Kurdish dominated areas. Consequently, it is unlikely that the oil issue would not be reflected in Iraq's new constitution.

4. At least on paper, the Afghani constitution of 3 January 2004, succeeded to combine--not to synthesize--Islamic law (*Sharia*), democracy, protection of minorities, and respect for human dignity by juxtaposing these four principles. First, it states that no law can be contrary to Islam (article 2) and that the Supreme Council is a mix of Islamic and secular judges (article 116). Second, the Afghani constitution enforces free, general, secret, and direct ballots to elect President, National Assembly, and municipal councils. In this way, this constitution sets the conditions for general elections in 2004. Third, it recognizes the Islamic jurisprudence of the Afghani Shia minority. Finally, article 7 sanctions the principles of the *Universal Declaration of Human Rights*.

<u>Conclusion</u>

At least on paper, both the former Iraqi republican constitutions (1958 and 1968) and the new Afghani constitution declare equality of all citizens, freedom of religion, freedom of speech, and so forth. At first sight, all three constitutions are compatible with democracy, protection of minorities, and respect for human rights.

In 1958, the rulers of Iraq made a serious effort to respect these constitutional values, but were never able to implement free and fair elections. Furthermore, the executive power was divided between a ceremonial three-man Presidential Council and a Prime Minister. The subsequent Ba'ath regime endorsed the 1968 constitution, reinforcing a one-party-government. The constitutional articles related to protection of minorities and respect of human rights were never implemented or honored.

The new Afghani constitution reflects much more the Islamic reality in the Greater Middle East: it foresees Islamic jurisdiction for "cases dealing with personal matters" for both the Sunnis and the Shi'ites and its Supreme Court is composed of a mix of Islamic and secular judges. In contradiction to the Iraqi 1958 constitution, a presidential office consisting of one President and two Vice-Presidents centralizes the executive power. Again, at least on paper, the Afghani constitution clearly endorses the values of democracy, protection of minorities, and the respect of human rights. Though, this constitution is too young in order to assess accurately and objectively its application and effectiveness within the Afghani society.

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[1]Bernard Lewis, *The Crisis of Islam: Holy War and Unholy Terror* (New York, NY: Modern Library, 2003), 102.

[2]US Department of Army, *Iraq: A Country Study* (Washington, DC: Government Printing Office, 1990), 49.

[3]Ibid., 51.

[4]*Iraq Interim Constitution* (1958) (Baghdad, Iraq: Iraq Government Press, 26 July 1958), art. 4.

[5]Ibid., art. 9.

[6]Ibid., art. 21.

[7]Ibid., art. 23.

[8]Ibid.

[9]*Iraq Interim Constitution* (1990) [Publication online] (Bern, Switzerland: Universität Bern, 2003, accessed 19 September 2003); available from http://ww.oefre.unibe.ch/law/icl/iz00000_.html; Internet, art. 1, art. 2, art. 4, art. 5, art. 7, art. 13, art. 19, and art. 25.

[10]US Department of State, *State Department Report Outlines Human Rights Abuses in Iraq* [Publication online] (Washington, DC: US Department of State, 31 March 2003, accessed 6 December 2003); available from http://usinfo.state.gov/regional/nea/iraq/text2003/0331hmnrightsrpt.htm; Internet, p. 1 of 29.

[11]*Iraq Interim Constitution* (1990), art. 37, art. 38, art. 43, and art. 44.

[12]CIA, *World Factbook 2003* [Interactive publication online] (Washington, DC: Central Intelligence Agency, accessed 2 November 2003); available from http://www.odci.gov/cia/publications/factbook; Internet.

[13]Ibid.

[14]*Constitution of the Islamic Republic of Afghanistan* (2004) Unofficial translation from Pashto and Dari [Publication online] (Bern, Switzerland: Universität Bern, 2003, accessed 12 January 2004); available from http://www.oefre.unibe.ch/law/icl/af00000_.html; Internet, art. 131.

[15]Ibid., art. 1, art. 2, and art. 3.

[16]Ibid., art. 2.

[17]Ibid., art. 7.

[18]Ibid., art. 6, art. 61, art. 83, and art. 141.

[19]*Constitution of the Islamic Republic of Afghanistan,* art. 4.

[20]Ibid., art. 81 and art. 82.

[21]Ibid., art. 60.

[22]Ibid., art. 116.

[23]Ibid., art. 118.

[24]*Draft Constitution of Afghanistan* (2003) Unofficial translation from Pashto and Dari [Publication online] (Kabul, Afghanistan: Afghani Constitutional Commission, 2003, accessed 17 November 2003); available from http://www.constitution-afg.com/draft_const.htm; Internet, art. 121.

[25]*Constitution of the Islamic Republic of Afghanistan,* art. 121.

[26]Reporters without Borders, *Afghanistan: Supreme Court Confirms Death Sentence for Two Journalists for "Blasphemy"* [Article online] (Paris, France: Reporters without Borders, 2003, accessed 12 December 2003); available from http://www.rsf.fr/print.php3?id_article=7706; Internet, p. 1 of 2.

[27]Ibid.

CHAPTER 4

SYNTHESIS OF ISLAM, DEMOCRACY, AND HUMAN DIGNITY

Introduction

At first sight, Islam, democracy, and respect for human rights seem not to be compatible in Iraq. Therefore, this chapter attempts to determine an Iraqi constitutional solution providing the first step toward the synthesis of these three elements. Taking into account the Iraqi mosaic of sectarian and ethnic factions, this thesis assigns particular attention to the issue of protection of minorities.

Firstly, this chapter depicts options for democratic governmental representation. Based on this outcome, it further analyzes options for the Iraqi state-structure and the three powers of governance: executive, legislative, and judicial. Finally, this chapter dedicates an entire section to the compatibility study of Islam and human rights. The conclusions reflect constitutional solutions that would provide the new Iraq with a synthesis of Islam, democracy, protection of minorities, and respect for human dignity.

Options for Democratic Governmental Representation

Demographic, territorial, and historical facts and figures are an essential input for the framework of the new Iraqi constitution. Analyzing the constitutional aspirations of the diverse sectarian and ethnic groups, none of the relevant information provided by these factions is truly reliable. The most recent, (probably) fair, Iraqi census dates from 1957. Strong demographic evolutions and the Ba'ath Arabization process during the last three decades have made this census completely inaccurate for a 2004 estimate of the Iraqi population. Therefore, this thesis compares records published by both Western and

Arabian sources in order to get a more reliable snapshot of the actual Iraqi situation. Although the resulting statistics, calculated by deduction, are still unproven estimates, at least they provide an objective basis for further constitutional analysis within the present thesis.

All consulted sources agree that about 97 percent of the Iraqi population is Muslim and that the Shi'ite group represents by far the national majority. However, there is no reliable estimate for the size of the latter group. Table 1 gives an overview of the sectarian and ethnic demographic representation based on 2002 estimates published by the CIA and al-Jazeera.[1] The fourth column of table 1 provides a deducted population percentage calculated on the records of both sources mentioned above and on estimates published by political movements representing the different factions (see chapter 2).

The total of the latter statistics makes the Iraqi population grow to more than twenty-eight million people; this means an overestimation of about 115 percent.

Table 1. Sectarian and ethic demographic representation in Iraq (estimate 2002)			
Group	CIA Estimate	al-Jazeera Estimate	Deduction
Shi'ite Arabs	75-80% (60-65% Shi'ites)	77.10%	60.50%
Sunni Arabs			16.80%
Christian Arabs		Max 2.70%	0.40%
Sunni Kurds	15-20%	19%	18.30%
Yazidis		Max 0.30%	0.40%
Christian Kurds		Max 2.70%	0.40%
Sunni Turkomans	5.00%	3.00%	2.00%
Christian Assyrians		Max 0.80%	1.00%
Others		Max 0.30%	0.20%
Total	24,683,313	24,001,816	100%

Sources: CIA and al-Jazeera.

Analyzing the sectarian and ethnic composition of the current IGC (see table 2), the Shi'ite populations is represented by 52 percent of the council me mbers.

Table 2. Sectarian and ethic demographic representation in the IGC		
Group	Number of members	Percentage
Shi'ite Arabs	13	52%
Sunni Arabs	5	20%
Sunni Kurds	5	20%
Sunni Turkomans	1	4%
Christian Assyrians	1	4%
Total	25	100%

Source: BBC News, UK Edition.

According to an opinion analysis of the US Department of State, Office of Research, based on a total of 1444 interviews conducted in the urban areas of Baghdad, Fallujah, Ramadi, Basrah, Najaf, Suleymania, and Erbil, most Iraqis seem to feel that the sectarian and ethnic composition of the IGC is fair.[2] Indeed the comparison of the different faction's representation percentage depicted in tables 1 and 2 relates that:

1. All minorities with a minimum of 1 percent of the population have at least one representative in the IGC.

2. Although the Sunni Arab and the Kurdish populations are minorities with respectively 16.8 and 18.3 percent (see table 1), both factions have an IGC representation of 20 percent.

3. A majority of only 52 percent of the IGC-members represents a Shi'ite population of probably more than 60 percent and six of the thirteen Shi'ite members are Islamic clerics.

In November 2003, Shi'ite Grand Ayatollah Ali Sistani pushed the CPA not to follow the "constitution first, then elections and sovereignty" strategy, but instead to organize "one person, one vote" elections first.[3] Sistani's expressions confirm the confidence the Shi'ite faction has in obtaining the majority through free and fair elections.

Analyzing the facts and figures above, the composition of the major part of the constitutional institutions can be based on simple mathematical rules. In order to make majority voting possible, it is necessary that each institution has an odd number of members. The actual representation key applied to the IGC is "one-five-thirteen" (one Assyrian, one Turkoman, five Sunni Kurds, five Sunni Arabs, and thirteen Shi'ite Arabs). Based on the records of tables 1 and 2, this repartition key is fair for the Assyrian, Turkoman, Sunni Kurdish, and Sunni Arab factions, but unfair for the Shi'ite Arab faction. At the present stage of the analysis, this thesis proposes a "one-five-fifteen" repartition key for constitutional bodies consisting of twenty-seven members. Comparing the Iraqi situation to democratic governments all over the world, this repartition key seems particularly applicable to the executive branch of the future Iraqi government.

For constitutional bodies with less than twenty-seven members, this thesis proposes a "one-three-nine" repartition key. This key still protects the Assyrian and Turkoman minorities and gives an appropriate representation to the Kurdish, Sunni Arab, and Shi'ite factions. According to table 3, such a constitutional body would be composed of seventeen members. In case the Iraqi government needs less than twenty-seven minister and, eventually, state-secretary assignments, this repartition key could be applied as an alternative option.

Some of the constitutional bodies, such as the Iraqi equivalent of the US or Afghani Supreme Court, will normally not have more than seven or nine members. The US and Afghani Supreme Courts have nine members. For the Iraqi Supreme Court, this thesis proposes a "one-two-three" repartition key. The smallest number of members is then nine (see table 3). In order to protect the Assyrian and Turkoman minorities, this thesis advises not to compose constitutional bodies with less than nine members. In addition, this solution maintains a correct balance of power between the Shi'ite, Sunni Arab, and Kurdish factions.

Table 3.	Sectarian and ethnic composition of constitutional bodies				
Repartition Key	1-2-3	1-3-5	1-5-15	1-5-15	1-5-15
Possible Example	Supreme Court	Executive branch (alternative option)	Executive branch	Senate	Parliament
Shi'ite Arabs	3	5	15	75	225
Sunni Arabs	2	3	5	25	75
Sunni Kurds	2	3	5	25	75
Turkomans	1	1	1	5	15
Assyrians	1	1	1	5	15
Total	9	13	27	135	405

For constitutional bodies that need more than twenty-seven members, the "one-five-fifteen" repartition key can be extended to multiplications of twenty-seven. Table 3 gives a possible composition of a senate and a parliament. For the actual Iraqi situation, this example would represent one senator per approximately 175,000 citizens, and one deputy per about 60,000 citizens.

Despite the fact that these repartition keys are based on an objective analysis, they are only applicable to the central (federal) government in Baghdad. According to the Assyrian, Turkoman, and, most importantly, the Kurdish aspirations, the Iraqi Republic will not be a durable democracy without granting a minimum of autonomy to these factions.

Options for the Iraqi State-Structure

Based on the aspirations of the different factions, this thesis analyzes the following four options:

1. A federation consisting of one Arab and one Kurdish constitutional entity.

2. A federation consisting of one Shi'ite, one Sunni Arab, and one Kurdish entity.

3. A federation of five entities: Shi'ite Arab, Sunni Arab, Sunni Kurdish, Turkoman, and Assyrian.

4. A federation of six constitutional entities comprising three regions (North, Center, and South) and three city-regions (Baghdad, Mosul, and Kirkuk).

This thesis favors the fourth option because the other three options include risks for later clashes between factions, especially in the cities of Baghdad, Mosul, and Kirkuk. The option of an Iraqi unitary state-structure, proposed by some Shi'ite and Sunni Arab political representatives, is not considered in this thesis. The forced implementation of a unitary state-structure would lead to uprisings of the Kurdish factions and, without foreign intervention, the new Iraqi Army would not be able to defeat the well equipped, trained, and motivated Pesh Mergas.[4] Furthermore, the Shi'ite population fears the possibility of a Sunni Arab (military) coup d'état.

Option one is the preferred solution for both the Shi'ite and Kurdish factions. The Shi'ites want to control the Iraqi Arabs, including the Sunni Arabs, and the Capital Baghdad where at least 2,000,000 Shi'ites inhabit Sadr City.[5] For the Kurds, it is easier to deal with one Shi'ite partner than with two different Arab partners. Both the Kurds and the Shi'ites were repressed peoples under Saddam Hussein's (Sunni Arab) regime. This common experience of former repression and proclivity for current revenge is the major inspiration of the present Shi'ite-Kurdish coalition. Analyzing the larger Iraqi picture, this temporary "brotherhood" may not lead to rapid constitutional decisions because of the fact that they would be merely influenced by revenge and historical events; revenge for the former Sunni Arab domination and historical events such as the massacre in the Kurdish city of Halabja on 16 March 1988. Today's policy makers who have a stake in tomorrow's Iraqi constitution may not accept a de facto suppression of the Sunni Arab, Assyrian, and Turkoman population. Accepting option one includes the risk of accepting future sectarian or ethnic cleansing in the cities of Baghdad (Sunni Arab cleansing by Shi'ites), Mosul (Sunni Arab and Assyrian cleansing by Kurds), and Kirkuk (Sunni Arab and Turkoman cleansing by Kurds).

Option two provides local autonomy to the Sunni Arab population in the center of Iraq, but does not solve the problem of Sunni Arab-Shi'ite coexistence in Baghdad. While option three grants a solution for the Turkoman and the Assyrian factions, it cannot avoid a painful cohabitation of the different sectarian and ethnic groups in the flashpoint cities, mentioned in chapter 2: Baghdad, Mosul, and Kirkuk. As a result, this thesis advises the implementation of option four: the Federal Republic of Iraq, consisting of three regions and three city-regions (see figure 6).

The Executive Branch

In order to prevent a single faction from acquiring exclusive governmental control, executive, legislative, and judicial powers should be separated. Regarding the executive branch, the drafters of the new Iraqi constitution can opt for either a presidential or a parliamentary system. In the former system, the President is the active chief of the executive branch. In the latter, a Prime Minister is directly accountable to the parliament or the National Assembly.

In case of a presidential system, the chief executive authority is elected through separate general ballots or through elections by an electoral college. Regarding the Iraqi situation, the analysis of both the sectarian and ethnic factors (see chapter 2) and the case studies (see chapter 3) indicates the necessity for a strong and durable chief of the Iraqi executive branch. This thesis examines the following types of executive branches:

1. A presidential system in which the Head of State, elected through general ballots, is also the head of the government.

2. A parliamentary system, in which the Prime Minister is head of the government and the President, Head of State, is mainly a ceremonial position.

Presidential System

Option one depicts a political system in which the presidential candidate announces his or her choice of two Vice-Presidents before the elections. These Vice-Presidents represent two sectarian or ethnic factions different than that of the presidential candidate. As a result, the presidential "coalition team" adequately reflects the Iraqi societal mosaic. Furthermore, the formation of such a presidential team assures the empowerment of a unitary administration.

For instance, Shi'ite Abdul Aziz al-Hakim (SCIRI) in coalition with Sunni Arab Mohsen Abdel Hamid (Iraqi Islamic Party--IIP) and Kurdish PUK-leader Jalal Talabani could form a fairly strong presidential team. A second coalition led by KDP-chairman Massoud Barzani would provide the basis of a tough democratic competition.

This thesis does not promote presidential elections through an electoral college because this could create a dangerous case in which, for instance, all the Shi'ite electors form a coalition against the Sunni Arabs and Kurds in order to gain a Shi'ite Presidency. Moreover, the non-Shi'ite Iraqi people would not enjoy the opportunity to elect a (non-Shi'ite) presidential candidate or team, to whom they wish to give their confidence to rule the country. The outcome of the presidential elections would then be very predictable: the president would always be a Shi'ite. As a result, presidential elections through an electoral college would probably turn into both popular and political frustrations.

Parliamentary System

Analyzing the Iraqi situation, described in chapters 2 and 3, the second option is feasible through the formation of a parliamentary political coalition as the method of entry into office of the chief executive authority--the Prime Minister. In order to assure a government of national unity and the protection of minorities, the governmental coalition should then put into application a repartition key similar to those depicted in table 3.

Compared to the first option, the parliamentary system has the inconvenience of being less stable, certainly in the Iraqi case of a new Middle Eastern democracy. Indeed, it is easier for an Iraqi Prime Minister to lose the confidence of the parliament than to impeach a strong presidency. Moreover, Iraq's new democratic government will need sufficient strength in order to lead the post-Saddam country through a difficult transition

process toward prosperity. Again, this reveals that the accomplishment of the Iraqi democratic challenge will need strong diplomatic, military, and economic support from the United States, Iraq's neighboring countries, and, in a wider sense, the international community. Therefore, this thesis favors the first option, which provides an Iraqi presidential administration consisting of one President and two Vice-Presidents.

<u>The Legislative Branch</u>

Whether the Iraqi people should favor a uni- or bicameral parliament--National Assembly--has little influence on the stability of the government. Building upon the proposed presidential executive branch and the experience of the Afghani constitution-building process, this thesis favors a bicameral system. It would provide a more balanced diffusion of legislative power and a more adequate representation of each of the six constitutional entities of the Iraqi Federal Republic.

Identical to the Afghani case study, the Iraqi National Assembly would consist of a parliament and a senate. However, the drafters of the Iraqi constitution will have to confront a much more difficult problem: the negotiations concerning the choice of electoral system.

Electoral System

According to a May 2003 report of the Century Foundation, the Iraqi constitution drafters have the choice between the following electoral systems:[6]

1. Plurality-majority system: the candidate who wins the plurality or the majority of votes wins the elections and represents the electoral district.

2. Proportional system: the parliamentary representation seeks to translate a party's share of the votes into a corresponding proportion of parliamentary seats.

3. Semi-proportional system: there is a small amount of seats--for instance, three to five--in each district to be filled.

In the case of Iraq, the implementation of the first option would mean that each constitutional entity has to be divided into multiple electoral districts. Consequently, only a single person per district can be elected. This system favors the formation of single party legislative power, with a coherent parliamentary opposition. Unfortunately, it has also the effect of excluding minority parties from gaining representation in the central government. In the case of Iraq, this electoral system is very unfavorable for the minority populations (Turkomans, Assyrians, et cetera) who would not have the possibility to defend their interests through legislative representation.

The electoral system of the second option would provide a parliamentary representation of multiple parties, as long as they meet a minimum electoral threshold. During the last Kurdish elections of 25 May 1992, the electoral threshold was set at 7 percent.[7] As a result, neither the Assyrians, nor the Turkoman could obtain a parliamentary seat in the Kurdish Regional Assembly.[8] In most of the democracies employing this form of electoral system the minimum electoral threshold is set between 2 and 5 percent.[9] Analyzing the sectarian and ethnic demographic representation of table 1 and taking into account the proposal of this thesis to establish six constitutional entities, the Iraqi minimum electoral threshold should in any case not be more than 4 percent (see also appendix A). Further, the Century Foundation states that: "The disadvantages of the proportional representation include the tendency to give rise to unstable coalition

governments and the failure to provide a strong geographic connection between representatives and the electorate."[10] For the Iraqi situation, this will probably be the case after its first parliamentary elections. Nonetheless, this electoral system has the advantage to guarantee representation of all the Iraqi minorities on governmental level. Moreover, this system encourages the formation of small political parties representing, for instance, women's rights or secular governmental reform. In this way, these small groups would be able to gain a political voice within both the national and the international political forums.

The third option of the Century Foundation represents an electoral system that mixes plurality-majority and the proportional system.[11] Within this system, the probability for a small party, representing, for instance, Assyrians or Turkomans, to win a parliamentary seat is very low. This electoral system does not protect sufficiently the Iraqi minorities and, therefore, cannot be applied to the actual Iraqi political situation.

Based on the analysis of the three Century Foundation options, this thesis favors the implementation of a proportional electoral system in Iraq. In the hypothesis that Iraq becomes a Federal Republic with six constitutional entities, the distribution of parliamentary seats cannot merely be based on a pure mathematical distribution between sectarian and ethnic factions (see table 3). In order to attain democracy in Iraq, the following conditions should be set: general elections and diffusion of power.[12] The application of table 3 would meet the first condition, but not the second one. At present stage of the analysis, a second itineration of the Iraqi people's governmental representation estimate is therefore necessary.

Step One: Pragmatic Electoral Representation per Faction

In order to reach diffusion of power, no single faction or party should be able to obtain the majority inside the National Assembly. On the other hand, the central government should stand for the majority of the Iraqi people. The Shi'ite faction represents more than 60 percent of the population (see table 1). Because of this, this thesis recommends the US administration negotiate an attribution of 49 percent of the legislative power to the Shi'ite faction and an equal redistribution of the difference between the mathematical (see table 3) and the negotiated representation to the other four factions (see table 4). The author of this thesis admits that these negotiations will be very difficult, particularly with the Shi'ite faction. The negotiators will have to convince this faction that democracy is based on a balance of power and that a de facto (democratic) victory of the Shi'ites will not contribute to the implementation of a stable and durable Iraqi democracy. The results of the proposed *modus operandi* are depicted in table 4.

Table 4. Estimate: Redistribution Parliamentary Seats per Faction				
Faction	Mathematical legislative representation (see table 3)		Proportional redistribution (%)	Corresponding number of parliamentary seats
Shi'ite Arabs	225	55.56%	49.14%	199
Sunni Arabs	75	18.52%	21.23%	86
Sunni Kurds	75	18.52%	21.23%	86
Turkomans	15	3.70%	4.20%	17
Assyrians	15	3.70%	4.20%	17
Total	405	100%	100%	405

Step Two: Proportional Electoral Representation per Constitutional Entity

Derived from the sectarian and ethnic estimate (see table 1) and the demographic statistics, mentioned throughout the previous chapters of this thesis, appendix A attempts to provide an objective estimate of the factions' population per constitutional entity. In absence of accurate census information, this thesis emphasizes a feasible calculation method that assures democratic representation of the different Iraqi factions and, simultaneous, protection of the Turkoman and Assyrian minorities. From the outset of the future constitutional negotiations, the figures of appendix A would probably need several adjustments corresponding to accurate census information which, for the moment, is not available in Iraq.

Hence, appendix B shows the estimated number of parliamentary seats per faction and per constitutional entity. These figures are the result of a cross--horizontal and vertical--calculation method in order to, first, reflect the overall Iraqi demographic statistics of each faction (horizontal cross-check), and, second, assure proportional representation of the different factions within each region and city-region (vertical cross-check). The figures of appendix B reveal two major considerations:

1. The new Iraqi constitution does not necessary need to reflect a federation based on sectarian and ethnic division, generally called "Libanization," from the system enshrined in the Lebanese Constitution. Except for the Turkoman and Assyrian minorities, this model provides the apportionment of the available parliamentary seats per constitutional entity and not per sectarian or ethnic faction (see row "Total" of appendix B). In this case, the constitutional negotiations should focus on the regional

representatives of the different factions to agree on the number of governmental representatives attributed to each region and city-region.

2. In order to reach the US deadline of 30 June 2004, for the transfer of sovereignty to an Iraqi interim government, this model provides the CPA the possibility to propose each sectarian and ethnic faction to elect--or select--a number of "Transitional National Assembly" representatives in accordance with appendix B. As a result, the electoral model of appendix B provides the US administration with an alternative solution to the actual CPA-IGC agreement, which calls for general elections of an Iraqi National Assembly no later than 31 January 2005.[13] In addition, the "Transitional National Assembly" would then be able to materialize the Constitutional Grand Council with a role similar to the Afghani *Loya Jirga* almost three years ago.

The Judicial Branch

Once the different Iraqi factions have reached a consensus about state-structure, executive authority, parliamentary representation, and electoral system, the problematic issue about the judiciary in this Muslim country will likely lead to much more difficult negotiations. Analyzing the aspirations of each faction (see chapter 2) and regional historical case studies (see chapter 3), this thesis aims to present an Iraqi judicial system acceptable by each sectarian and ethnic group.

Source of Law

As mentioned in chapter 3, the new Afghani constitution of 3 January 2004 states that no law can be contrary to the beliefs and provisions of Islam. [14] Initially, the draft constitution of November 2003 stated this issue differently: "ART. 3. In Afghanistan, no

law can be contrary to the sacred religion of Islam <u>and the values of this Constitution</u>."[15] It is unclear why the Afghani *Loya Jirga* omitted the last part of the draft article. Based on the analysis of the Islamic factor (see chapter 2), one can conclude that the intent of the Loya Jirga was not to mix Islamic ("Holy") and secular ("worldly") issues in the same constitutional article. As the Iraqi Republican constitutions of 1958 and 1990 did not mention Islam as <u>a</u>, or <u>the</u>, source of law, a broader scope of Islamic constitutional examples seems appropriate:

1. Constitution of the Kingdom of Bahrain: "ART. 2. The Islamic Sharia is a principal source for legislation."[16]

2. Constitution of Yemen: "ART. 3. Islamic Sharia is the source of all legislation."[17] Despite the fact that both Bahrain and Yemen have a Shi'ite population of respectively 50.14 and 46.9 percent (estimate 1999),[18] their constitutions do not mention which Islamic law--Sunni or Shia--is applicable. The next section of this thesis therefore explores the almost 1400-year-old incompatibilities between Sunni and Shia Islamic law (*Sharia*).

Concerning the Iraqi sectarian situation, none of the Iraqi (1958 and 1990), Afghani, Bahraini, or Yemeni constitutional articles synthesizes both the Islamic and democratic aspirations regarding the respective nations' basic law. As there is no standard Sharia applicable to both the Sunni and Shia sects, and as a completely secular constitution would probably not be acceptable by either the Shi'ite, or the Sunni factions, this thesis recommends the US administration promote the constitutional endorsement of "*respect for the Muslim identity and the constitutional values.*" In this way, the respective constitutional article forms a guarantee against potential legal abuse by Islamic extremists

of an elected Iraqi Government or by *ulama* (scholars of Islamic law), members of the

Iraqi Supreme Court. Inspired by the new Afghani constitution, a possible paraphrasing

of the first three Iraqi articles could be:

> *ART. 1. Iraq is an Islamic Federal Republic and an independent, unitary, and indivisible State.*
>
> *ART. 2. The religion of Iraq is the sacred religion of Islam. Followers of other religions are free to perform their worship within the limits of the law.*
>
> *ART. 3. The law will respect the Muslim identity and the values of this Constitution.*

These three articles respect the aspirations of both the Sunni and Shi'ite Islamic

(moderate) movements and, furthermore, protect the Iraqi non-Muslim minorities. The

next step in the process of building a new Iraqi judicial branch is the implementation of

courts.

Judicial Symbiosis of Islamic and Secular Courts

As mentioned before, Sunni and Shia Sharia are not compatible. For example, in

the domain of family law, both sects follow different marriage, divorce, and succession

laws.[19] Moreover, Islamic law does not reside within the boundaries of one country. A

striking example of transnational Islamic law is what Chibli Mallat called the "Shi'i

International."[20] Consequently, a Shia Muslim in Lebanon for example follows the same

family law and succession law as his or her fellow worshipper in Iran or Iraq.

In a reliable estimate of 1999, 34 percent of the Lebanese population was Shi'ite,

another 21.3 percent Sunni.[21] The Lebanese legal experience during the last decade--after

the last Civil War--is an interesting case study of this particular domain. Lebanon has

both Shia and Sunni Islamic courts. Intermarriages between Sunni and Shia Muslims are

regulated through both sects' Islamic courts by providing each spouse a written contract prescribing the regulations in case of, for instance, divorce and inheritance.[22] Despite not being laid down in a legal code, civil (secular) law prevails on Islamic law for matters such as property, criminality, and financial affairs.

Analyzing the Iraqi situation and examining the above-mentioned Lebanese examples, this thesis recommends the US administration promote the establishment of an Iraqi judicial symbiosis of Islamic and secular courts (see figure 7). In this judicial system, each Iraqi belongs to one of the three following categories: an Iraqi citizen and a Shia Muslim; or an Iraqi citizen and a Sunni Muslim; or an Iraqi citizen and a non-Muslim. Its application requires the new Iraqi permanent constitution to stipulate the specific domains for which Islamic courts are competent.

The new Afghani constitution regulates Shia jurisdiction in article 131.[23] Unfortunately, this article does not stipulate which court will apply Shia jurisprudence in cases dealing with personal matters of Shi'ites. It seems fairly unacceptable for a Shi'ite to be judged by a secular or Sunni court in personal matters, even if it applies the Shia jurisprudence. Furthermore, this implies that all judges need to acquire knowledge in this specific jurisprudence, centered in the Shia school of Najaf. A legal precedent of the proposed judicial symbiosis can be found in Iraq. Its constitution of 1925--Iraq as a hereditary monarchy--implemented three kinds of courts: civil, religious, and special courts.[24] At that time, the religious courts were subdivided in Sharia courts, Jewish Spiritual Councils, and Christian Spiritual Councils.[25] The competencies of Sharia courts were laid down as follows:

ART. 76. The Shara' [*Sharia*] Courts alone shall be competent to deal with actions relating to the personal status of Muslims and actions relating to the administration of their Auqaf (Pious Foundations).

ART. 77. Justice shall be administered in the Shara' [*Sharia*] Courts in accordance with the rules of the Shara' [Sharia] peculiar to each of the Islamic sects, in conformity with the terms of a special law. The Qadhi [*Qadi* or Islamic judge] shall be a member of the sect to which belong the majority of the inhabitants of the place to which he is appointed. Both Sunni and Jaafari [Shia] Qadhis [*Qadis*] shall remain in the cities of Baghdad and Basra.[26]

At first sight, these constitutional articles seem, to a certain extent, appropriate to the actual situation in Iraq. In practice, Iraqi Islamic courts have functioned since the introduction of Islam. Whether the central government was Ottoman, British, monarchial, military, socialist, or Ba'athist, the Iraqi Muslims always have had the opportunity to settle "actions relating to the personal status" by a *qadi* (Islamic judge) of their sect. Consequently, the new Iraqi constitution will probably not be able to change this reality. Therefore, it is preferable to lay down this judicial reality in the Iraqi constitution, assuring simultaneously the protection of minorities and the respect for human dignity.

Supreme Court

Similar to the Afghani constitution-building process and in respect for the Muslim traditions, this thesis proposes the establishment of an Iraqi Supreme Court composed of a mix of Islamic and secular judges. Nonetheless, the new Iraqi constitution should specify the number of Islamic and secular members. In accordance with the first section of this chapter, this thesis proposes the implementation of an Iraqi Supreme Court of nine judges (see table 5).

Table 5. Composition of the Supreme Court			
Faction	Secular judges	Islamic judges	Total
Shi'ite Arabs	1 or 2 *	1 or 2 *	3
Sunni Arabs	1	1	2
Sunni Kurds	1	1	2
Turkomans	1		1
Assyrians	1		1
Total	5 or 6	3 or 4	9

Note: *At this moment, the number of Shi'ite Islamic judges is not predictable and will depend on the outcome of the Iraqi constitutional negotiations.

Islam and Human Rights

Both Sunni and Shi'ite scholars argue that the *Universal Declaration of Human Rights* is a Western (liberal) approach.[27] According to the Pakistani Sunni influential thinker Abdul Ala Mawdudi[28] human rights in Islam mean those rights granted by God and are thus an integral part of the Muslim faith.[29] In *Human Rights in Islam*, Mawdudi enumerates, among others, the following fundamental rights in Islamic societies:

1. Protection of (non-Muslim) minorities.
    Islam has also laid down certain rights for non-Muslims who may be living within the boundaries of an Islamic state and these rights necessarily form part of the Islamic constitution. In Islamic terminology, such non-Muslims are called *dhimmis* (the covenanted), implying that the Islamic state has entered into a covenant with them and guaranteed their protection. The life, property and honour of a *dhimmi* is to be respected and protected in exactly the same way as that of a Muslim citizen. Nor is there any difference between a Muslim and non-Muslim citizen in respect of civil or criminal law. The Islamic state may not interfere with the personal rights of non-Muslims, who have full freedom of conscience and belief and are at liberty to perform their religious rites and ceremonies in their own way. Not only may they propagate their religion, they are even entitled to criticize Islam within the limits laid down by law and decency.[30]

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2. Respect for the chastity of women.

        Women's chastity must be respected and protected at all times, whether she belongs to one's own nation or to the nation of an enemy, whether we find her in a remote forest or in a conquered city, whether she is our co-religionist or belongs to some other religion or has no religion at all. A Muslim may not physically abuse her under any circumstances. All promiscuous relationships are forbidden to him, irrespective of the status or position of the woman or of whether she is a willing partner to act.[31]

Another Sunni scholar, Mohammad Khoder, addresses the fundamental right of

equality between men and women as follows:

        The Islamic view concerning women differs greatly from the views held by religious and secular systems.[32]

        It is true that there are some differences in certain cases concerning men and women, based on differences in their natures and their role in society. For exemple, the testimony made by two women in [religious] court, in some instances, is considered legally equivalent to the testimony forwarded by one man. The particular circumstance is based upon the fact that women's participation in public life is, generally speaking, relatively less than man's because her home commitments and the raising of her children requires that she remains home more.[33]

3. Freedom of expression.

        Islam gives the right of freedom of thought and expression to all citizens of an Islamic State on condition that it is used for propagating virtue and not for spreading evil.[34]

4. Freedom of association.

        Islam has also given people the right to freedom of association and formation of parties or organizations. This right is subject to certain general rules. It should be exercised for propagating virtue and righteousness and never for spreading evil and mischief.[35]

5. Freedom of conscience, conviction, and religious sentiment.

        Islam gives the right to freedom of conscience and conviction to the citizens of an Islamic State. . . . Muslims have to recognize and respect the decision of people who do not accept Islam: no moral, social, or political pressures may be put on them to change their mind.[36]

        "Do not argue with the people of the Book [Jewish and Christian people] unless it is in the politest manner," (29:46) says the Qur'an. This order is not limited to the people of the Scriptures, but applies with equal force to those following other faiths.[37]

6. The security of property.

Along with security of life, Islam has with equal clarity conferred the right of security of ownership of property. The Holy Qur'an goes so far as to declare that the taking of people's possessions or property is prohibited unless done by lawful means.[38]

The Shia point of view about human rights in Islam is relatively in line with Mawdudi's considerations. According to Iranian Shi'ite Islamic scholar, Mohammad Bahmanpour, Islam is not inherently hostile or fundamentally incompatible with the *Universal Declaration of Human Rights*.[39] He argues that most of these UN measures are either identical or conformant with Islamic values and precepts.[40] Bahmanpour recognizes the incompatibility between Human Rights and (Shia) Islam by stating: "The problem arises when Human Rights proponents want to take some of these rights to their extreme in a way that they contradict the more vital and basic moral standards of Muslim faith."[41]

At first sight, both the Sunni and Shia points of view regarding human rights are incompatible with a constitutional democracy that respects human dignity. However, this thesis argues that the above-enumerated Islamic fundamental rights are compatible with the stipulations about human dignity as stated in the *National Security Strategy of the United States of America*. Namely, its chapter II asserts that: "America must stand firmly for the nonnegotiable demands of human dignity: the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal justice; respect for women; religious and ethnic tolerance; and respect for private property."[42]

Taking into account the Middle Eastern heritage, traditions, and actual situation, Sunni and Shia Islamic fundamental rights are considerably nested in the *National Security Strategy of the United States of America*. In order to prevent a growing gulf between the *Universal Declaration of Human Rights* and the practical application of

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respect for human dignity in Iraq, the new constitution should lay down those

fundamental (civil) rights that, according to the *National Security Strategy of the United States of America*, are nonnegotiable. In this way, *worldly* constitutional law would become compatible with *holy* Islamic law.

Once again, this analysis confirms the complexity of the Iraqi constitution-building process. Besides finding a compromise for the various sectarian and ethnic factions' aspirations, this constitution-building process also implies the deconfliction of Islamic and secular standards and percepts. In order to increase the prospect for successful implementation of a durable Iraqi democracy, the new constitution should endorse both Islamic values and nonnegotiable aspects of human dignity.

As a result, this thesis proposes a pragmatic approach of the human rights' issue in Iraq and recommends the US administration apply a step-by-step strategy in order to assure the establishment of a durable Iraqi democracy that protects its minorities and respects human dignity. Once the democratic (Islamic) Republic of Iraq is a fact, human rights issues, such as women's empowerment; and a broader interpretation of freedom of press and religion, should have a chance to evolve "from the inside." Undertaking the initiative to enforce these topics "from the outside" seems to be a "bridge too far" and, as a consequence, could endanger the overall stability in the Middle East.

Conclusion

This chapter provides the US administration several options for Iraq's permanent constitution of end 2005. The proposed solution could help the administration shape foundations for the constitutional negotiations between the different Iraqi sectarian and ethnic factions. This constitutional solution takes into account the aspirations of each

Iraqi faction and, in addition, the lessons learned of both the Iraqi and Afghani historical case studies. Further, it is built on historical evidence, cultural heritage, and respect for the Iraqi traditions. Last but not least, the proposed permanent constitutional solution attempts to synthesize Islam, democracy, protection of minorities, and respect for human dignity.

In summary, this thesis proposes the implementation of the Islamic Republic of Iraq consisting of six constitutional entities (see figure 6):

1. With a strong three-member presidential coalition (executive branch),

2. A bicameral parliament based not on sectarian or ethnic division, but on proportional governmental representation per constitutional entity (legislative branch),

3. An Iraqi judicial symbiosis of Islamic and secular local courts, and a Supreme Court, composed of a mix of Islamic and secular judges (judicial branch),

4. Constitutional regulations guaranteeing the protection of minorities and the respect for human dignity.

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[8]Ibid.

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[21]Carl L. Brown, 16.

[22]Information obtained from Lebanese citizens on base of non-attribution.

[23]*Constitution of the Islamic Republic of Afghanistan*, art. 131.

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[25]Ibid., art. 75 and art. 78.

[26]Ibid., art. 76 and art. 77.

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[31]Ibid., 18.

[32]Mohammad Khoder, *Human Rights in Islam*, Translated from Arabic into English by Zaid A. Al-Husain (Beirut, Lebanon: Dar Khoder, 1988), 85.

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[35]Ibid., 29.

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CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

The establishment of a free Iraq at the heart of the Middle East will be a watershed event in the global democratic revolution.[1]

George W. Bush

Introduction

As depicted in figure 5, the theory of an Iraqi Islamic democracy seems to be a paradox. It will probably be one of the biggest twenty-first century challenges to implement this theory in Iraq. In order to make this political system viable, it will need powerful support from both the Iraqi people and the international community. Through research, this thesis attempted to provide some insights and recommendations for the permanent constitution-building process of a nascent Iraqi democracy.

This thesis proposes the implementation of an Iraqi constitution depicting an Islamic democracy, based on protection of minorities and respect for human dignity. It also provides a possible roadmap for the constitution-building process of a new Iraq: an Islamic democratic federal Republic consisting of three regions and three city-regions. The definition of the future borders of the northern, central, and southern regions should be based on both historical heritage and demographic elements. The historical heritage comprises the circumstances of the former Ottoman provinces of Mosul, Baghdad, and Basra and the Iraqi reality at the time of the 1958 interim constitution. The three proposed city-regions are Baghdad, Mosul, and Kirkuk.

In order to avoid the formation of enclaves, the borders of each region or city-region should be defined as depicted in figure 6. Military commanders are well placed to define borders corresponding to defendable lines. The latter criterion is necessary in order to deny future potential insurgency or, even, invasion by a competing faction.

Recommendations to the US Administration

1. The establishment of six stabilization areas of operation (districts) corresponding to the ethnic, sectarian, historical, and demographic criteria of figure 6.

2. The promotion of the formation of a plurality of political parties within each district.

3. The organization of free and fair elections in each district. In order to meet the deadline of transfer of sovereignty on 30 June 2004, this thesis proposes an alternative solution in which the sectarian and ethnic factions (communities) elect--or select--an Iraqi "Transitional National Assembly" in accordance with appendix B.

4. The promotion of a constitutional endorsement of an Iraqi Federal Republic that respects the Muslim identity, democracy, protection of minorities, and human dignity. Regarding the respect for human dignity, the new Iraqi constitution should lay down those fundamental civil rights that, according to *The National Security Strategy of the United States of America*, are nonnegotiable (rule of law, limits on the absolute power of the state, free speech, freedom of worship, equal justice, respect for women, religious and ethnic tolerance, and respect for private property).

Further Research Topics

1. Synthesis of secular and Islamic education in a Muslim country.

2. Influence of the future Iraqi Defense Force structure on the stability in the region.

3. Iraqi pan-Shi'ite influence on the political balance of power within Lebanon, Syria, Iraq, Kuwait, Bahrain, Iran, Afghanistan, and Pakistan.

4. Islamic democratic synthesis in Bahrain, Lebanon, and Yemen.

5. The strategic consequences of promoting democracy in Iraq's neighboring countries: Syria, Jordan, Saudi-Arabia, Kuwait, and Iran.

6. Implications of reinforced Kurdish autonomy in Iraq on the internal stability of Iran and Turkey.

Conclusions

Based on the analysis of the local religious-ethnic factors and the study of former regional constitutional experiences, this thesis provides the US administration and, by extension, the US-led CPA, a feasible blueprint of flexible options in order to adequately assist the Iraqi permanent constitution-building process. Hence, this blueprint can form an objective basis for constitutional negotiations between the different Iraqi sectarian and ethnic factions.

Adopting the distribution of parliamentary seats per constitutional entity (see appendix B), it is not necessary for the new Iraqi permanent constitution to endorse a federation based on sectarian and ethnic division. First, this electoral model provides the Assyrian and Turkoman minorities the insurance of adequate representation on the

central government level. Second, its application hinders the rule by one single faction in case of an electoral outcome purely based on ethnic and tribal representation. Finally, this electoral model enables the establishment of political parties that are not based on religion or on ethnicity. As a result, *Libanization* of Iraq can be avoided.

Moreover, the proposed model of appendix B provides the US-led CPA with an alternative solution to the Transitional Administrative Law (TAL) agreement of 8 March 2004. This agreement foresees general elections for an Iraqi National Assembly before 31 January 2005, but not before the transfer of sovereignty to an Iraqi Interim Government on 30 June 2004.[2] In order to fill a potentially dangerous power vacuum between 30 June 2004 and 31 January 2005, the electoral model of appendix B can provide the CPA with an Iraqi "Transitional National Assembly" before the deadline of transfer of sovereignty. Once the key leaders of each Iraqi faction have approved the number of representatives per community and per region, the CPA can allow these leaders to organize their own caucuses or "community elections."

Further, the proposed constitutional blueprint of this thesis attempts to find a consensus between the Iraqi religious-ethnic traditions and US interests, reflected in the *National Security Strategy of United States of America*. In conclusion, this thesis proposes an Iraqi permanent constitution-building process that synthesizes Islamic values, democracy, protection of minorities, and respect for human dignity.

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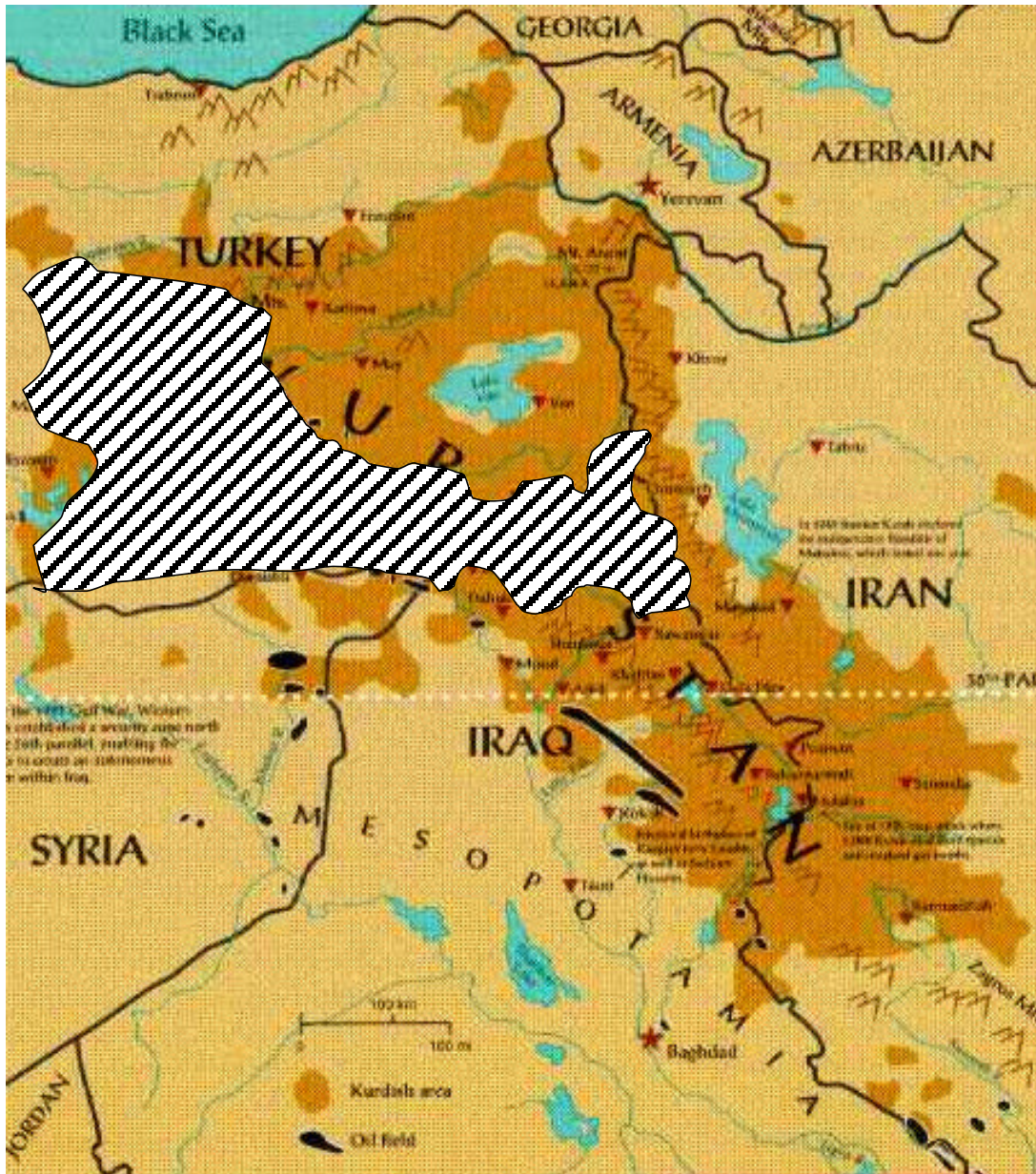
Figure 1.   Treaty of Sèvres: Projection of US President Woodrow Wilson's "Kurdistan"
on Kurdish Nationalistic Map

Source (of background map): Kurdistan Regional Government (KRG), *Map of Kurdish
Population* [Publication online] (Erbil, Iraq: Kurdistan Regional Government,
2003, accessed 3 November 2003); available from http://www.krg.org/reference/
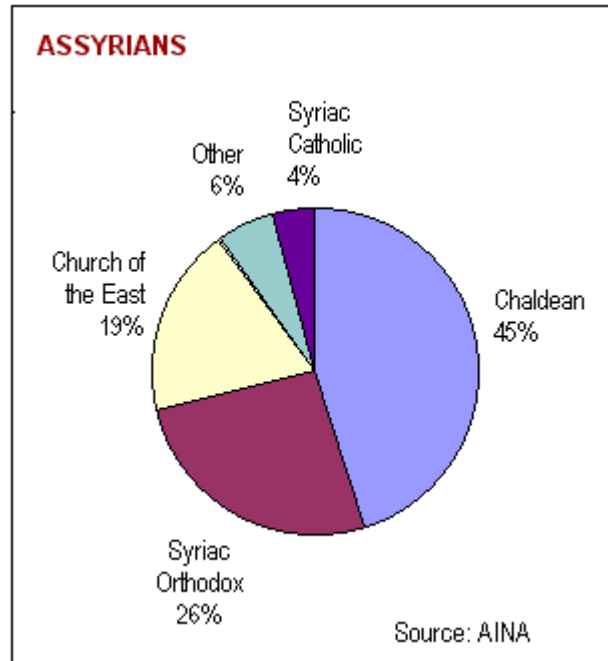images/map1.jpg; Internet, p.1 of 1.

Figure 2.   Assyrian Population per Sect

Source: Peter BetBasoo, *Brief History of Assyrians* [Book online] (San Francisco, CA:
Assyrian International News Agency, 2003, accessed 3 November 2003);
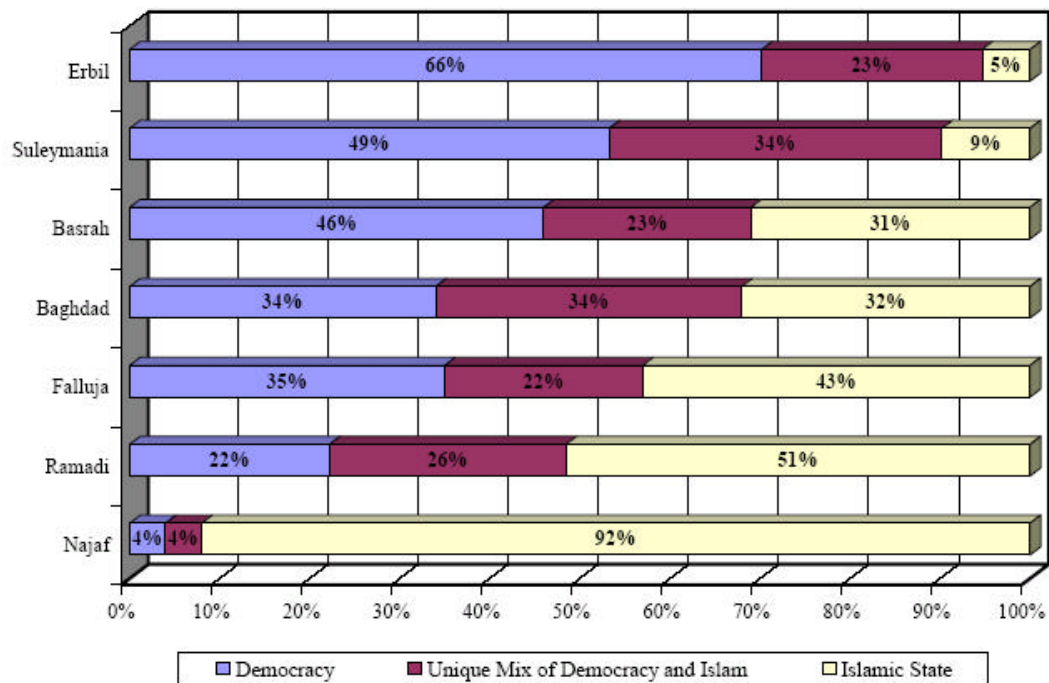available from http://www.aina.org/aol/peter/brief.htm; Internet, 3.

Figure 3.   Iraqi Opinion Analysis: Preferred Political System for Iraq

Source: US Department of State, Office of Research, *Opinion Analysis: Iraqi Public Has Wide Ranging Preferences for a Future Political System* (Washington, D.C.: Government Printing Office, 21 October 2003), 4.
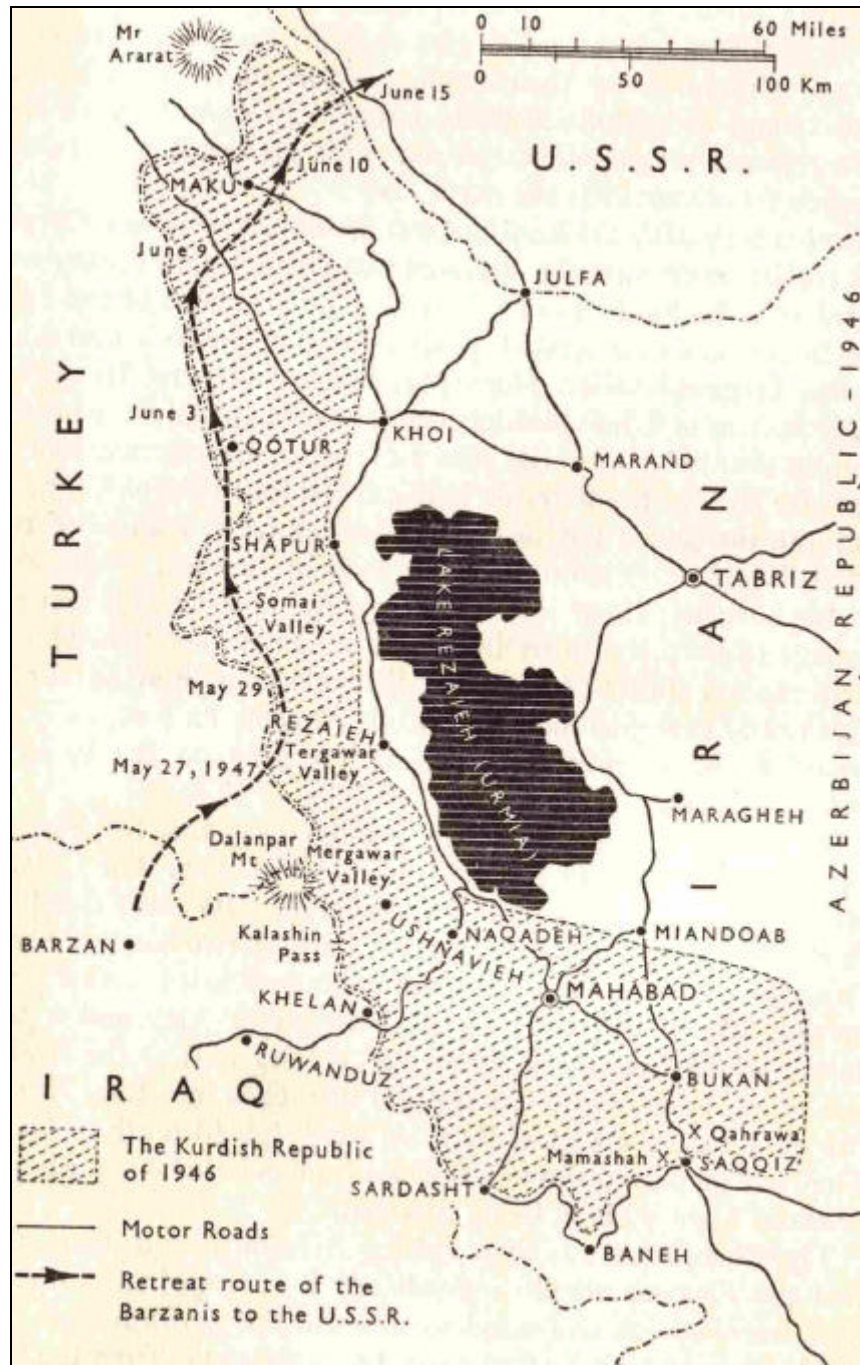
Figure 4.   The Boundaries of the Kurdish Republic of Mahabad: Sites of Battles, and the
Route of the Barzanis Retreating to the USSR.

Source: William Eagleton, *The Kurdish Republic of 1946* (London, UK and New York,
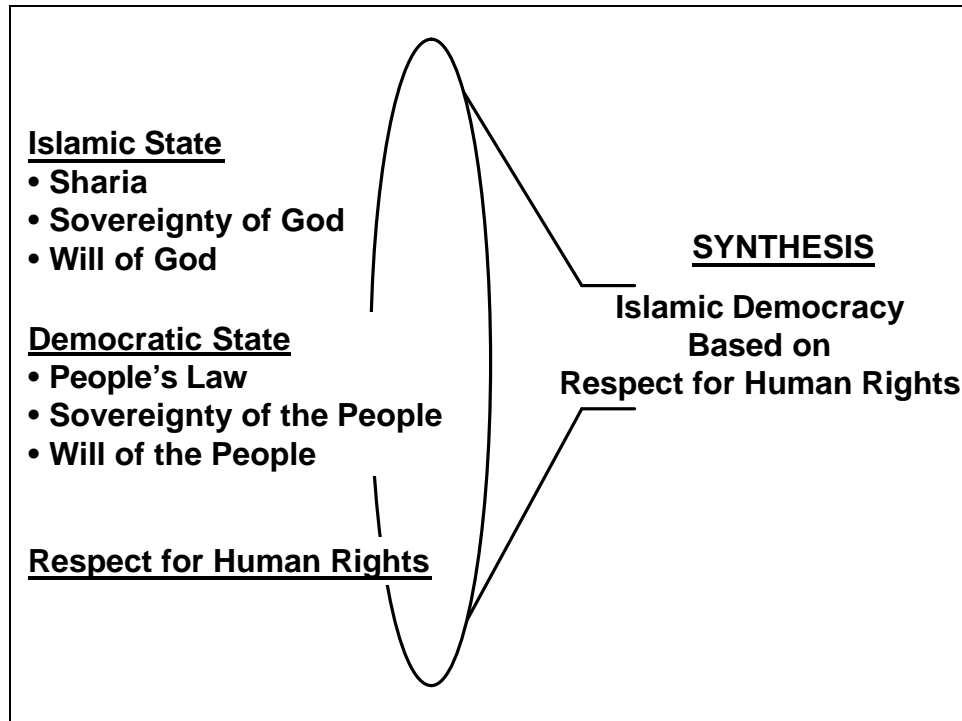NY: Oxford University Press, 1963), 127.
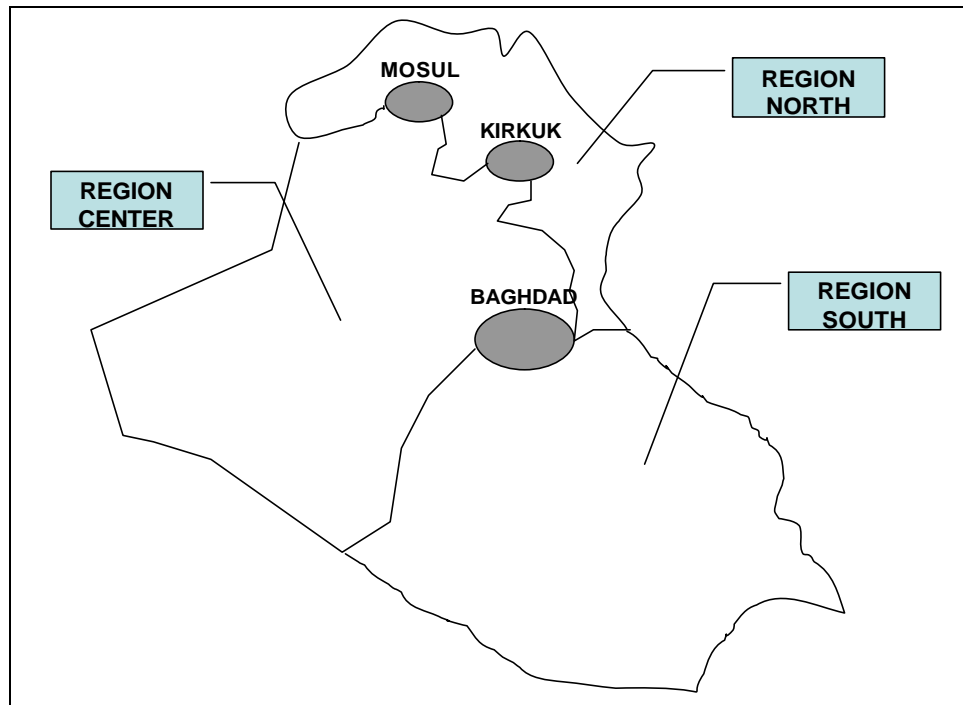
Figure 5.   The Islamic Democracy Synthesis

Figure 6.   The Proposed Federal Framework of Iraq

Note: This picture is not on scale. The borders are given as an example and do not correspond with the ethnic, sectarian, historical, or demographic reality.
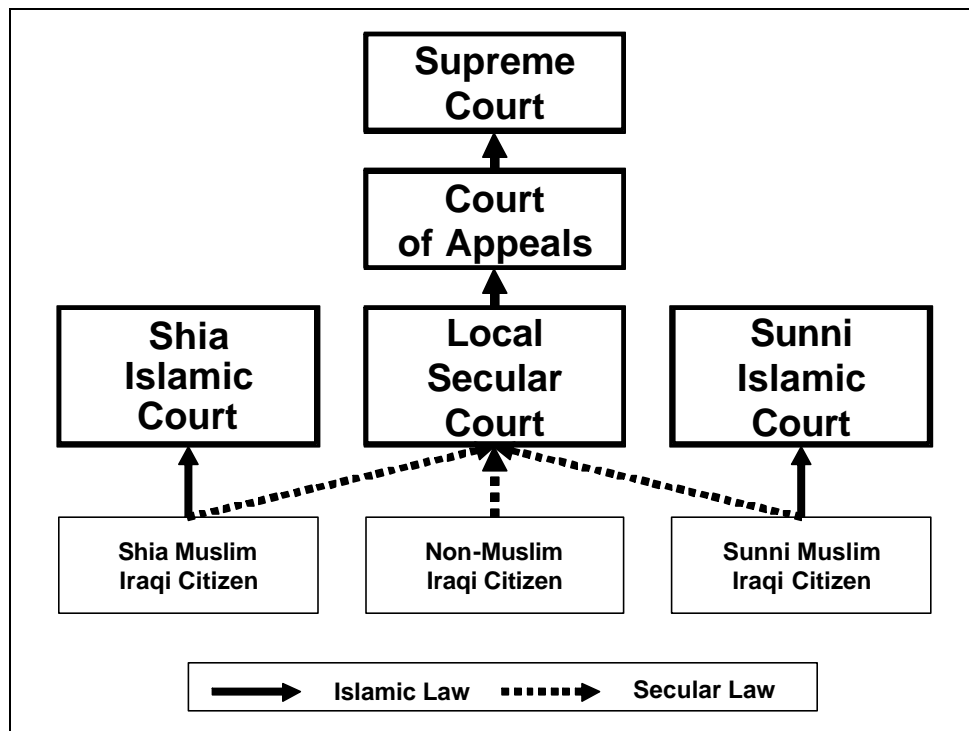
Figure 7.   The Iraqi Judicial Symbiosis of Islamic and Secular Courts

GLOSSARY

Caliph. (Arabic *khalifa*) [Sunni] Deputy or successor (sc. of the Prophet). After the abolition of the Ottoman Caliphate several Muslim rulers sought to obtain wide acceptance of their claims to the title. Some Muslim jurists held that any Muslim ruler was entitled to call himself Caliph.[1]

Faqih. (Persian) Shia jurist [cf. Arabic *ulama*, the plural of *alim*].[2]

Fatwa. Islamic ruling.[3]

Ghayba. (Shia)   1. The occultation of the twelfth *Imam* in the ninth century.
                 2. The state of occultation.[4]

Hadith. The traditions of the Prophet, which record his saying and actions and in their totality constitute the *Sunna*.[5]

Ijma.   The consensus; the collective result of individual minds employing independent judgment (*ijtihad*).[6]

Ijtihad. Independent judgment.[7]

Imam. Originally a prayer leader but also extended to denote the leader of the Muslim community or of the sections of it. In Shi'ite usage one of the divinely guided descendants of Muhammad.[8]

Millet. Officially recognized religious community in the Ottoman Empire. The term later acquired a broader meaning nearer to that of "nation" [or a group of people with broad self-rule in personal matters].[9]

Mufti. Muslim jurist qualified to give opinions on matters of legal interpretation and to issue a ruling (*fatwa*).[10]

Mulla. Lesser member of the religious classes, cf. Persian *akhund*.[11]

Mujtahid. Jurists qualified to give authentic legal rulings, especially among the Shi'ites.[12]

Qadi.   Judge.[13]

Qiyas. Rules of reasoning, principally those of analogical deduction.[14]

Qur'an. The definitive written collection of the divine revelations of Muhammad.[15]

Shaikh. Literally "old man." Term used to denote heads of tribes, [Kurdish] Sufi orders, guilds and petty states.[16]

Sharia. Islamic law.[17]

Shi'ite. Follower of the Islamic religious Shia sect which originated in a political dispute over the succession to the leadership of the Muslim community. The Shi'ites espoused the claims of Ali and his descendants, whom they came to regard as divinely guided. The Shi'ites are divided into numerous sects of which the largest is the Imani or Twelver Shia sect in Iran.[18]

Sufi. Religious mystic, member of a religious order or *tariga*.[19]

Sunni. One who follows the *Sunna* or [the record of the] traditions [the example] of the Prophet, a member of the largest Muslim group, that which is commonly termed orthodox. Sunni Muslims follow one of four main schools of law: Hanafi, Hanbali, Maliki and Shafii.[20]

Sunna. The example [traditions] of the Prophet.[21]

Taqlid. Imitation.[22]

Ulama. 1. The plural of *alim*, those with religious [Islamic] knowledge, commonly those who have completed a course at a school of Islamic jurisprudence [cf. Persian *faqih*][23]
2. Scholars of Islamic law.[24]

Umma. Muslim community.[25]

Villayet. Ottoman province, governed by a *vali*.[26]

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[1]M.E.Yapp, *The Near East since the First World War* (New York, NY: Longman Inc., 1991), 477.

[2]Noah Feldman, *After Jihad: America and the Struggle for Islamic Democracy* (New York, NY: Farrar, Strauss, and Giroux, 1989), 88.

[3]Yapp, 479.

[4]James P. Piscatori, *Islam in a World of Nation-States* (Cambridge, UK: Cambridge University Press, 1986), 19.

[5]Ibid., 4.

[6]Ibid., 15.

[7]Ibid.

[8]Yapp, 478.

[9]Ibid., 479.

[10]Ibid.

[11]Ibid.

[12]Ibid.

[13]Piscatori, 18.

[14]Ibid., 6.

[15]Yapp, 480.

[16]Ibid.

[17]Ibid.

[18]Ibid.

[19]Ibid.

[20]Ibid.

[21]Piscatori, 3.

[22]Ibid., 7.

[23]Yapp, 481.

[24]Piscatori, 5.

[25]Feldman, 260.

[26]Yapp, 481.

APPENDIX A

ESTIMATE OF FACTIONS' POPULATION PER CONSTITUTIONAL ENTITY

Faction	Region South		Region Center		Region North	
Shi'ite Arabs	12,000,000	95.47%	200,000	16.26%	50,000	1.49%
Sunni Arabs	520,000	4.14%	1,000,000	81.30%	50,000	1.49%
Sunni Kurds	50,000	0.40%	30,000	2.44%	3,500,000	95.11%
Turkomans		0.00%		0.00%	30,000	0.79%
Assyrians		0.00%		0.00%	20,000	0.53%
Total	12,570,000		1,230,000		3,650,000	
Faction	City-Region Baghdad		City-Region Mosul		City-Region Kirkuk	
Shi'ite Arabs	2,500,000	49.60%	50,000	2.45%		0.00%
Sunni Arabs	2,500,000	49.60%	900,000	44.12%	80,000	7.27%
Sunni Kurds	20,000	0.40%	800,000	39.22%	600,000	54.55%
Turkomans	10,000	0.00%	90,000	4.41%	400,000	36.36%
Assyrians	10,000	0.00%	200,000	9.80%	20,000	1.82%
Total	5,040,000		2,040,000		1,100,000	

ESTIMATED NUMBER OF PARLIAMENTARY SEATS PER CONSTITUTIONAL

ENTITY

Faction	Total in Table 1	Total in Table 4	Region South	Region Center	Region North	City-Region Baghdad	City-Region Mosul	City-Region Kirkuk
Shi'ite Arabs	225	199	163	4		32		
Sunni Arabs	75	86	7	30		32	16	1
Sunni Kurds	75	86		1	48	5	16	16
Turkomans	15	17			1	1	4	11
Assyrians	15	17			1		14	2
Total	405	405	170	35	50	70	50	30

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