Using Institutions to Moderate Separatist Tendencies: A Focus on Iraqi Kurdistan

by

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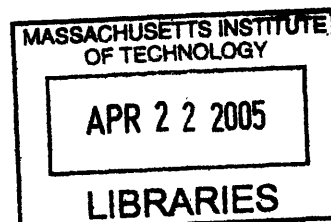Massachusetts Institute of Technology

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ABSTRACT

This thesis offers an alternate theory to the problem of secessionism by integrating two separate fields of research: nationalism and constitutional engineering. In particular, I apply two prominent theories of nationalism, those of Ernest Gellner and Benedict Anderson, to the problem of constitutional engineering. The theories developed by Gellner and Anderson have furthered our understanding of the historical and evolutionary processes of nationhood and nationalism. I argue that the insight offered by these theories can therefore better guide policy makers, scholars, and constitutional engineers in the design of political institutions for deeply-divided societies. The engineering of institutions has the capacity to contain separatist conflict by striking at what I argue are the two necessary cause of secessionism – desire and ability. In my thesis I focus on one case study in particular, that of Iraqi Kurdistan.

I argue that a secessionist movement by Iraqi Kurds can best be thwarted by applying a two-pronged strategy: First, devolve enough power to the Kurds so that their rights as a minority group are protected and their desire for self-rule is fulfilled. Likewise, ensure the representation of Kurds in all levels of government. Second, encourage diversity within the Kurdish political arena. Both components of this strategy can be achieved by adopting a proportional representation electoral formula, selecting a territorially-based federalism, and choosing a parliamentary system.

Thesis Supervisor: Roger D. Petersen
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Introduction

Constitutional design has enormous implications for deeply-divided[1] multiethnic states, particularly for those that find their sovereignty internally threatened by potential secessionist movements. The use of domestic institutions to re-organize political power offers the most viable alternative to the continued territorial segmentation or complete territorial dismemberment of deeply-divided states. Unfortunately, political scientists tend to conceptually divorce the state-building process and the nationalism it engenders from the task of constitutional engineering despite the obvious interaction between them. In other words, state-building as a causation of nationalism and the institutional mechanisms designed for ethnic reconciliation are two distinct categories of scholarly research and rarely overlap. Furthermore, there is a systematic lack of communication between these discursive fields.

This thesis aims at overcoming the artificial dichotomy between these two strands of research in hope that a more integrated approach can help bring about better institutional solutions to ethnic conflict. This thesis therefore proposes an application of two prominent theories on nationhood and nationalism, articulated by Ernest Gellner and Benedict Anderson respectively, to the problem of constitutional engineering for divided societies. The insight offered by these theories can guide constitutional engineers in the development of political institutions that facilitate reconciliation between cleavage groups. In particular, the engineering of institutions has the capacity to contain separatist conflict by striking at what I argue are the two necessary cause of secessionism – desire and ability. Focusing primarily on the issue of Kurdish secessionist tendencies as it relates to the ongoing constitutional engineering of post-war Iraq, this paper develops a prescriptive analysis for multiethnic societies struggling to contain one or more secessionist movements.[2]

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[1] A divided society is defined as one with sharp ethnic, religious, national, linguistic, and/or tribal cleavages. This definition is adapted from: Andrew Reynolds, *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy* (Oxford: Oxford University Press, 2002).

[2] In international relations, there exists a normative bias against secessionism and the principle of self-determination of nations, and a preference for upholding the territorial integrity of existing states and the principle of the inviolability of borders. For many scholars and policymakers, a potential problem with the self-determination of one independence-seeking nation is that it might encourage other groups with separatist tendencies to seek secession, which would in turn provoke violence. While this assumption rests on dubious empirical grounds, this fear is not completely unfounded. In some regions like Africa and the Middle East, few state boundaries coincide with linguistic, religious, or cultural dividing lines. Furthermore, given the enormous number of existing nations and an infinite number of potential nations, the world cannot sustain a corresponding number of independent political units. This author does not see secession as undesirable in all cases, nor is she against the creation of a Kurdish nation-state or Kurdish self-determination. However, given the current public rhetoric of the international community regarding Kurdish independence, it is clear that a move for independence by the Kurds would spawn a great deal of violence and precariously alter the balance of power in an already volatile region. The point of this thesis is therefore to present an institutional prescription for Kurdish secession. As all institutions affect identity issues – there is no neutral type of institution – the institutional choices made in Iraq can have a large impact on whether the Kurds seek secession or choose to remain within the state.

Background and Organization of the Paper

Democratization in Iraq will be difficult to realize not only because of deep ethnic and religious schisms that divide the Iraqi people, but also because of the complex set of legacies that come from Iraq's tumultuous political history. Drafters of Iraq's new constitution will have to allay the fears of the traditionally dominant Sunnis who now fear political marginalization, check the Shi'i who seek to flex their newfound political muscle as the majority, fulfill Kurdish desires for self-rule, all the while ensuring that smaller minorities, like the Turkmen and Christian Assyrians, are guaranteed some form of representation in government. Engineering a constitution that satisfies the interests of all competing groups in Iraq will therefore be a formidable task.

With sovereignty recently returned to the country, the interim government of Iyad Allawi is struggling to iron out the myriad structural details left unresolved by the transitional administrative law. As the country's interim constitution, the law enshrines power-sharing between Iraq's heterogeneous groups vis-à-vis federalism. The exact nature of this federal system, however, is unclear, and the country's electoral laws have yet to be drafted. An overall political climate of weariness in the country regarding the viability of a democracy is heightened by concern that one group, the Kurds, aim for secession rather than accommodation within the Iraqi state.

In Iraq, many view Kurdish demands for an ethnically-defined region of their own with significant powers and control over natural resources as proof of their separatist tendencies. Most Kurds wish to retain the large degree of self-rule they enjoyed under the protection of the U.S.-enforced no-fly zones. As Nesreen Berwari, the Kurdish minister of public works in the new government, so aptly put it: "Why would we ever accept less today than we had for the last 12 years under Saddam?"[3] While the Kurds in Iraq have agreed to seek autonomy within an Iraqi federal state, it is no secret that they would prefer outright independence from Baghdad.[4] But, given the geopolitical realities of the region, including enormous pressure by neighboring states to prevent the emergence of an independent Kurdistan in northern Iraq, Iraqi Kurdish leaders know that such aspirations will likely go unrealized. The Kurds, though, are not committed to the unity of Iraq, especially if they continue to feel as though they are second to Iraq's Arab population. As it is, the patience of most Kurds is wearing precariously thin as Kurdish grievances continue to mount. Most recently, a reference to the Transnational Administrative Law Security was omitted from the UN Council Resolution 1546, which formally established Iraq's interim government. Kurds were furthermore angered by the failure to appoint a Kurdish candidate to the post of Prime Minister or President in the new Iraqi government.

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[3] Quoted in: Bartle Breese Bull, "Soon there may be no Iraq – just a free Kurdistan and a burning Arabistan," *New York Times*, June 9, 2004.

[4] This assessment is based upon the predominant view of articles and editorials published in Kurdish newspapers between the months of May 2004-August 2004. Additionally, in January 2004, over 80 percent of the adults in Iraqi Kurdistan signed a petition asking for a vote on independence. It can be safely assumed that those requesting such a referendum would vote in favor of independence.

The engineering of democratic institutions in Iraq may guide the dynamics of politics between ethno-religious groups into non-violent forms. By applying Gellner and Anderson's theories of nationhood and nationalism to the competing constitutional models of Arend Lijphart[5] and Donald Horowitz,[6] two major contributors to the discourse on constitutional engineering in deeply divided societies, this thesis proposes a two-pronged strategy for moderating Kurdish separatist tendencies: the dual application of a positive incentive to remain within the state with a disincentive to leave the state. In particular, I argue that a constitutional design which employs a proportional representation electoral system in coordination with a non-ethnically defined federal system and parliamentarianism tends to discourage separatist tendencies in a divided, heterogeneous society. The aforementioned institutions and electoral system will promote intra-group political fragmentation and multipartyism (impeding a group's ability to secede) while guaranteeing minority rights and full representation and participation in government (dampening a group's desire to secede).

The paper is divided into two main parts. Part I sets the conceptual stage for the Iraq-specific prescriptions that follow in Part II. I begin to construct the theoretical framework for my analysis by outlining the key precepts of my own theory on secession. Next, I review a prominent theory of nationalism offered by political sociologist, Ernest Gellner, and apply Gellner's theory to the Kurdish case study to explain why Iraqi Kurds desire independence rather than accommodation within the state. I then detail another hypothesis on nationalism posited by Benedict Anderson, and use the predictions generated by this theory to gauge the current level of social and political fragmentation within Iraqi Kurdistan. Anderson's theory as applied to the Kurdish case study warns of an increased ability by the Iraqi Kurds to secede and confirms the need of constitutional arrangements that can restrain extrainstitutional mobilization.

Part 2 of my paper begins by addressing other variables that affect a group's propensity to secede in order to underscore the constraints in which those who design institutions are already operating. Such variables include the military balance of power, wealth, and the influence of international actors, for example. The next section of the paper reviews the main theories on constitutional engineering in divided societies, highlighting the broad range of institutional possibilities. The following section of the paper considers which political institutions and electoral systems are most appropriate for Iraq. In other words, which institutions are more likely to generate Kurdish political

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[5] Lijphart, who is accredited with developing what has become known as consociational theory, believes that the only way for divided societies to function in a democratic manner is by instituting a political arrangement in which the competing groups within a state share power at an elite level. Two other key components of Lijphart's consociationalism are proportional representation and the minority veto.

[6] Donald Horowitz, a legal scholar and one of Lijphart's most outspoken critics, finds consociational theory an unfruitful path for constitutional designers. Horowitz finds consociationalism to be motivationally deficient, in that there is no incentive provided by this system to majority power-holders to compromise or bargain with the less-powerful minority group(s). Why, he asks, should majority group leaders with over 60 percent support, and the ability to gain all of the political power in a majoritarian democracy, be so self-abnegating as to willingly yield power to minority group leaders? According to Horowitz, incentives for inter-ethnic accommodation must be built into the constitutional structure and electoral formula. His preference is the alternative vote electoral system in conjunction with federalism and presidentialism.

fragmentation while simultaneously dampening the Kurds' desire to secede from the state. The paper concludes with a prediction for the future of Iraq given the existing transitional law and the direction of current discourse in Iraqi Kurdistan.

Part I:

Factors that Affect a Group's Propensity to Secede

Political science literature offers a broad range of hypotheses that seek to explain the origin of nations and nationalism. Indeed, both topics continue to be the subject of intense debate in scholarly circles, with different positions staked out by primordialists[7] and constructivists.[8] Primordialism and constructivism as theoretical paradigms propose different understandings of both the origin of nations and nationalism and how identities are formed and reconstructed. Oftentimes, the variation in opinion regarding which democratic institutions can best facilitate reconciliation between cleavage groups is grounded in the divergent worldview of constitutional engineers.

This paper assumes the endogeneity of identity, that group boundaries are fluctuating rather than constant, and that institutions can influence identity reconstruction. It also works from the assumption that identity is driven more by common historical experiences than primordial ties. Few scholars nowadays accept primordialism in its bald or simple form, seeing the discontinuity that characterizes pre-modern ethnicities with their more modern counterparts. More common is for social scientists to use the history of interaction between cleavage groups and the state to explain how a group's present behavior is conditioned by past experience.[9]

Nationalism enters the scene when a group that identifies as a nation demands expanded sovereignty on behalf on the national community. These demands can take variable forms. They can involve calling for greater autonomy within an existing state or they can involve pushing for secession. I argue that a minority group's propensity to use force in order to separate from a state is affected by its *desire* to secede and its *ability* to secede. Desire and ability to secede are necessary but not sufficient conditions of separatism. When a minority group perceives itself to be collectively different from the majority and therefore deserving of some kind of different treatment, it increases the group's desire for self-rule. Indeed, a group that identifies itself as constituting an

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[7] Primordialists emphasize attachments that spring from cultural givens like language, religion, customs, kinship, race, and so on. These primordial ties possess a power beyond rational calculation, not because of the nature of the primordial tie itself, but because of the power and meaning people attribute to it. According to primordialists, identities are singular and fixed. A person can never have more than one dominant identity. Furthermore, an identity, once acquired, becomes permanent and cannot be reconstructed.

[8] Constructivists believe that other social forces play a more important role in the formation of identities. For constructivists, identities are fluid and endogenous.

[9] See: Valerie Bunce, "Federalism, Nationalism, and Secession," in *Federalism and Territorial Cleavages* (Baltimore: Johns Hopkins University Press, 2004), pp. 417-440; Craig Calhoun, *Nationalism* (*Buckingham*: Open University Press, 1997), pp. 51-65; Tedd Gurr, *People Versus States: Minorities at Risk in the New Century* (Washington, DC: United States Institute of Peace Press, 2000), pp. 68-69.

organic nation distinct from the nation-state from which it is submerged can create a desire for secession, especially if there is a history of mistreatment and repression of minority groups by the majority nationality.

Ability has more dimensions than the former category of desire. It is influenced by a group's level of social and political fragmentation, its military strength, the disposition of the international actors and the larger international environment from which they operate, and the group's access to wealth. The major focal point of this paper will be the first point listed, or the existing level of social and political fragmentation. The relative level of national cohesion is important because it dictates how well the group can mobilize support among its co-nationals to fight for independence. A divided leadership means a divided constituency, and hence an inferior capacity to wage a successful fight for independence.[10]

The central hypothesis of this paper is that a political restructuring via domestic institutions can best manage separatist tendencies by striking a blow to both necessary conditions of secessionism: a group's desire to secede and a group's ability to secede. Indeed, the ability of the state to contain conflict within its borders rests in part upon the mechanisms and procedures embedded in institutional arrangements. Such structures ensure a respect for minority civil and political rights and access to education and economic opportunities, all of which affect a group's desire to secede. Domestic institutions can also affect a group's ability to secede by fragmenting the group's political leadership, thus making ethnic mobilization more difficult and secession less likely. In more technical terms, the design of political institutions, in re-distributing existing resources and incentives, can play a large role of shaping the identity reconstruction of cleavage groups and the behavior of political players.

My primary independent variable is therefore system type. In particular, this paper seeks to outline the relative advantages and disadvantages of different democratic institutions and electoral systems *for Iraq*.[11] The key independent variable in this study is the existing propensity (measured by desire and ability) to secede within Iraqi Kurdistan, and the dependent variable is secession. This paper proposes the following hypothesis: The higher the existing propensity to secede, the more likely a bid for secession by the group will be successful. However, a specific package of institutions and electoral devices (the intervening variable) can serve to dilute the desire and ability of a state-seeking group to secede.

Of course, successful accommodation does not derive from institutional factors alone. The contrast between the Basques and Catalans in a single state - Spain - make the

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[10] See: Monica Toft, *The Geography of Ethnic Violence: Identity, Interests, and the Indivisibility of Territory* (Princeton: Princeton University Press, 2003).
[11] The context of political institutions matter a great deal. It is the contextual considerations which help shape the incentives structure of institutions. Thus, the same institutions can be placed in different settings and have very different results. See: Robert Moser, "Electoral Systems and the Number of Parties in Postcommunist States," *World Politics*, Volume 51, April 1999, pp. 359-384.

insufficiency of institutional explanations clear.[12] In fact, it can be argued that the impact that institutional design can have on secessionism is modest compared to some other factors like historical grievances, cultural similarities or differences between different ethnic groups, the ideologies of political elites, etc. Nevertheless, a more deft constitutional design is likely to have some impact, if only because certain combinations of institutions are associated with exacerbating ethnic tensions and reinforcing the political salience of identity rather than diluting it. Recognizing this, the engineering of institutions is the best policy instrument available to political elites in states threatened with a secessionist war. Indeed, as will be argued below, institutional design can be used to moderate a group's propensity for secession because it has the potential to affect both of the necessary causes of secessionism – desire and ability.

What Influences a Group to Desire Independence?

Ernst Gellner, a renowned political sociologist, posited a hypothesis as to how national identities develop and how the idea of nationhood can influence a group's desire for self-rule and/or independence. Gellner defines nationalism as the principle which holds that the nation should be collectively and freely institutionally expressed, and ruled by its co-nationals.[13] In other words, it stipulates that individual nations should be equipped with their own state apparatus. According to Gellner, nationalism is a necessary component of modernity and remains the most salient principle of political legitimacy.

For Gellner, the advent of nationalism is explained by the erosion of rigid social structures that occurred during the period of industrialization. In an agro-literate society,[14] the social organization of the state was not conducive to nationalist tendencies. The ruling class, which formed a small minority of the population, was rigidly separated (marked by horizontal differentiation) from the majority population of peasants. In the pre-industrial world, jobs were highly specialized and the division of labor was marked. As such, education was job-specific and taught locally. The fixed socio-economic structure in this era precluded communication between communities, thereby allowing for distinct cultures and linguistic dialects to develop.

With industrialization, the relationship between state structure and culture would change, so that culture would come not just to underline structure, but to replace it. The rapid economic growth and the mobility of the labor force that accompanied industrialization spawned the need for a more general and standardized type of education in lieu of the specialized training required in the agrarian society. Effective schooling required every person be able to communicate with one another in the same shared linguistic medium and script. The infrastructure of the modern educational system could not be maintained nor function efficiently without the imposition of a uniform language. Thus, in the name of efficacy, only one language could be adopted by the state.

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[12] Catalan demands for secession have subsided while the Basque desire for independence continues, as evidenced by Basque public rhetoric and ETA violence.

[13] Ernest Gellner, *Nations and Nationalism* (Ithaca: Cornell University Press, 1983), p. 1

[14] Agro-literate is a term used by Gellner to mean agrarian or pre-industrial society.

According to Gellner, standardization of language was the most important precondition to the birth and rise of nationalism.

At the same time, only one culture could be adopted by the state. "Culture," says Gellner, "is no longer merely an adornment, confirmation and legitimation of a social order which was also sustained by harsher and coercive constraints; culture is now the necessary shared medium, the life-blood or perhaps rather the minimal shared atmosphere within which alone the members of the society can breathe and survive and produce; so it must be the *same* culture."[15] In other words, nationalism is an essential component of modernization – of the transition from agrarian to industrial society – requiring that a state be able to maintain one common, literate, and accessible culture.

Thus, the modern state imposes language and culture on its citizens. During the period of industrialization, cultural and political boundaries became congruent for the first time in history. It was this alignment of state and culture, says Gellner, which set the stage for the development of nationalism. As each cultural and linguistic entity cannot be endowed with its own political roof, those without power, access to education, and/or access to a high culture will often be politically disenfranchised and therefore become carriers of nationalism.

In his book, Gellner produces a typology of nationalism-inducing situations. There are three dimensions to his typology: power holders and non-power holders; those who have access to modern education and/or a viable high-culture and those that do not; and a polity in which the power-holders and the rest, the educated and uneducated, share a homogenous culture.[16] This typology suggests four situations in which nationalism will be engendered. When two of the conditions are met, nationalist agitation is likely, and in the case of nations submerged within other nation-states, like the Kurds in Iraq, the desire for secession increases. Gellner's fourth nationalism-engendering situation, labeled ethnic nationalism, can best be applied to the Kurdish story. According to Gellner, ethnic nationalism is characteristic of territories in which power-holders have privileged access to the central high culture, which is their own, while the powerless are also the culturally deprived, sunk in low cultures. The leaders of the powerless then spearhead efforts to make their low culture into a high culture, oftentimes urging secessionism from the nation-state from which they are submerged.[17]

Gellner would thus predict that conflict will occur where ethnic marks, particularly linguistic and cultural, are visible and accentuate the differences in education access and power; and above all, "when they inhibit the free flow of personnel across loose lines of social stratification."[18] In short: blockages in social mobility, when tied to ethnic markers, are at the heart of nationalist conflict. Exclusionary control of cultural capital give rise to vigorous nationalist wars and attempts by those lacking control of such educational or cultural capital to agitate for secession. An application of Gellner's

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[15] Gellner, p. 38.
[16] Refer to Gellner's typology of nationalisms on page 94.
[17] Gellner, pp. 98-100.
[18] Ibid.

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theory of nationalism to the Iraqi case study illuminates why the Iraqi Kurds began to develop a nationalist rhetoric and could not assimilate into the Iraqi nation.

A History of Iraq: Focus on Kurdish Social Entropy

The history of the modern state of Iraq begins at the conclusion of World War I.[19] The victorious allies invaded and occupied the three Ottoman provinces of Basra, Baghdad, and Mosul, and subsequently consolidated them into the new state of Iraq under a League of Nations Mandate in 1920. Iraq, like most of the states in the Middle East, is an artificial construct of European powers. In particular, the separation of Syria, Lebanon, and Iraq was due to French desires for a sphere of influence in the Middle East.[20] Thus, the borders of Iraq reflect not the territorial distribution of a particular people or the wishes of the new state's inhabitants, but rather the imperial interests of the French and British.[21] As Charles Tripp notes, it would be incorrect to assume that integration of these three Ottoman provinces into one state was based upon any shared or common experiences.[22] From the perspective of the Ottoman government in Istanbul, the three provinces were not treated as an administrative unit, nor were they given any form of collective representation. Thus, Iraq was a forced creation, lacking the essential foundation for nationhood. None of the people who found themselves citizens of the new Iraq wanted the state in the form it was created,[23] particularly the Kurds who were promised their own political entity by the Treaty of Sèvres.[24]

At the time of the Mandate, Iraq was comprised of three major ethno-religious groups. More than half of the state's three million inhabitants were Shi'i, roughly 20 percent were Kurdish, and less than 20 percent were Sunni, with the remaining population composed of Jewish, Christian, Sabean, and Turkmen minorities.[25] Despite these main ethno-religious divides, divisions existed *within* main ethno-religious groups. For example, cleavages existed between religious and secular Shi'i as well as between urban and tribal ones. The same was true of the Sunnis and Kurds.

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[19] This section draws heavily on two books: 1) Phebe Marr, *The Modern History of Iraq* (Boulder: Westview Press, 2004) and 2) Charles Tripp, *A History of Iraq* (Cambridge: Cambridge University Press, 2000).

[20] Andreas Wimmer, *Nationalist Exclusion and Ethnic Conflict: Shadows of Modernity* (Cambridge: Cambridge University Press, 2002), p. 173.

[21] Academic Efraim Karsh argues that Britain's local war allies also played a significant role in the territorial division of the defunct Ottoman Empire. For example, he notes that the Hashemite Kingdom of Jordan was created to satisfy the ambitions of Abdallah of the Hashemite family, older brother of Faisal, first king of Iraq. For more information, see: Efraim Karsh, "Making Iraq Safe for Democracy," *Commentary*, April 2003.

[22] Tripp, p. 29.

[23] Abbas Kelidar, "A Quest for Identity," *Middle Eastern Studies*, Volume 33, Issue 2, 1997.

[24] A year after Sèvres was signed, the treaty was abrogated and replaced by the Treaty of Lausanne (1923), which failed to mention the creation of a Kurdish nation-state. The Kurds thus found themselves formally divided between Iraq, Iran, Turkey, and Syria. The governments in all of the countries distrust the Kurds, fearing that, given the opportunity, they would all break away.

[25] Tripp, p. 31.

Nevertheless, the most salient cleavage was and continues to be ethnic, not religious or otherwise. Arabs are Iraq's largest ethnic group, comprising about 75 percent on the country's population and living primarily in the central and southern parts of Iraq, while Kurds comprise about 20 percent, living primarily in the north.[26] Most Arabs are Muslim, although they belong to two different sects of Islam. Roughly 60 to 65 percent of Iraqis are Shi'i and 25 to 35 percent are Sunni Muslims.[27] It is the two sects' divergent view on Muslim leadership that distinguishes them from one another.[28]

National integration of these three disparate groups into the new state of Iraq was complicated by the ascension of Sunni Arabs to all major seats of power, including all the main government ministries and the officer corps. The first king of Iraq, King Faisal of the Hashemite Monarchy, himself recognized the difficulty in drawing together the country's diverse social groups. Twelve years into his rule, he lamented the persistence of religious, ethnic, and tribal identities over loyalty to the state:

> There is still – and I say this with a heart full of sorrow – no Iraqi people but
> unimaginable masses of human beings, devoid of any patriotic idea, imbued with
> religious traditions and absurdities, connected by no common tie, giving ear to evil, prone
> to anarchy, and perpetually ready to rise against any government whatsoever, and we
> want ...to mold a nation out of these masses? He who understands the difficulty of
> molding...a nation under such circumstances must recognize the effort necessary for such
> an achievement.[29]

King Faisal for his part failed to propagate an official national ideology that embraced all members of the Iraqi state. Faisal was committed to the ideals of pan-Arabism. As an ideology, pan-Arabism recognized all Arabs as constituting a single nation, with racial, historical, cultural, social, and linguistic bonds. It further envisioned the political unification of all the Arab lands –"from the Atlantic Ocean to the Persian Gulf, and from the Taurus mountains in the north to the Indian Ocean to the south."[30] Pan-Arabism excluded the Kurds and other Iraqi minorities who were not ethnically Arab. It was further found suspect by most Shi'i. While most Iraqi Shi'i were Arab, they saw pan-Arabism as part of a Sunni plot to change the demographic balance in Iraq, making Sunnis the new majority in an expanded Arab state. Others feared that pan-Arabism would eventually submerge the Shi'i majority in a Sunni-dominated culture. Iraqi pan-Arabists in general devoted little thought to the issue of how other ethnic groups would respond to the creation of Iraq as an Arab state.

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[26] Dawn Brancati, "Can Federalism Stabilize Iraq?", The Washington Quarterly, Volume 27, Number 2, p. 8.

[27] Ibid.

[28] Shi'i Muslims believe in the doctrine of the Imamate whereby leaders of the Muslim community must be descendents of the Prophet Muhammad. The Sunnis, in contrast, insist that leaders should be chosen for their personal attributes rather than their lineage. Of course, other distinctions exist between the two sects of Islam, but the most fundamental distinction is rooted in the aforementioned disagreement. Most Kurds subscribe to Sunni Islam, but they feel little solidarity with their Sunni Arab brethren. In this case, ethnic differences appear to overshadow sectarian commonalities.

[29] Quoted in: Adeed Dawisha, "Iraq: Setbacks, Advances, Prospects," Journal of Democracy, Volume 15, Number 1, January 2004, p. 553.

[30] Amatzia Baram, Culture, History, & Ideology in the Formation of Ba'thist Iraq (New York: St. Martin's Press, 1991), p. 9.

Nevertheless, Faisal and successive Iraqi governments tried to forge a common Iraqi identity through the usual methods. State education placed a heavy emphasis on nationalism and secularism. All textbooks were intensely pan-Arab and emphasized Arab social customs and great periods of Arab history. The new conscript army was also heralded by Faisal as the quintessential national intuition. By bringing soldiers from all over Iraq to serve together in defense of the state, Faisal hoped that bonds would develop that would cut across ethnic and sectarian lines. Finally, a vigorous national propaganda campaign was unleashed to encourage the citizens of Iraq to think of themselves as one nation (albeit one that was both transnational and Arab in character). Such efforts, however, were in vain. As long as pan-Arabism was the official ideology, Iraq was to remain fragmented by overriding religious, ethnic, and tribal affiliations.

The adoption of pan-Arab rhetoric by the state was rejected most forcefully by the Kurds, who had repeatedly challenged state authority since the state's founding.[31] In 1920, with the establishment of the new Iraqi state under British auspices, the Kurds stood a chance of obtaining a substantial amount of autonomy from the new state. The British expressed some sympathy for the plight of the Kurds, and thus promised them some degree of self-government under the new British Mandate. However, Britain was unsure of what to do with some of the Kurdish mountainous areas on the north and eastern borders that were contested by Turkey. Its uncertainty was compounded by Kurdish claims to Kirkuk, which despite being predominantly Kurdish had significant numbers of non-Kurds within city limits. Because of the city's oil deposits, the British could not conceivably surrender control of this valuable area and its wealth-producing assets.

When Kurdish clamors for some degree of autonomy persisted, the British agreed to consider the idea. In 1922, a declaration was issued that promised Kurds the right to set up a Kurdish government within the boundaries of the Iraqi state, contingent upon whether the Kurds themselves could agree on its constitution and the territories it would cover. This promise was officially abandoned some four years later when the Kurds failed to reach such a consensus among themselves.

The British eventually began to administer Kurdistan directly despite its earlier pledges of autonomy for the region. It further neglected to include in the 1930 Anglo-Iraqi Treaty (which outlined the conditions of Iraqi sovereignty from Britain) any mention of Kurdish language rights in schools and local administration. During the 1930s, the Kurds began to clamor for the implementation of such rights, but their agitation proved fruitless. Kurd uprisings were frequent phenomena in the decades to follow.

In the next forty years, Kurdish grievances continued to steadily mount as language and cultural rights were repeatedly denied by successive Iraqi government and Kurdish uprisings met with force. Kurdish repression, both culturally and politically,

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[31] This section draws heavily from two books: McDowall, *Modern History of the Kurds* (London: I. B.Tauris & Company, 2004) and Martin van Bruinessen, *Agha, Shaikh and State: the Social and Political Structure of Kurdistan* (London: Zed Books, 1992).

reached its zenith during the administration of Saddam Hussein. In 1971, in order to counter a Kurdish claim to Kirkuk, arguably the country's economic heartland, Saddam ordered the expulsion of some 40,000 Kurds to Iran on the grounds that they weren't really Iraqis, and in 1972 tens of thousands were forced out.[32]

Harsh as these measures were, they paled in comparison with the treatment meted out to the Kurds during and after the eight-year civil war with Iran. At the end of the Iran-Iraq War in 1988, Saddam embarked upon a massive putative campaign aimed at the complete eradication of the Iraqi Kurds as a social-political community. He ordered the destruction of all Kurdish villages in Iraq. The Iraqi army succeeded in systematically destroying all Kurdish villages in the north. Some half-million Kurds were ethnically cleansed, while another 25,000 had fled to Turkey or Iran.[33] The most devastating incident, however, was the infamous Anfal Campaign, whereby Saddam's troops used chemical weapons to kill over 5,000 Kurds and injure an additional 10,000 in the town of Halabja.[34]

To summarize, since the founding of the Iraq, the adoption of pan-Arabism as the official state ideology by King Faisal and many of his successors served to ostracize the majority of the people, particularly the Kurds, rather than mold them into a single nation. Gellner's story can account for how the process of state formation in Iraq bred an Arab-dominated national identity: In Gellner's point of view, a state accomplishes the task of creating a nation by setting up national school systems that impose a single linguistic standard.

And this is exactly what occurred in Iraq. Arabic became the official state language propagated by the national school system and the Arab culture was adopted by the state as its high culture. Additionally, this new nation-state excluded the Kurds. A history marked by acute alienation from the Iraqi state, political disenfranchisement, mass depopulation and deportation, and genocide have precluded the Kurds from assimilating into the Iraqi nation. To borrow Gellner's language, the Kurds suffered from severe social entropy in Iraq. They have been blocked from social mobility and excluded from power, education, and access to wealth. Additionally, this exclusion was tied to ethnic and cultural markers. They thus meet Gellner's established criteria for the development of nationalism.

Gellner's theory in conjunction with the historical record suggests that the Kurds will continue to present the greatest challenge to Iraqi nation-building. As David Corn, editor of *The Nation* magazine writes: "When the British incorporated the Kurdish lands of the former Ottoman Mosul vilayet into the Iraqi state which they set up after World War I, they made what surely must be counted as one of history's greatest mistakes."[35] Continuing on, Corn writes "A de facto Kurdish state that has existed since the summer

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[32] Karsh, p. 25.
[33] Ibid.
[34] Ibid.
[35] Quoted in: Hadi Elis, "The Kurdish Demand for Statehood and the Future of Iraq," *Journal of Social, Political and Economic Studies,* Volume 29, Number 2.

of 1990… stands as an enduring testimony to the Kurds' rejection of the decision to include them into the newly invented state of Iraq, a decision made, not by them, seven decades earlier."[36]

The birth of a Kurdish pseudo-state in northern Iraq since 1991 further precludes the ease of assimilation into the new Iraqi state. Indeed, in this de facto state, "universities have been opened, permits of radio and TV stations regulated, municipal and parliamentary elections held, police and security forces created, a central bank instituted, a nation flag created, a national anthem composed, and a capital city established."[37] In addition, the exclusive use of the Kurdish language, in public discourse as well as in public school, has weakened the facility of most Kurds in Arabic. This will aggravate problems of Kurdish integration into the new Iraqi state if not addressed institutionally. Thus, Gellner's story can account for both the rise of the Iraqi state along Arab lines and the development of Kurd nationalism. In terms of creating a unitary Iraqi state, the Kurds are the biggest impediment to Iraq's nation-building endeavor.

What Affects a Group's Ability to Secede?

Another prominent political sociologist, Benedict Anderson, has a different take than Gellner on what constitutes a nation, and hence how nationalist rhetoric develops and leads to ethnic conflict. Whereas Gellner sees nationalism as a form of false consciousness, Anderson speaks instead of an "imagined community," a community that calls into being a territorial state that in turn creates a nation.[38] Anderson's theory, when applied to the Kurds, helps explain why the Kurds are becoming increasingly unified both socially and politically, despite a history of internecine fighting between the two key clans and political parties. This increase in unity has the potential to cause the territorial dismemberment of Iraq if not managed correctly.

According to Anderson, nations are imagined political communities. This community is necessarily limited and sovereign – limited because even the largest nation has finite (albeit elastic) boundaries and sovereign because the concept of nationalism was conceived during an age in which ideological movements were destroying the legitimacy of the sacral monarchy. Anderson places great emphasis on the fact that such nations reside in the minds of its adherents. Building upon a concept developed by Seton Watson and Ernest Renan, Anderson argues that a nation exists when a significant number of people in a community consider themselves to form a nation and behave as if they formed one. The nation is imagined, claims Anderson, because "the members of even the smallest nation will never know their fellow members, meet them, or even hear of them, yet in the minds of each lives the image of their communion."[39]

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[36] Ibid.
[37] Ibid.
[38] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: New Left Books, 1991), Chapter 1.
[39] Ibid.

Nationhood and nationalism, then, are part of a psychological and historical process. As such, nations are constructed by group members in their heads. Anderson argues that one's imagination is constrained by macro-historical forces linked to modernization. Like Gellner, Anderson sees nationalism as a modern phenomenon. He rejects the claims of primordialists that the roots of nations and nationalism are found in antiquity.

For Anderson, the age of nationalism began in Western Europe in the eighteenth century. Anderson insists on the pivotal importance of print capitalism in the genesis of nationalism. Print capitalism gave rise to the novel and the newspaper, both proving apt vehicles for representing the kind of imagined community that is the nation. The novel and newspaper both allowed for the presentation of simultaneity in "homogenous, empty time."[40] The reading of the newspaper is of significant importance for Anderson, as he sees it as a ceremony that is regularly performed between certain hours of the day by most people. Every newspaper reader is therefore aware that his "ceremony" is being replicated by myriad other members of his community, "of whose existence he is confident, yet of whose identity he has not the slightest notion."[41] In other words, imaginary communities were forged by people reading the same newspapers in the same language conceivably at the same time. In sum, communicative media are placed center-stage by Anderson in generating and maintaining nationalism. The functionality of such types of media is twofold. First, it helps members within a group to think of themselves and see themselves as a distinct nation, separate from other groups within a political entity. Second, it can affect a group's ability to seek self-rule or secession by creating a more unified and culturally strong nation.

Thus, for Anderson, there has to be some common form of culture or media among people in an imagined community in order to constitute a nation. When applied to the Kurds, it becomes clear that Anderson's theory has significant explanatory power. Anderson would predict that Kurdish social and political fragmentation would correlate with periods of government repression of Kurdish written expression, and likewise that Kurdish unity would be on the rise when Kurdish newspapers, radio broadcasting, popular music, and television programs were widely circulated and available across Kurdistan. As will be discussed below, an exponential increase in the publication and circulation of Kurdish media since the Second Gulf War has caused not only a healing in the previously tenuous relationship between Kurds belonging to the two different political parties and a concomitant strengthening of a singular and unified concept of an Iraqi Kurd national identity.

The Kurds of Iraq: Do They Stand United? Gauging Past and Current Levels of Kurd Unity

Conventional wisdom dictates that the Kurds of Iraq will never be able to reconcile their differences in order to organize and mobilize enough support among co-ethnics to wage a successful war of succession. Given the history of intra-group relations

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[40] Ibid.
[41] Ibid.

in Iraqi Kurdistan, such an opinion is not surprising. While the Kurds have existed as an identifiable and distinct group for more than two thousand years, many internal divisions exist within Iraqi Kurdistan. In the past, Iraqi Kurds have been divided by religion, among competing tribes, between tribes and urban Kurds, and landowners/notables and peasants, and most recently between the two main Iraqi Kurd political parties – the KDP and PUK, run by Massoud Barzani and Jalal Talabani respectively. However, feelings of national solidarity and unity are currently one the rise. Anderson's process of media-induced national and cultural unity help explain the increase in internal cohesion among Kurds, as can considerable efforts by the US government to mend divisions between the KDP and PUK.

The KDP was Iraqi Kurdistan's foremost political party until a rift developed between elder Mustafa Barzani and fellow KDP intellectual, Jalal Talabani. Talabani was a left-wing urbanite who envisioned an Iraqi Kurdistan free from tribalism. For Talabani, the removal of tribalism from politics would better foster a Kurdish identity based upon a nationalist ideal. Barzani's approach to politics conflicted with this ideal, and soon this faction of the KDP splintered off to form the new Patriotic Union of Kurdistan (PUK). While having different political agendas, both parties sought autonomy for Iraqi Kurdistan.

Iraq's surprise attack on Iran in 1980 gave these parties a unique opportunity to obtain the autonomy they had failed to achieve earlier. A number of Kurdish nationalists tried to exploit the situation in order to drive government forces out of Kurdistan while the government was embroiled in a new war. Baghdad was nevertheless successful in calling on certain Kurdish tribes during the war to further its campaign against rebellious Kurds. The KDP provided local support and intelligence to the Iranian forces. In revenge, and to set as an example to others who might contemplate collaboration with Iran, the Iraqi security forces rounded up an estimated 8,000 members of the Barzani clan and killed them.[42] At the same time, Saddam courted the leader of KDP's rival party, Jalal Talabani of the PUK. The PUK at times joined forces with Saddam's forces against the KDP. When he failed to accede to the PUK's demands for autonomy, the PUK mobilized its forces against Baghdad and begin initializing guerilla attacks once again. Any willingness of the Kurds to cooperate with the state more or less ended after the First Gulf War and the establishment of the north and south no-fly zones.

With the end of the Gulf War, yet another Kurdish uprising against Iraqi rule was crushed by Iraqi forces; nearly 500,000 Kurds fled to the Iraq-Turkey border, and more than one million fled to Iran.[43] Thousands of Kurds subsequently returned to their homes under UN protection. Under international auspices, relatively free elections were held throughout the Kurdish zone in May 1992, on the basis of proportional representation and a threshold of seven percent to qualify for seats.[44] The elections produced more or less equal representation for the KDP and PUK. Each party gained roughly 50 percent of the vote, with a variety of smaller parties – Assyrian, Kurdish Christian, and socialist –

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[42] Ibid, Chapter 18.
[43] Ibid.
[44] Ibid, p. 380.

gaining some seats as well.[45] In June 1992, the Kurdish Assembly began its sessions in Arbil.

Disputes inevitably erupted between the two parties, exacerbated by historical mistrust, but caused more immediately by arguments over where the jurisdiction of one party began and the other ended.[46] These issues centered on questions of territory, but also questions of the distribution of international economic aid and oil revenues. Due to the inability of the parties to reconcile their differences, two parallel Kurdish administrations eventually developed in Iraqi Kurdistan; a PUK-run zone in the south and a KDP region in the north. In December 1993, the first open armed clashes between the forces of the two main rival Kurdish parties broke out. Soon after the first Gulf War, the KDP received support in the form of arms and money from the Iranian government. In return, the KDP aided Tehran in the fight against its own Kurdish population. The KDP also looked to Turkey for support, and in return provided assistance to Turkey in its perennial pursuit of PKK members.[47] In particular, the KDP allowed the Turkish forces into Iraqi Kurdistan to pursue the PKK rebels who had fled across the border to escape persecution. Meanwhile, the PUK began to cultivate a relationship with Iran.

In hopes of eliminating its rival party, the KDP finally turned to Baghdad and asked for military assistance from the Iraqi government. 30,000 Iraqi troops then entered the Kurdish region and helped the KDP capture the town of Arbil from the PUK.[48] It furthermore used the opportunity to hunt down regime opponents that had sought refuge there. Kurdish in-fighting helped Baghdad re-assert some control over Iraqi Kurdistan and boost Saddam's prestige, to the detriment of the Kurdish people. As casualties mounted, the Kurdish administration was paralyzed and all hope of a unified Kurdish region appeared to have been lost. Only an agreement brokered by Washington in 1998 helped to end the armed clashes between parties. After intense American pressure for reconciliation, Barzani and Talabani committed themselves to power-sharing in the region. The Kurdish assembly was to reconvene after a long hiatus and the parties' separate security forces, known as the peshmerga, were to be integrated.

Also, this increased unity is paralleled by the increasing circulation and popularity of Kurdish media that emphasize Kurdish unity and independence, as Anderson's theory predicts. The nationalist rhetoric recently published by Kurd authors and widely circulated in Iraqi Kurdistan makes evident that Kurdish unity is on the rise and the divisions that plagued the two parties in the past are beginning to heal. In Andersonian terms, the Kurds of Iraq are beginning to imagine themselves as one nation. With this essential criterion for nationhood met, not only is continued nationalist agitation in Iraq

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[45] The Turkmen chose not to participate in the election because of the danger of the majority still under government control and to avoid offending Ankara, with which the party naturally had close relations.

[46] Continuing tension between the KDP and PUK was partly a personal dispute between the two leaders, partly geographical (between Bahdinan and Suran), linguistic (between Kurmanji and Surani), and ideological (between traditionalist and progressive cultures). See: McDowall, p. 385.

[47] The PKK is the radical Kurdish separatist movement in Turkey that has been named a terrorist organization by the US. In April 2002, the party abandoned its guerilla warfare tactics and changed its name to the Kurdistan Freedom and Democracy Party (KADEK).

[48] Tripp, p. 272.

likely, but the ability of the Iraqi Kurds to secede is improved. Recent articles in Kurdish media outlets confirm this hypothesis.

According to one Kurdish author, anyone who has been to Iraqi Kurdistan will instantly recognize that virtually no Kurd wants to be part of the new Iraq. The same author furthermore recognizes that the dual leadership in Kurdistan has harmed Kurdish ability both to win gains in the new government as well as precluded the possibility of independence. He therefore urges the rapid reconciliation between the KDP and PUK:

> I understand that when it comes to independence, we have been brainwashed. We have been told of independence so negatively that we think of it as a sin, unpatriotic, or as treason. But unpatriotic to whom? Whose political system? Whose regime? Kurdish leadership has the mentality of 60 years ago: that independence is out of the question and that our highest goal should be cultural rights or autonomy within the boundaries of the motherland. But whose motherland? The Kurds or Arabs?

> In the past 25 years, more than 17 independent states mushroomed from non-existence. Many of them are a fraction of Kurdistan in size, population, history of civilization, history of struggle, and natural resources. The US and West, Iran, Iraq, Syria, and Turkey will never agree even in principle to an independent state in Iraqi Kurdistan. It is therefore up to the Kurds to take the initiative....

> The Kurdish leadership must stop flip-flopping on the future of our nation. The Kurds in Iraq do *not* want to live under Arab rule. And no matter how much the Baghdad regime promises a bright future, we don't trust them, and for good reason. The Kurdish leadership should respect the wishes of its people....[49]

Another Kurdish nationalist argues that all Kurds, despite past intra-group conflict, are brothers and sisters of the Kurdish nation and should fight for independence:

> Brothers and sisters of the Kurdish nation: While it might be true that the mountains have been our only true ally and trusted friend throughout our history, a new chapter of Kurdish nationalism must emerge to allow us to develop and evolve economically, strategically and politically before we are bound to the fate our unfortunate history once more. It is time for us to unite once and for all, be strong and be counted. History has had a cruel habit of repressing the Kurdish nation and in addition to having the unfortunate distinction of being probably the only community of over fifteen million people which has not achieved some form of national statehood, despite a struggle extending back over several decades.

> The Kurds are a proud nation full of love, tradition, culture, and brotherhood. Now we must use these qualities to unite and stop the brutality and repression places on our beloved nation and start to believe that we have the right to statehood. In the year 2003 we were given the unique opportunity to decide our own future.... There should no longer be hatred and civil war among our Kurdish brothers in Iraq and we should no longer accept the bullying tactics of the Turks, Arabs, or Persians. ...

> It is time for us to reflect on our current situation and our history of hardship and believe in us as a great nation, and more importantly, rectify the wrongs of history. Kurds are one entity; artificial borders and history may have divided us but the unity in our hearts is indivisible. We are all brothers, in spite of country of habitat, and must fight the same

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[49] Hiwa Nezhadian, "Are We Missing the Boat Again," *Kurdishmedia.com*, August 13, 2004.

battles, have the same goals, believe in the same faith, and have the same desire and determination.... No longer shall we be a byproduct of history, but we will become the makers of history. We must start to believe that we are a great nation, not merely as an act of deception or to bolster self-pride, but because we are truly are a great nation.[50]

Since these nationalist articles are widely accessible in Iraqi Kurdistan, it is no surprise that most Kurds have started to think and act as one group united. Though divisions between the KDP and PUK continue today, the second Gulf War and the end of the military campaign brought with it unprecedented cooperation between the two parties. The KDP and PUK speak of reconciliation as they work together to protect Kurdish interests and secure Kurdish representation in the new Iraqi government. Moreover, any Kurdish concerns that are raised publicly are jointly drafted and/or endorsed by both Barzani and Talabani.[51]

In short, while the Kurds possess a strong sense of their own identity in relation to the surrounding Iraqi nationality, whether or not they remain in the Iraqi state depends heavily on the ingenuity of Iraq's constitutional engineers. Like so many times in the past, it is clear that the Kurd's inability to unite behind one strong leader has rendered them impotent to wage a war of secession, despite the preference of most Iraqi Kurds for their own nation-state.[52] Increased cooperation between the Kurdish parties and unity between the Kurdish people should be trumpeted by Kurd nationalists who seek an independent state. Indeed, most Iraqi Kurds have never felt a part of Iraq "from the day of its proclaiming, let alone at a time when it is bathed in blood and terror,"[53] and would welcome the establishment of their own political entity. But such a development should simultaneously invoke fear in the other Iraqi groups who wish to preserve Iraq's territorial unity (the Kurds are really the only group that want a political divorce from Baghdad). A Kurdish government united behind one leader would likely be a death knell to the territorial integrity of Iraq.

Part II:

Other Factors Affecting Kurdish Propensity to Secede

Political scientists have identified an exhaustive list of factors that can affect a group's desire and ability to seek secession. As the focus of this thesis is the institutional factors that serve to moderate Kurdish separatist tendencies, a lengthy discussion of these other factors is beyond the scope of this thesis. However, the most important factors to the Kurdish case study will be addressed briefly. In this author's opinion, the variables that have the greatest potential to influence the Kurd's propensity to secede from Iraq

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[50] Bashdar Ismaeel, "Kurdish Repression and Misfortune," *Kurdishmedia.com*, October 21, 2003.

[51] For example, see letter to President Bush drafted by Barazani and Talabani, written on June 1, 2004. Go to: http://www.kurdmedia.com/reports.asp?id=2013

[52] This unfortunately has been the case since time immemorial. Realization of a Kurdish state has been impeded not only by international opposition and force, but more importantly by Kurdish internal dissension and internecine fighting. See: McDowall, footnote 31.

[53] Bashdar Ismaeel, "Allawi's Mission Impossible," *Kurdishmedia.com*, August 19, 2004.

include the group's military strength, access to wealth, the disposition of international actors, the installation of a monarch, and media regulation.

1. Military Capability of the Kurds/Composition of the New Iraqi Army

A separatist group's military strength, or its tooth to tail ratio versus the forces of the state, will have obvious ramifications on the outcome of a war. The Kurds currently boast a well-disciplined and well-trained militia, known as peshmerga, of over 100,000.[54] The peshmerga, whose members were principal American allies in the 2003 war, are better armed, better trained, and more disciplined than the minuscule Iraqi army the United States is now trying to reconstitute. Indeed, the number of peshmerga exceeds the number of men in the Iraqi army, which remains small and disorganized due to the humiliating defeat it suffered at the hands of the Americans last year. The Kurdish peshmerga is also well armed, having been allowed by the U.S. to keep the significant quantities of Iraqi heavy weapons they captured at the end of the war. This simple tooth-to-tail ratio in favor of the Kurds undoubtedly improves the Kurd's ability to fight a war of secession if it came down to it.

Likewise, the composition of the new Iraqi army can be influential in shaping the behavior of the country's Kurdish population. After disbanding the former Iraqi army, the U.S. is currently working hard to train and equip a new model Iraqi army of about 40,000 highly mobile troops - 20,000 volunteer soldiers, plus another 20,000 employees to perform logistical and administrative tasks.[55] The new army's mission will be purely defensive and its composition will reflect Iraq's religious and ethnic diversity. Additionally, no Iraqi air force or navy is being created. For these reasons, compounded by the slow rate of recruitment, Iraq will be forced to rely on the coalition for national security for the foreseeable future.

This weakness in somewhat offset by the creation of the Iraqi Civil Defense Corps (ICDC). The ICDC was established by coalition executive order as a temporary force to augment coalition troops and the future Iraqi army, but now has taken on a larger role and now participates in counterinsurgency and other military operations. It is a kind of National Guard that provides internal security for the country.

The best way to reduce the threat of Kurdistan's peshmerga to the Iraqi army and to ensure that the new army is representative of the country's ethnic makeup is twofold. First, Iraqi Kurds should be allowed to retain *part* of its peshmerga force for the purpose of security, but to convert it into the region's civil defense corps. Other Iraqi armed forces could only enter Kurdistan with the consent of the Kurdistan National Assembly. The remaining members of the peshmerga should be fully integrated into the Iraqi national army. This would simultaneously remove the threat of the peshmerga to Iraq's own military while enabling Kurdistan to remain internally secure. A federalist structure would facilitate such a transition of the peshmerga to ICDC status.

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[54] Figures range between 80,000 and 100,000+ depending on the source. Anonymous, "After the War is Over," *The Economist*, Volume 366, Issue 8314, August 2003.
[55] See: Adeed Dawisha, footnote 29.

2. Assess to Wealth: Focus on Oil

Access to wealth and economic opportunities in the new system is extremely important for aggrieved minorities, affecting both desire and ability to secede, be it in different directions. Access to wealth is an important component of any military battle. Indeed, groups that have limited access to funds cannot afford to invest money in weapons and military training necessary to fight a successful war of independence. Thus, having access to wealth might help those Kurds bent on a political divorce from Iraq the necessary resources to fight their war of independence.

Alternatively, groups that have access to wealth and economic opportunities might be less inclined to seek separation from the state than economically disadvantaged ones. Gellner's typology of nationalism-producing situations helps to explain why those blocked from power – be it economic, social, or otherwise – are more inclined to develop nationalist rhetoric and separatist tendencies. Whether access to wealth will mute secessionist tendencies or heighten them therefore depends on which effect is stronger – the dampening desire to secede because of improved economic opportunities or the increased ability to secede because of access to wealth.

In Iraq, developing an effective institutional mechanism for dealing with oil is particularly important, many would argue as important as sound constitutional and electoral engineering. How well the new government handles this sensitive task will affect the odds of the Iraq's success as a democracy. In fact, Iraq's new institutional arrangement can even help determine how oil revenues are managed. With regards to Kurds, control of oil revenues will directly impact what resources are available to the Kurds for economic and political development of Iraqi Kurdistan, and in turn can influence their desire to remain in the Iraqi state or opt for a political divorce. Says political analyst Dawn Brancati of the importance of oil to Iraqi Kurdistan: "If the Kurds do not receive a larger share of the oil revenue generated in Iraq than the size of the population warrants, they may decide to secede from the country in the future, should they find they do not have money to finance the new policies and projects they devise."[56]

Political scientist Chappell Lawson warns that Iraq's vast oil resources leave the country vulnerable to the corrupting and politically-destabilizing influence of oil.[57] Like Nigeria, Venezuela, Angola, Libya, and a host of other countries that boast ample oil and natural gas reserves, Iraq is in danger of becoming what Lawson terms a "classic petro state," whereby oil contributes to poor economic growth, democratic instability, and even democratic failure. Economists and political scientists alike have recognized a strong correlation between concentrated oil wealth in the hands of political elite and underdeveloped political institutions.

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[56] Brancati, p. 15.
[57] Chappell Lawson, "How Best to Build Democracy: Laying Foundations for the New Iraq," *Foreign Affairs*, July/August, 2003.

Economists Nancy Birdsall and Arvind Subramanian explain why oil seems to stump economic growth and political maturation in developing democracies.[58] First, say Birdsall and Subramanian, because world oil prices are notoriously volatile, fluctuations in price can instigate a vicious cycle of excessive government spending when "they are flush" and severe spending cuts when prices eventually plummet. Another reason for the relationship between oil and political instability is that exploitation of natural resources like oil can crowd out other activities in a country's economy, to the detriment of domestic industry. A third explanation for the "oil curse" is that it obstructs the development of a society's economic and political institutions. Birdsall and Subramanian elaborate:

> "Natural resources, unlike output created by human endeavor, yield large 'rents,' which are rewards in excess of effort. But such rents are easy to appropriate – either by the state or by the few who control the resource's extraction.... The state is relieved of the pressure of tax and has no incentive to promote the protection of property rights as a way of creating wealth. As for the country's citizens, because they are not taxed, they have little incentive and no effective mechanism by which to hold government accountable. This can lead to the unchecked abuse of state power and undermine the process by which political systems reconcile conflicting interests and demands.[59]

This story can certainly be applied to the cases of Iran, Libya, and Saudi Arabia. These conditions make it very difficult, if not impossible, for political institutions to develop.

Lawson, Birdsall, and Subramanian all argue that the solution does not lie in privatization of Iraq's oil industry. Privatization, explains Lawson, would not preclude politicians from doing everything in their power to retain control over the country's oil wealth. This is because the revenues that the government receives from the sale of oil would still be in danger of being misspent. Lawson's solution: to devolve control of Iraq's oil as far away from the central government as possible. Lawson recommends that Iraq follow the Alaska plan,[60] where everyone in the state would receive an annual or monthly royalty check from the interest of oil funds. Birdsall and Subramanian concur with Lawson's argument, stating that the best alternative to privatization is to distribute Iraq's oil wealth directly to its people. This system works better, they say, because it minimizes opportunities for corruption and misappropriation by politicians. All three authors agree that a provision for the distribution of oil revenues must be included in the new Iraqi constitution so that discretionary power is permanently removed from the hands of Iraq's political elite. This is the only way to hedge against the corrupting influence of oil and concomitantly ensure the "long-term economic and political empowerment of ordinary Iraqis."[61]

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[58] Nancy Birdsall and Arvind Subramanian, "Saving Iraq From Its Oil," *Foreign Affairs*, July/August 2004.
[59] Ibid, p. 81.
[60] The Canadian province of Alberta also enjoyed success with the Alaska plan for managing its oil wealth.
[61] Birdsall and Subramanian, p. 88.

3. International Actors

The disposition of the international community can also have a decisive outcome on a separatist war. The Western powers in particular have a great capacity to influence the character and consequences of secessionist movements by using the military, political, and/or economic policy instruments at their disposal. The supply of arms, the provision of safe havens, the promise of trade, and/or the threat of sanctions and armed intervention are just a few of the means through which international actors can affect the behavior of state-seeking minority groups.

The disposition of international actors can therefore influence the propensity of the Kurds to secede from Iraq. The Turks have already threatened military intervention in Northern Iraq if the Kurds were to get their own autonomous province. With a sizeable Kurdish population of its own, Turkey fears that such a large devolution of power and local rule to Iraqi Kurds would incite its own Kurd population to clamor for similar rights or take it a step further and move for complete independence. Turkey, it seems, has an irrational emotional and ideological view that its frontiers cannot be changed without threatening the very foundations of the republic.[62] As historian David McDowall observes, in Turkey, the present borders have acquired an almost mystical quality.[63] These fears confound Turkey to such a degree that it's Prime Minister, Recep Tayyip Erdogan, went so far as to propose a formal alliance between Turkey, Iran, and Syria to prevent the emergence of an independent Kurdish state.[64]

Any destabilization of the region that would occur as a result of Turkish and/or Iranian meddling would be reason enough for the U.S to resist efforts by the Kurds for statehood or an autonomous unit of their own. The Kurds, in fact, accuse the U.S. of betraying the Kurdish people in pursuit of its own strategic interests in the region.[65] Indeed, the U.S. has already taken a strong stance against a federal design granting the Kurds their own autonomous unit. The U.S. surely would not hesitate to use further diplomatic pressure to block the adoption of a tri-partite federal design, and, given the strategic importance of the region and the U.S. stake in ensuring the viability of a democratic Iraq, the U.S. would likely resort to economic or even military tactics to preclude such a development.

4. The Installation of a Monarch

Some scholars and policy makers have flirted with the possibility of installing a monarch in Iraq, arguing that such a figurehead might help improve the unity of the Iraqi people. Political scientist Aideed Dawisha addresses this issue briefly in an essay on the

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[62] According to the research of political scientist Monica Toft, in general, it is only multinational states with more than one potential secessionist group that are staunchly opposed to loosing control of territory due to a fear of precedent setting. Turkey, though, fears Kurdish secession, even though the Kurds are its only minority group.

[63] McDowall, p. 7.

[64] Welat Lezgin, "Turkey hopes for a regional alliance to prevent the emergence of a Kurdish state," *Kurdmedia.com*, July 26, 2004.

[65] Brendan O'Leary, "The Kurds Must Not Be Betrayed Again," *Financial Times*, March 23, 2003.

likelihood of successful democratization in Iraq. In the essay, Dawisha suggests that restoring the Hashemite monarchy, albeit under strict constitutional limits, might be a stabilizing force for the country for two reasons.[66] First, because the former Hashemite monarch shared the faith of Iraq's Sunnis, a re-installation of a Hashemite monarch might help re-assure the Sunnis that the new system will not lead to their marginalization from the political process. Second, the monarchy has the advantage of being connected with tradition, which would make it a stabilizing force in a time of uncertainty. "A constitutional monarchy in Iraq," says Dawisha, "could become a symbol of the country's unity and civility."[67] As Dawisha points out, after forty years of Franco's brutal dictatorship, the restoration of a constitutional monarchy worked to guarantee stability and progress in Spain.

While Daiwsha is not incorrect in making these statements, he does not give due consideration to how the other groups in Iraq would respond to such a development. Given the record of the Shi'i and Kurdish repression under the Hashemite monarchy, the re-installation of a Hashemite monarch might cause consternation among all identity groups except for the Sunnis. A monarch might therefore be more polarizing than unifying. The Kurds in particular would be loathe to embrace a political system where their figure head was reminiscent of their second class citizenship under the Hashemite reign.

5. Media Regulation

A cursory review of the Anderson's theory is sufficient to highlight the far-reaching implications of media regulation on nation-formation and nationalism, and in turn the propensity of a disadvantaged group to seek secession. The structure of the media in Iraq, the rules regarding broadcasting, and the country's media laws all are extremely important to the Kurdish case study. Strong media regulation and censorship are correlated to a weakened sense of group cohesion and identity. Thus, a widely accessible free press, protected from state ownership and regulation should be created in Iraq to foment the strengthening of an all-inclusive Iraqi national identity.

Generally, there are three types of laws that regulate the media in a country. First, there are pro-competitive antitrust rules.[68] Second, there are laws that relate specifically to the ownership of media outlets, aiming to ensure that people have access to a diversity of political and cultural viewpoints. Lastly, there are laws that directly regulate media content. In theory, competition alone should provide enough diversity of viewpoints without the need for specific ownership or content rules. Also, the fact that new media outlets—the internet, cable and satellite TV—have greatly increased diversity of viewpoints should allow for less media regulation.

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[66] Adeed Dawisha and Karen Dawisha, "How to Build a Democratic Iraq," *Foreign Affairs*, Volume 82, Number 3, May/June 2003.
[67] Ibid.
[68] "Turning it Off: Media Regulation Outside of the U.S." *The Economist*, September 11, 2003.

The problem for developing countries like Iraq is that most media laws that exist are not enforced. Indeed, political influence and money influence which licenses are granted more than existing laws. World-wide, a large percentage of the media is still owned or run by the state. A study by America's National Bureau of Economic Research in 2001 found that, in 97 countries it examined, the state controlled on average nearly one-third of newspapers, 60% of TV stations and 72% of top radio stations.[69]

Obviously, it is extremely important to ensure a media and press free from the control by the state. As such, state ownership of any form of media should be outright banned in Iraq. Also, there should be laws designed to protect the press from control by the state, like laws governing the freedom of information and the protection of the confidentiality of journalistic sources.[70]

Experts on media regulation and censorship urge for the independent regulation of the Iraq's media, and in particular to stand firm against any desire of the U.S. authorities to control the press in the name of security. Political Scientists Chappell Lawson and Strom Thacker propose the development of a politically-insulated board to regulate media in Iraq. The British government has already come up with a detailed proposal for an Interim Media Commission (IMC) to attempt fair regulation of Iraq's burgeoning media. The system outlines a clear procedure to handle complaints against the media: First, journalists and newspapers that break the rules can be judged by a panel of their peers. The panel can fine the guilty and can order the confiscation of publications and equipment. There is also an appeal process and judgments are justified in detail and on paper. The building of a free press in Iraq is one of the best ways to promote the strengthening of an Iraqi national identity and help diffuse Kurdish separatist impulses. The other method is of course vis-à-vis constitutional engineering. To this we now turn.

Literature Review

Given the existing desire and improving ability of the Iraqi Kurds to secede, the choice of institutional design by Iraq's constitutional engineers is critical. In order to forestall a secessionist attempt by the Kurds, the new Iraqi constitution must be designed so that it dampens the desirability and ability of such secessionism. However, before launching into a discussion about which institutional arrangements are capable of doing this, it will be useful to first review the main theories on constitutional engineering in current scholarly discourse.

Today, constitution writers can choose from a wide array of constitutional models, each with various advantages and disadvantages. However, the model that has perhaps received the most attention from scholars is consociationalism, an institutional arrangement developed by political scientist Arend Lijphart over three decades ago.[71]

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[69] Ibid.

[70] ChappelL Lawson and Strom C. Thacker, "Democracy? In Iraq?", *Hoover Digest*, Summer 2003.

[71] Consociationalism is a term first used by Althusius, and was latterly "rescued from obscurity" by Lijphart in the late 1960s. See: Andrew Reynolds, "Constitutional Design 2000." Paper presented at a

The essence of consociationalism, according to Lijphart, is "not so much any particular institutional arrangement as over-arching cooperation at the elite level in a culturally fragmented system."[72] This elite-level cooperation, or power-sharing, denotes the participation of representatives of all major ethnic and communal groups in political decision-making. Other central features of the system include: proportionality in decision-making bodies, a high-degree of autonomy for each entity, a parliamentary form of government, and a mutual veto.

Proportionality, especially in legislative elections, ensures a broadly representative legislature. Proportional representation, though, is a very broad category that encompasses a wide range of possibilities. Main areas of variation include the use of open or closed lists of candidates, the electoral formula,[73] the level of the electoral threshold,[74] and the district magnitude.[75] Lijphart recommends multimember districts that are not too large, list proportional representation,[76] and closed or almost closed lists.[77]

Group autonomy means that each group has the authority to run its own internal affairs, especially in the area of education and culture. This is usually achieved vis-à-vis federalism, where autonomous units coincide with ethnic/religious/linguistic boundaries. In a parliamentary system, the cabinet is a collegial decision-making system rather than the presidential one-person executive with a purely advisory cabinet. Lijphart prefers a parliamentary system, as for him it is the optimal way of ensuring broad representation in the office of the executive as opposed to just in the legislature. Finally, the minority veto protects groups from what they see as encroachments on vital issues, like those compromising the rights and autonomy of the group. The mutual veto invokes John Calhoun's "concurrent majority" principle, which states that each group should be invested with "the power of protecting itself, and places the rights and safety of each where only they can be securely placed, under its own guardianship."[78]

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conference on institutional design, conflict management, and democracy at the University of Notre Dame, December 1999.

[72] Arendt Lijphart, "Cultural Diversity and Political Integration," *Canadian Journal of Political Science*, Volume 4, Number 1, March 1971, p. 10.

[73] An electoral formula is the formula for translating votes into seats. This definition, along with all other definitions in this section (unless otherwise noted), are adapted from: Pippa Norris, *Electoral Engineering: Voting Rules and Political Behavior* (Cambridge: Cambridge University Press, 2004), Chapter 2.

[74] An electoral threshold is the minimum number of votes needed by a party to secure representation.

[75] District magnitude is the average number of seats per constituency. It varies substantially among the world's democracies. Under a proportional representation system, the larger the district magnitude, the more proportional the outcome and the lower the hurdles facing smaller parties.

[76] In list proportional representation, parties present lists of candidates to the voters. This is in contrast to the rarely used single transferable vote, in which parties put forward as many candidates as they think could win in each constituency. Voters rank their preferences among candidates. The total number of votes is counted, and then the number of seats divides this vote total in the constituency to produce a quota. Candidates must reach the minimum quota in order to be elected. When the first preferences are counted, if no candidate reaches the quota, then the candidate with the least number of votes is eliminated, and his or her votes are redistributed according to second preferences. This process continues until all seats are filled.

[77] Voters choose parties rather than individual candidates from a ballot list.

[78] See: Reynolds, footnote 1.

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Whereas consociationalism strives for the inclusion of all voices within the legislature, Donald Horowitz's model aims for moderation in the legislature instead. This moderation would be achieved through the alternative vote, also known as the instant run-off or preferential voting.[79] In addition to an alternate vote electoral system, Horowitz recommends a presidential system[80] over a parliamentary one. The primary criteria distinguishing between a presidential and parliamentary system are twofold. First, in parliamentary systems, the executive is selected by the legislature and is dependent on legislative confidence. In a presidential system, the executive is elected directly or indirectly by voters and is not dependent on the confidence of the legislature. Horowitz prefers a presidential system because having a separately elected president makes power-sharing in a divided society more feasible since it makes it more difficult for any single group to capture total power in the state. For instance, a group with limited or no power in parliament might be able to gain access to the presidency. This helps prevent any one group from being completely marginalized from the political process.[81]

The final element of Horowitz's consociational model is federalism. While federalism is seen by many as the "golden road" to reducing ethnic conflict in a sustainable way,[82] it is not always a panacea for ethnic conflict. In some cases, it can radicalize ethnic conflict and even lead to secession and territorial dismemberment. Much depends on the nature of the federal units. For Horowitz, it is important to institute a federal system that cross-cuts ethnic cleavages rather than one whose units align with ethnic boundaries.

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[79] The alternative vote is generally classified as a majoritarian type of electoral system. Instead of marking a simple "X" on a ballot, voters are asked to rank their preferences among candidates. To win, candidates need to obtain an absolute majority of votes. Where no one candidate wins more than 50 percent after first preferences are counted, then the candidate with the least votes is eliminated, and his or her votes are redistributed among other candidates. The process continues until an absolute majority is secured.

[80] Presidentialism refers to a regime in which the president is always the chief executive and is elected by popular vote, or, as in the US, by an electoral college. The terms of office for the president are usually fixed, and, under pure presidentialism, the president has the right to retain ministers of his or her choosing regardless of the composition of Congress. Definition adapted from: Scott Mainwaring and Matthew Shugart, "Juan Linz, Presidentialism, and Democracy: A Critical Appraisal," *Comparative Politics*, Volume 29, Number 4, July 1997, p. 449.

[81] Part of the reason why Lijphart and Horowitz disagree on almost every point is because of their disparate theoretical stance. Lijphart, a primordialist, designed his consociational model based on the notion that identities are fixed and exogenous. It is no surprise, then, that the idea of consociationalism "is not to abolish or weaken segmental cleavages but to recognize them explicitly and turn the segments into constructive elements of a stable democracy."[81] Consociational theory therefore assumes that voting affiliation is driven primarily by ascriptive identities, and that these identities are not subject to redefinition through the political process. In contrast, Horowitz sees institutions and electoral engineering as the key to weakening the political salience of social identities like ethnicity in deeply-divided societies. Rather than designing institutions that reinforce ethnic cleavages, institutions can be engineered to foster interethnic cooperation by creating new cross-cutting cleavages that downplay the importance of one's ethnicity.

[82] Hurst Hannum, "Territorial Autonomy: Permanent Solution or step toward secession?" forthcoming in: Andreas Wimmer, *Facing Ethnic Conflict: Toward a New Realism* (Boulder: Rowman & Littlefield, 2004. Older version of essay downloaded from: www.zef.de/download/ethnic_conflict/hannum.pdf.

A Point by Point Comparison:

1. The presidential versus parliamentary debate:

Many scholars other than Lijphart, such as Adeed Dawisha and Juan Linz, argue that a presidential system has many disadvantages. For Dawisha, the most dangerous feature of a presidential system is that it is vulnerable to abuse by the president himself. Some presidents, he notes, have been known to stay in power longer than constitutionally mandated by simply refusing to give up their seat.[83] Dawisha further observes that presidential campaigns encourage the "politics of personality" that tends to overshadow the politics of competing parties and party programs. Dawisha's final critique of presidentialism is that it is especially prone to "corruption, repression, and self-aggrandizement, particularly in the Middle East and Central Asia."[84]

Juan Linz, in a book on the relative merits of presidential and parliamentary forms of government, offers a scathing review of presidentialism.[85] Linz's thesis, that presidentialism is inherently inferior to parliamentarianism, is supported by a rigorous analysis of presidential systems in Latin America. His first critique of presidentialism is that it introduces a strong element of a zero-sum game into democratic politics with rules that tend toward a 'winner takes all' outcome. In other words, a candidate is either elected or not. In a parliamentary system, many outcomes are possible. Coalition governments and power-sharing are fairly common, and the government and opposition may cooperate in the legislative process. Also, for this reason, the incumbent government is more attentive to the demands and interests of even the smallest parties.[86]

Two additional problems of presidentialism are outlined by Linz: frequent executive-legislative stalemates and the rigidity of presidential terms in office. Stalemates are common in presidential systems because of "dual democratic legitimacy," or the fact that concurrent powers are divided into two offices. Both claim the democratic legitimacy associated with being popularly elected, but the president and legislature might belong to different parties and/or have different preferences and priorities. Linz additionally finds problematic the fixity of the president's term in office. If the president proves to be incompetent or unpopular, there is no mechanism built into the system to remove him. Voters have to wait until the end of the presidential term in order to punish the president for not doing his or her job well. On the other hand, parliamentary systems deal more effectively with ridding an inept president with their provision for votes of confidence and snap elections.

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[83] Adeed Dawisha and Karen Dawisha, "How to Build a Democratic Iraq," *Foreign Affairs*, Volume 82, Number 3, May/June 2003.
[84] Ibid.
[85] Juan Linz, "Presidential or Parliamentary Democracy: Does it Make a Difference?" in Juan Linz and Arturo Valenzuela, *The Crisis of Presidential Democracy: The Latin American Evidence* (Baltimore: The Johns Hopkins University Press, 1994), p. 18.
[86] Ibid, p. 7.

Other scholars note that some of Linz's criticisms of presidentialism are unfounded or exaggerated. Mathew Shugart,[87] for example, argues that the stalemate problem caused by the dual legitimacy of the executive and legislature has not been as serious as Linz and others have alleged. Besides, says Shugart, conflicting claims to legitimacy also exist in parliamentary systems, albeit to a lesser degree. Conflicts can sometimes arise between two chambers of an assembly, or between the head of state (whose role is sometimes more than just ceremonial, like in Italy and the Czech Republic) and legislature.

Additionally, Linz's implication that the risk of coups, caused by the rigidity of the president's fixed term, could be eliminated by switching to parliamentarianism goes too far. Shugart shows that many parliamentary political systems have suffered military interventions and coups, like in Bangladesh, Pakistan, Sudan, Thailand, and Turkey. Finally, Linz's assertion that presidentialism introduces a more "winner-takes-all" approach to politics than does parliamentarianism is contested by Shugart. The degree to which democracies promote winner-takes-all rules, says Shugart, depends more on the electoral and party system, and on the federal or unitary nature of the system.

According to Shugart, the most acute shortcoming of Linz's book is the following: "Given the concentration of presidential democracies in one part of the world (namely Latin America), how can we be sure that the region's poor record of democracy is not due to historical or social factors rather than presidentialism?" Shugart accuses Linz of not bothering to explore the counterfactual argument - that parliamentarianism would have succeeded where presidentialism had failed. Perhaps, suggests Shugart, the superior record of parliamentary systems has rested partly on where parliamentary governments have been implemented.

Horowitz concurs with many of Shugart's findings. In response to Dawisha and Linz's accusation that presidentialism is prone to corruption, Horowitz retorts that parliamentary regimes have had their share of abuse of power. Simply look to Africa, argues Horowitz. With regards to the observation that presidential terms are fixed and make almost impossible the president's removal before the end of his or her term, Horowitz argues that empirics suggest the same is almost always true with parliamentary systems. Horowitz points out that, except for when a government called an early election in order to benefit from its transient popularity, practically every parliamentary regime in Africa and Asia that was not overthrown by a military coup served its full term. So, while in theory it is easier to remove an unpopular parliamentary regime in the middle of its term than an unpopular president, in practice the need seldom arises, so the fixed term constitutes no distinction between presidential and parliamentary systems.[88]

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[87] Mathew Shugart and John Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992). See also: Mark Jones, *Electoral Laws and the Survival of Presidential Democracies* (Notre Dame: University of Notre Dame Press, 1995).
[88] Horowitz, *A Democratic South Africa: Constitutional Engineering in a Divided Society* (Berkeley: University of California Press, 1991), p. 209.

Horowitz's primary reason for favoring a presidential system over a parliamentary one is because, in his opinion, a separately elected president makes sharing power in a divided society more feasible because it precludes any single group from capturing total power in the state whether or not the group captures a majority of seats in parliament. Also, by dividing the executive office between a president and prime minister, there would be fewer opportunities for presidential abuse of power and privilege.

Very recently, studies have come out that suggest that the continuing debate over presidential and parliamentary systems have "missed the forest for the trees."[89] In their study of 56 transitions to democracy in non-OECD countries, Timothy Power and Mark Gasiorowski[90] find no significant difference in the rate at which presidential and parliamentary regimes survive as democracies. According to their research, institutional factors are less important than structural factors, such as the level of economic development, for the survival of democratic governments. Likewise, George Tsebelis finds that what determines regime stability is the number of veto players, both institutional and partisan, not whether the system is presidential or parliamentary.[91] Still, no consensus has been reached in academic circles that settle this polarized debate.

2. Proportional representation versus the majoritarian debate:

Horowitz's primary critique of power sharing and Lijphart's brand of consociationalism is that it cannot work in practice. The assumption, says Horowitz, that elites in divided societies are likely to be more tolerant of other ethnic groups is unsubstantiated. Studies have shown that elites in some countries are not less ethnocentric than their followers.[92] In Horowitz's opinion, Lijphart's reliance on statesmanship rather than electoral-based incentives for inter-group cooperation is therefore suspect.

The key explanation for its failure, explains Horowitz, is that it does not create incentives for elites to reach out across group lines to cooperate. Why should leaders of the majority groups readily abdicate power to minorities? Major parties can almost always be expected to prefer majoritarian electoral rules while minor parties generally prefer to adopt proportional representation arrangements. In proportional representation systems, some groups would need to form coalitions in order to pass certain legislation, but not majority groups whose base of followers is big enough to obviate the need for coalitions.

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[89] Timothy Power and Mark Gasiorowski, "Institutional and Democratic Consolidation in the Third World," *Comparative Political Studies*, Volume 30, Number 2.

[90] Ibid.

[91] George Tsebelis, "Decision Making in Political Systems: Veto Players n Presidentialism, Parliamentarianism, Multicameralism, and Multipartyism," *British Journal of Political Science*, Volume 25, Number 3, pp. 289-325.

[92] Horowitz, "Encouraging electoral accommodation in divided societies," in Brij V. Lala and Peter Larmour, Electoral *Systems in Ethnically Divided Societies: The Fiji Constitution Review* (Canberra: National Center for Development Studies, The Australian National University, 1997). See also: Ben Reily and Andrew Reynolds, *Electoral Systems and Conflict in Divided Societies* (Washington, DC: National Academy Press, 1999).

Also, continues Horowitz, without elite incentives for accommodative behavior, incentives must be worked into the electoral system. Electoral rewards provide ethnic leaders with the motivation that they otherwise would lack. Such a system would involve vote-pooling. Horowitz defines vote-pooling as the exchange of votes by ethnically based parties that, because of the electoral system, are marginally dependent for victory on the votes of groups other than their own. And in order to secure those votes, group leaders must behave moderately on issues of ethnic conflict. The electoral rewards provided to a moderate can compensate for the threat posed by opposition from more extreme co-ethnics. It is Horowitz's belief that incentives are the key ingredient to inter-ethnic accommodation in the political sphere.

Horowitz admits that some common criticisms of majoritarian systems are accurate. In particular, many academics argue that a first-past-the-post (FPTP)[93] electoral system can systematically exclude from the political process even large minority groups, particularly those that are geographically dispersed. FPTP is an electoral system that is designed to give the leading party the majority of parliamentary seats. The system systematically exaggerates the parliamentary lead for the party in first place, with the aim of securing a decisive outcome and government accountability, thereby excluding smaller parties from representation in the government. Lijphart is particularly concerned with the use of FPTP in communities that are divided into multiple cleavages, especially between majority and minority ethnic populations. Oftentimes in these types of societies, claim Lijphart, cleavages are reflected in party politics, and the balanced rotation between government and opposition might be absent. In this case, it is possible for predominant parties to abuse power and trample over the rights of minorities. The potential dangers of this type of electoral system are therefore great for transitional democracies in heterogeneous societies.

The central argument for avoiding FPTP is that it may lead to an "elective dictatorship" or a "tyranny of the majority," characterized by entrenched power for the predominant majority populations, disregard for minority rights, and a lack of effective checks and balances. Despite the obvious shortcomings of FPTP, Lijphart admits that the alternate vote, another type of majoritarian system, is the better alternative.

While Lijphart acknowledges that within majoritarian systems, Horowitz's alternative vote is superior to both FPTP and the single-transferable vote, there is still a scholarly consensus against the adoption of any form of majoritarian system in a divided

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[93] The system of first-past-the-post (FPTP) or single member plurality elections is used for election to the lower chamber in fifty-four countries worldwide, including the United Kingdom, Canada, India, and the United States.[93] The basic manner in which FPTP works is as follows: countries are divided into territorial single-member constituencies; voters within each constituency cast a single ballot for one candidate; the candidate with the largest number of the votes is elected; and, in turn, the party with the largest number of parliamentary seats forms the government. Under a FPTP formula, candidates do not need to pass a minimum threshold to be elected, nor do they require an absolute majority of votes to be elected. Instead, all they need is a simple plurality. However, it is important to note that the common results of a FPTP system are mitigated by demographic concentration. In other words, minority populations that are highly concentrated can win districts. Thus, some minorities in Iraq, like the Turkmen, could potentially win representation under FPTP.

society. Even with an alternate vote system, Horowiz's preferred electoral model which aims toward moderation, the system would still favor the majority at the expense of the minority. Lijphart is emphatic in asserting that this would never be acceptable to a minority. Lijphart uses Northern Ireland as an example to make his point. In Northern Ireland, Protestant majority rule, even with the proviso that the more moderate Protestants would be in charge rather than the more extreme ones, would *never* be acceptable to the Catholic minority.

Lijphart responds to Horowitz's myriad criticisms of his consociational model by asking one simple question: Is a majoritarian system likely to be chosen in a negotiated transition to democracy when there are minority groups with grievances against the majority? This is highly unlikely. Lijphart argues that in a situation where one or more relatively small minority groups face a majority or several larger groups, the minorities would be unwilling to accept a system that does not offer them a chance to be represented by their own leaders but instead by the more moderate leaders of majority or larger groups.

Proportional representation, says Lijphart, is designed to promote consensual decision-making, bargaining, and compromise among multiple parliamentary parties, each with a stake in power, and dispersed decision-making processes. The beauty of proportional representation, claims Lijphart, is that in addition to producing proportionality and minority representation, it treats all ethnic groups in a completely equal and evenhanded manner. Furthermore, the social diversity proportional representation provides is invaluable for divided, heterogeneous societies because it improves the range of voices and experience brought to policy discussions, and also because the entry of minority representatives into public office can increase the sense of democratic legitimacy. Why deviate from full proportional representation at all?[94]

3. Territorial versus Ethnic-based Federalism:

Part of the reason why federalism is seen by many as a "golden road" to democracy is the enormous variety of forms that it encompasses to accommodate the most diverse, multinational countries in the modern world. The basic notion of federalism – to combine shared rule and provincial/regional rule in a single political system - has been applied in different ways to fit different circumstances. The federal systems of today vary in many ways: in the number of constituent units; how the boundaries of these units are determined; the degree of symmetry or asymmetry in their constitutional status; the scope of the allocation of legislative, executive, taxing, and expenditure responsibilities; the degree of provincial/regional involvement in federal decision-making; and the procedures to resolve conflicts (eg. arising over areas of overlapping jurisdiction) between the different levels of government.

Lijphart and Horowitz both see federalism as a powerful instrument in abating ethnic tensions in a heterogeneous society. First, federalism gives expression to identity groups, be it religious, linguistic, or cultural, and allows such groups to maintain their

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[94] Lijphart, "Constitutional Design for Divided Societies," *Journal of Democracy*, p. 100.

distinctiveness while preserving the unity of the state. Federalism is also an instrumental factor in making multiethnic societies work because it disseminates power away from the center of the state and, by allowing groups that are a minority at the national level to have significant input or even the ability to govern at the local or state level, it makes the struggle for hegemony by one group over the state unnecessary and therefore less likely.

In debating how federal systems should be designed, both Horowitz and Lijphart focus on one primary feature: how the boundaries of federal units are drawn. Lijphart recommends that federal units should coincide with ethnic or other group boundaries,[95] while Horowitz and other scholars, such as Seymour Lipset, argue that federalism should "cross-cut the social structure" in order to avoid the reification of ethnically-based identities. Asks Horowitz, how can one recognize identity groups while at the same time attempting to diminish their importance on the political stage? Lipset in particular argues against a brand of federalism that divides a country "between different ethnic, religious, or linguistic areas, as it does in India and Canada."[96] "Democracy," declares Lipset, "needs cleavage within groups, not between them!"[97] Likewise, political scientist Jack Snyder says the following of ethno-federal arrangements: "Purported solutions to ethnic conflict that take pre-democratic identities as fixed, such as ...ethnofederalism, may needlessly lock in mutually exclusive, inimical national identities. In contrast, creating an institutional setting for democratization that de-emphasizes ethnicity might turn these identities toward more inclusive, civic self-conceptions."[98]

Other authors argue that regional autonomy, particularly along ethnic lines, is a slippery slope and is likely to lead to secession and/or partition. For instance, Eric Nordlinger[99] excludes this brand of federalism from his recommended set of conflict-regulating practices in divided societies because it might result in the break-up of the state: "The combination of territorially distinctive segments and federalism's grant of partial autonomy sometimes provides additional impetus to demands for greater autonomy, and, when those demands are refused, secession and civil war may follow."[100]

Snyder is another person who makes this claim. Snyder points out that Yugoslavia, the Soviet Union, and Czechoslovakia, all three socialist multiethnic republics, split up along federally demarcated lines when communism collapsed. Two of the republics, the former Soviet Union and Yugoslavia, were wracked by violent ethnic conflict at the time of their respective dissolutions. Snyder notes that none of the other

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[95] For other authors who argue for a federal system based on ethnicity, see: Leslie Gelb, "What Comes Next?", *Wall Street Journal*, May 20, 2004; Dawn Bracanti, see footnote 12; and Chappell Lawson, "How Best to Build a Democracy," *Foreign Affairs*, Volume 82, Issue 4, July/August 2003, p. 206.

[96] Seymour Lipset, *Political Man: The Social Bases of Politics* (Garden City, NY: Anchor Books, 1963), p. 81.

[97] Ibid.

[98] Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W.W. Norton & Company, 2000), p. 36.

[99] Eric Nordlinger, quoted in: Reynolds, The *Architecture of Democracy*, p. 44. See also: Bunce, footnote 9.

[100] Ibid.

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former communist states experienced ethnic violence, attributing the absence of conflict the states' institutional structure – a unitary form of administration rather than ethno-federalism.[101]

There are those, however, who find territorial federalism ineffective in diminishing ethnic conflict. According to political scientist Brendan O'Leary,[102] territorial federalism proposes to manage heterogeneous societies by diluting the political salience of ethnicity. The main goal of territorial federalism is nation-building. O'Leary, however, argues that territorial federalism only works for societies already united; people who "think of themselves as descended from the same ancestors, who speak the same language, or who profess the same religion."[103] When these conditions are not met, he warns, a multinational type of federalism that recognizes distinctness of each group, like that of asymmetrical federalism,[104] is more appropriate and ultimately more successful in staving off ethnic conflict. O'Leary cites Spain, who struggled with Basque and Catalan separatism, and Canada, who recently resisted the secession of Quebec, as two good examples. Other policy analysts who share O'Leary's view with respect to Iraq include Leslie Gelb and Peter Galbraith.[105]

No matter one's stance on this issue, it is nonetheless recognized that devising a federal system whereby each ethnic group is awarded autonomy becomes sticky in areas where the groups are intermixed. South Africa is a good example. According to Horowitz, no minority group could form a majority in any territory likely to be accorded the status of a constituent unit of a federal South Africa.[106] Hence, regional autonomy was not a viable option. Horowitz argues that minorities can benefit from federalism without devolving power to homogeneous units. In particular, federal units can "provide arenas in which politicians are socialized in dealing with conflict in a divided society before they must do so at a national level, disperse conflict by proliferating points of power, and support the maintenance of a democracy by making hegemony more difficult to achieve."[107]

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[101] Roger Brubaker makes a similar argument to Snyder, placing blame on the USSR's institutional structure for the outbreak of violence along ethno-federal lines. According to Brubaker, ethno-federalism heightens and politicizes ethnic conflict by channeling mass political participation along an ethnic path, thereby creating an ethnic state-in-waiting. See: Roger Brubaker, *Nationalism Reframed* (Cambridge: Cambridge University Press, 1996).

[102] Brendan O'Leary, "Multinational Federalism, Federacy, Power-Sharing, and the Kurds of Iraq." Paper can be found on: www.krg.org/docs/federalism/ federalism-iraqi-kurds-paper-sep03.pdf

[103] Ibid.

[104] Asymmetrical federalism refers to the differences in the status of legislative and executive powers assigned by the constitution to different regional governments within a federation. Asymmetry can provide an effective way of accommodating major differences (eg. social, cultural, linguistic, and economic) and pressures for autonomy among constituent units. Asymmetrical arrangements, however, are only appropriate for states with ethno-federal/regional autonomy arrangements rather than territorial federalism.

[105] See: Peter Galbraith, "How to Get Out of Iraq," *New York Review of Books*, May 13, 2004; and Leslie Gelb, "The Three-State Solution," *The New York Times*, November 25, 2003.

[106] Horowitz, p. 217.

[107] Ibid.

Prescriptions for Iraq

A review of the different constitutional models begs the question: Which institutional arrangements out of the barrage of possibilities are most appropriate for Iraq given its history of inter-group relations and the propensity by one cleavage group to secede? The answer hinges on which institutions can help reverse the process of state-building in Iraq that is conducive to Kurdish nationalism and increasing Kurdish national unity vis-à-vis the media. In short, the determining factor of success in Iraq will be how a particular institutional package affects the desire and ability of the Kurds to secede.

As detailed in Part I, Gellner's story of the state-building process in Iraq and its exclusion of the Kurds explain why the Kurds desire a state of their own. At least two of three conditions in his typology of nationalism-causing traits are met. If certain institutions were to give the Kurds greater access to power in the political arena, education, and/or a high culture of their own, two of Gellner's nationalist-causing conditions would no longer be met. The desire to secede is thus muted. However, new institutions in Iraq must not only reverse the damage done by the Iraqi state-building process, but they must also stop the further consolidation of the Kurdish pseudo-state that was spawned by the Andersonian process of media-induced unity.

Given these considerations, I argue that a secessionist movement by Iraqi Kurds can best be thwarted by applying a two-pronged strategy: First, devolve enough power to the Kurds so that their rights as a minority group are protected and their desire for self-rule is fulfilled. Likewise, ensure the representation of Kurds in all levels of government. Second, encourage diversity within the Kurdish political arena. Both components of this strategy can be achieved by adopting a proportional representation electoral formula, selecting a territorially-based federalism, and choosing a parliamentary system. An application of Gellner and Anderson's theories to constitutional design, as well the empirical record, suggest that this institutional package is optimal for Iraq.

1. The electoral design: Iraq should adopt a proportional representation electoral formula.

Only the Shi'i would be happy to adopt a majoritarian system because, as the biggest ethno-religious group in Iraq, they would dominate the political arena. After having been disenfranchised by the Ottomans, the British, and the Baa'thists, the Shi'i are unwilling to play anything less than a leading role in the new Iraqi government. However, this preference does not translate into an unwillingness to share power with Iraq's other identity groups. All major established parties in Iraq, along with most foreign policymakers and academics, favor a power-sharing arrangement like that embodied in a proportional representation electoral system.[108] Horowitz's preference for the alternative vote, if applied to the Iraqi Governing Council, would generate a body consisting mainly of members of the Shi'i majority, with the proviso that they would be

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[108] Andreas Wimmer, "Democracy and Ethno-religious Conflict in Iraq," *Survival*, Volume 45, Number 4, Winter 2003-2004, p. 121.

sympathetic to the interests of the Sunni and Kurdish minorities. It is hard to imagine that either the Sunni or Kurds would be satisfied with this arrangement in the long run.

Most important for moderating the separatist tendencies of one or more groups within a state, proportional representation has the effect of fragmenting ethnic parties with a monopoly on voters within its ethnic constituencies. Duverger's famous claim that plurality elections in single member districts favor a two-party system whereas proportional systems lead to multipartyism is supported by the results of rigorous testing by Pippa Norris.[109] According to Norris, the worldwide mean number of parliamentary parties was 5.22 in countries using majoritarian systems and 9.52 in countries with proportional representation electoral systems.[110] Thus, there are almost twice as many parties in countries using a form of proportional representation than those using a majoritarian electoral system.

The explanation for why majoritarian systems tend to produce two-party systems while proportional representation is associated with multipartyism goes to the heart of the debate on incentive structures. Simply put, politicians in countries employing a type of majoritarian system aim to appeal to the widest range of voters so as to capture a majority of votes, which are necessary to win any seats in parliament, whereas candidates in a proportional representation system need only to appeal to a narrow segment of society in order to be guaranteed a seat in parliament. The difference strategies are referred to by Norris as bridging and bonding strategies.

Norris explains that bridging strategies involve dissolving traditional boundaries between "us and them," by adopting whatever ideas and policy proposals that seem more practical and efficacious. Successful bridging strategies allow parties to "cross-over" and break out of dependence upon limited sectors of the electorate. Indeed, under majoritarian rules, parties and candidates must appeal to a variety of diverse interests if they are to secure a plurality or majority of votes. As such, they face considerable pressures to adopt broad catch-all appeals to multiple social groups distributed throughout the electorate. FPTP provides great incentives for cross-group appeals since it lowers the hurdles for election.

By contrast, proportional representation electoral systems encourage candidates and parties to employ a different strategy – bonding. The essence of the bonding strategy is that candidates can appeal to a much narrower segment of society and still be returned to office. The system allows political actors to reinforce their bonds with a core, oftentimes homogenous group of voters. While some scholars like Horowitz worry that this might exacerbate divisions in multiethnic societies, particularly when political actors seek to mobilize their base by heightening ethnic tensions through adopting popular rhetoric directed to group appeals, it can be a useful tool in promoting multipartyism among a core ethnic group by creating intra-group competition. Not only is this useful in checking Kurd secessionist tendencies, it can help heal ethnic and religious rivalries in Iraq by creating new points of contention within a group, or sub-cleavages.

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[109] Norris, pp. 9-11.
[110] Ibid.

Having established that proportional representation is conducive to multipartyism, how does this increase in the number of political parties affect the strength and direction of the Kurdish imagination? Anderson's theory suggests that a proportional representation electoral law and the multipartyism it engenders would help to fragment the Kurdish imagination. As detailed in Part I, the Kurdish media is working to strengthen Kurdish national unity by presenting a single narrative of Kurdish nation that emphasizes unity and internal cohesion. Few articles published dare to criticize the actions of the KDP or PUK. Both political parties are closely tied to Kurdish newspapers and media outlets. A proportional representation system, by fragmenting parties, can create an incentive for the new parties to distinguish themselves from the old. The Kurdish media will be responsive in the changing political stage and begin publishing the differing views on Kurdish politics. Thus, there will no longer be one narrative of Kurdish unity. There will be multiple narratives, each one serving to enhance the meaning of regional or political identities over ethnic ones.

2. The structural design: federal units in Iraq should cross-cut ethnic cleavages.

Like proportional representation electoral systems, federalism has the potential to affect party proliferation, which, in turn, can help hedge against Kurd secessionist tendencies. Horowitz demonstrates how changes in the structure of states induced changes in the structure of party competition. Federalism, according to Horowitz, can act as a type of electoral reform, setting off areas from each other, and making and unmaking legislative majorities by adjusting the territories in which their votes were to be counted. The cumulative effect, like proportional representation, is to proliferate the number of political parties, which can help hedge against Kurd secessionism in the manner described above.

However, the type of federal structure chosen, territorial versus ethnic, is as important as whether or not federalism is instituted at all. Ethnic federalism must be avoided in Iraq. Indeed, federalism along ethnic lines can set into motion powerful forces that will allow the Kurds to consolidate their existing pseudo-state, increasing their desire for independence rather than dampening it. On the other hand, territorial federalism would hedge against a Kurdish bid for secession by disrupting Kurdish nation-building efforts. Recall that for Gellner, language is one of the most important criteria for nationhood. While Kurdish must absolutely be recognized as an official language in Iraq, the use of the Arabic language should also be encouraged in Iraqi Kurdistan. If the Kurds were to have an autonomous region carved out of Northern Iraq, they would have little incentive to use Arabic in a private domain much less in public discourse. Kurdish would be used instead, and this exclusive use of Kurdish in the North would further Kurdish nation-building efforts in a manner inimical to the territorial integrity of Iraq. Instituting a federal structure that cuts across ethnic lines would help to promote bilingualism in Iraqi Kurdistan and therefore affect the propensity of the Kurds to secede.

Other more pragmatic reasons exist for Iraq to adopt a territorial brand of federalism. One such reason is that this type of federal structure would be beneficial to minorities within minorities, like the Turkmen and Christian Assyrians that reside in Iraqi

Kurdistan. Minority groups that aim for a high level of autonomy, like the Kurds, must be sensitive to the fact such a devolution of power would likely intensify the fears of even smaller minorities. As Horowitz points out, it is often the desire of regional majorities to deal with minorities in a non-democratic manner that contributes to secessionism in the first place.[111] The rights of the Turkmen and Christian Assyrians would be better assured in a system where power was not concentrated in a highly autonomous, singular unit, particularly if the federal structure is such that no single group is dominant. Thus, an Iraq federally organized to cross-cut cleavages would not only address the legitimate right to self-rule of the Kurdish community while guaranteeing the rights of all communities and sub-communities within Iraq.

Finally, territorial federalism is better suited for Iraq because there is much heterogeneity in the country. As noted above, aside from the acute Arab-Kurd divide, there are multiple points of cleavage in Iraq, even among members of the same ethno-religious group. The people of Iraq are further divided along sectarian, tribe, and class lines. No one group - the Kurds, Shi'i, nor Sunnis - are religiously, culturally, ideologically, or politically monolithic. Not all Shi'i, for example, entertain identical political ends. There is a great divergence of opinion between religious and secular Shi'i regarding institutional design. This heterogeneity makes territorial federalism more appropriate for Iraq than a regional/asymmetric federalism that explicitly recognizes the three main ethno-religious groups.

The next question becomes how many units should Iraq have in its federal structure and how the boundaries of the constituent units should be drawn. Most political scientists favor maintaining the current 18 administrative units from Saddam's era. In fact, it certainly looks as though the transitional government plans to construct the new Iraqi state on the basis of administrative governorates in the existing 18 provinces. Such a model is arguably the most feasible and preferable given that the current provincial boundaries are well established, having been born out of Iraq's 1969 law of governorates, and cut-across cleavage lines in the country.

Also related to the federal arrangement in Iraq is the question of how the federal and provincial governments should organize themselves for the purpose of collecting revenues and financing expenditures, and how financial resources should be distributed to each level of government. These financial arrangements, referred to as fiscal federalism, are important for the survival of a federal democracy since it can constrain what the different levels of government within the federation can do in exercising their constitutionally assigned legislative and executive powers. Indeed, the capacity of federal, provincial, and local government to assume their responsibilities hinges on the balance between the level of decentralization of revenues and of government spending, the scale of transfers between levels of government, the conditions attached to those transfers, and the differences in the capacity of provincial and local governments to

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[111] Donald Horowitz, "The Cracked Foundations of the Right to Secede," *Journal of Democracy*, Volume 14, Number 2, April 2003.

provide comparable public services at comparable levels of taxation and tax collection arrangements within the state.[112]

Since an elaborate discussion of the optimal design of Iraq's tax code and the federal and provincial government's expenditure powers are beyond the scope of this thesis, a brief outline of key points should suffice. First, major taxing powers should be shared by the Iraqi federal and provincial governments. However, customs/excise and corporate taxes should remain in the domain of the federal government, the former because it ensures an effective internal customs and economic union, the latter because corporations, in earning their income, tend to cross the boundaries of internal provincial units.[113] Because personal income taxes may be more directly attributed to the location of residence, this taxing power should therefore be shared by the federal and provincial governments.[114] Additionally, sales and consumption taxes are areas traditionally shared by the federal and provincial governments, and Iraq should be no exception to this rule.

With respect to the distribution of taxing and expenditure powers, I argue that significant power should be devolved to the provincial governments in Iraq. This power would have the added benefit of dampening Kurdish desires for secession by allowing the Kurdish government to raise and spend money on what it deems important for the well-being of its people, be it the building of new schools and public works or for improved health care services. Moreover, it should be made explicit in the Iraqi constitution that the federal government should have the authority to provide grants to provincial governments for any purpose, whether it is under federal jurisdiction or not (eg. health, education, social services, disaster-relief, etc). The federal government must have ample power and a concentration of resources if it is to perform the redistributive role usually expected of it. This is of particular importance in Iraqi Kurdistan, which has many poor and undeveloped areas, and also because U.S. reconstruction efforts have largely ignored the region. And finally, in the case of financial imbalances, the federal government should be allowed to make unconditional transfers[115] so as to not influence how the money is spent by the provincial governments. Having conditions attached to the transfers might impinge on the constitutionally-mandated powers allocated to the provincial governments in Iraq.

3. The institutional design: Iraq should adopt a parliamentary system of government.

The best way to achieve broad representation in the office of the executive is by employing a parliamentary system. While a proportional representation electoral system would guarantee the representation of all major ethno-religious groups in the Iraqi parliament, a presidential system cannot guarantee such proportional representation in the cabinet as a parliamentary system can. And, as political scientist Stephen Van Evera notes, "A system cannot be recognized as broadly representative unless power is shared

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[112] Ronald Watts, *Comparing Federal Systems in the 1990s*, Queens University Press: Ontario, 1996.
[113] Ibid.
[114] Ibid.
[115] Unconditional transfers are those where no conditions for use are attached by the federal government.

among all groups within the executive *and* legislature."[116] With a parliamentary system, the Kurds can expect to hold a few key ministries, which would satisfy their need to be well-represented in all levels of government. Such an institutional design would create yet another positive incentive for the Kurds to stay in the state.

In addition, having established that proportional representation is the optimal electoral mechanism for Iraq given its social composition, it would be counterproductive to adopt a presidential system given that a parliamentary system normally accompanies a proportional electoral formula, and for good reason. Trying to combine the two systems fundamentally alters the incentive structures of both, and usually results in unexpected voting behavior. Israel is a case in point. Between 1996 and 2003, Israel experimented with a dual ballot system. In Israel's new system, the prime minister was directly elected via FPTP rather than appointed by the governing party in the legislature, but was still subject to a vote of no confidence by the parliament. Meanwhile, the Knesset was elected using a proportional representation formula. Thus, for these few years, Israel was an odd amalgam of a parliamentary and presidential system. According to former deputy speaker of the Knesset, Naomi Chazan, the system proved to be disastrous.[117]

A mixed system was initially proposed to mitigate some of the more negative features generally associated with parliamentary systems, namely legislative deadlock, institutional inefficiency, and coalition instability. It was likewise expected to make the executive less dependent on the parliament, and therefore improve government efficiency and longevity. Unfortunately, the Israeli experiment proved ill-fated. According to Chazan, the reforms caused an explosion in the number of parties awarded representation in the system, making governing even more cumbersome and inefficient. Furthermore, the lack of checks and balances in the new system precluded decisiveness in the decision-making process. As Israel was fast becoming ungovernable under this system, the country soon returned to its former status as a pure parliamentary system with proportional representation in 2003.

A key lesson to be learned from Israel's experience is that altering a single feature of a government system – be it structural, institutional, or electoral - has serious ramifications for all other systems. One can more easily correct for the more problematic features of a parliamentary system by altering the electoral threshold or the number of multimember districts rather than switching to a presidential system. Furthermore, Iraq, unlike Israel, has no genuine experience with liberal democracy, and therefore does not have the luxury of experimenting with different types of systems. Iraq would unlikely recover from a failure, where Israel, with a long and rich history of democracy, could scarcely afford to undertake such a social science experiment. It is therefore in the best interest of all Iraqis to adopt a parliamentary system. Moreover, Sistani and many other key players in the new government insist upon Iraq adopting a parliamentary system. Thus, at this point in time, parliamentarianism is almost a given.

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[116] Email Conversation with Stephen van Evera, August 2004.
[117] Interview with Naomi Chazan, August 2004.

Is Iraq on Track?

After several long and arduous months of squabbling, backbiting, setbacks, and hard compromises among members of the Iraqi Governing Council (IGC), the Iraqi interim constitution[118] was finally signed on March 8, 2004. The document designates how Iraq is to be governed until a permanent constitution has been drafted by a national legislature and approved by the Iraqi public.

The document states that the system of government in Iraq will be republican, federal, democratic, and pluralistic, with power to be shared between the central government and Iraq's regional governments, governorates, municipalities, and local administrations. The constitution also recognizes two official languages – Arabic and Kurdish. Islam will be the official state religion and a source of legislation in the new government. The Iraqi constitution also includes an extensive bill of rights, granting all Iraqis freedom of expression, thought, and religion, along with a right to security, education, health care, and social security. There is even a special clause that specifies women should comprise at least 25 percent of the elected national assembly.[119] The document also stipulates that Iraq will have a president, two deputies, a prime minister, and a cabinet. Lastly, the constitution requires that elections for the National Assembly take place by December 31, 2004 if possible, but no later than January 31, 2005.

Analyst Andrew Apostolou, in a derisive review of the interim constitution, identifies several sources of deficiency in the Interim Law.[120] One of the most contentious issues of the constitutional debate was the role Islam should play in determining state legislation. Apostolou finds the language regarding the role of Islam deliberately vague and therefore potentially dangerous. He cautions that such ambiguity is a "ticking time bomb" waiting to detonate. Although Islam is deemed a source of legislation in the law, it is not the single source as many conservative Shi'i wanted. Still, under the interim constitution, no legislation can be adopted which may violate the precepts of Islam. According to Apostolou, this language can serve as an effective Islamic veto on any proposed legislation. Yet, another clause in the constitution may serve as a counter veto to that handed to the Islamist's. Article 7(A) states that no law can be adopted which contradicts the principles of democracy. Thus, explains Apostolou, the constitution is riddled with contradictions. While this might not be viewed as a contradiction by many Americans, who see no inherent tension between religion and democracy, it is a glaringly obvious to secular Iraqis, particularly women and the Iraqi Kurds.

Another source of conflict in the constitution is a provision that could give the Kurds an effective veto over the text of a permanent constitution. The interim constitution allows three of Iraq's eighteen governorates to veto the ratification of a

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[118] The Iraqi interim constitution is the law that establishes how Iraq will be governed in the interim period. See: http://www.oefre.unibe.ch/law/icl/iz00000_.html.

[119] 25 percent is a goal, not an enforced quota.

[120] Andrew Apostolou, "Crisis Delayed: The Iraqi interim constitution could fail," *National Review Online*, March 2, 2004.

permanent constitution. This, in effect, allows either the Kurds or the Sunni Arabs, each of whom make up between one-fifth and one-sixth of Iraq's population, to block a constitution they don't like. Grand Ayatollah Sistani in particular was concerned that the provisions awarded too much authority to Kurds and other minorities and prejudged the conclusions of a future constitutional convention.

"Any law," said Sistani, "prepared for the transitional period will not have legitimacy until it is approved by the elected national assembly."[121] Iraqi Kurds and Sunnis are of course wary of any political process that would give Shi'i the strongest say in Iraq's new government. Fortunately, this objection was shelved for the time being. Speaking of the deferment of this objection, Hamid al-Bayati, a senior leader with the Supreme Council for the Islamic Revolution in Iraq, one of the groups that had initially refused to sign the document, said: "We've decided to sign the constitution and resolve the problems in it later."[122] This provision in the interim constitution is nonetheless wise, as imposing a constitution on reluctant Kurds or Sunni Arabs would provoke a new cycle of resistance and conflict, and maybe even lead to civil war.

Perhaps more important than specific controversial clauses in the constitution are things left unsaid or undetermined. Many policymakers are concerned that a great deal of re-negotiation will be necessary when the terms of the permanent constitution are debated and ultimately drafted. Full agreement on the permanent constitution could take many months, if not longer. Juan Cole, a Middle Eastern affairs expert, emphasizes this point: "An elected parliament next year must in essence renegotiate many of the prime points in this document, and those negotiations are likely to be extremely difficult and controversial to provoke a great deal of trouble. This document has put off many of the most essential disputes until the future."[123] Such issues include the exact nature of federalism, the status of Kirkuk, and the distribution of oil revenues.

Nevertheless, the constitution marks a significant step in the democratization of Iraq and the return of Iraqi sovereignty and self rule. As BBC correspondent Caroline Hawley points out, this is the first time Iraqis have ever had a say in the political future of their country.[124] And although the interim law does not satisfy every group in Iraq, the relevance of this document should not be disregarded. Kurd journalist Bashdar Ismaeel rightly notes that full agreement was improbable if not impossible given the number of groups making demands.[125] Ismaeel praises the law for addressing some of the long-standing Kurdish concerns, including language and cultural rights. Some Kurds even maintain that the interim law constitutes a milestone in national reconciliation between the Kurdish people and Arabs. KDP's Barzani said of the constitution, "This document

[121] "Iraq: The Interim Constitution," *Council of Foreign Relations*, March 8, 2004. Go to: http://www.cfr.org/background/background_iraq_const.php.
[122] Ibid.
[123] "Iraqi Interim Constitution signed," *PBS Online News Hour*, March 8, 2004.
[124] "Iraq's Draft Constitution Hailed," *BBC News Online*, March 1, 2004.
[125] Ismaeel, see footnote 50.

will strengthen Iraqi unity in a way never seen before. This is the first time that we Kurds feel that we are citizens of Iraq."[126]

The interim law indeed provides for the enfranchisement of *all* ethno-religious groups as well as for the full protection of the most basic human rights. It also succeeds in preserving Iraqi unity - not by force, but through understanding and cooperation. BBC's Hawley proclaimed that the agreement on the constitution was "nothing short of classic compromise."[127] Adnan Pachachi, a Sunni member of the ICG, said members had to overcome deep divisions on many issues, but did so by consensus and without having to take a single vote: "The result is that after several months of hard work we have been able to reach agreement on all substantial issues before us," he told a press conference.[128] Like Hawley and Pachachi, many chose to focus on the positive aspects of the law rather than its omissions.

Even countries like France and Russia, who were both vociferously opposed to the war, expressed praise for the new Iraqi constitution. Only Turkey denigrated the achievements of the transitional law. Turkish Justice Minister Cemil Cicek said the following of the interim constitution: "We consider the interim constitution an arrangement which does not satisfy us, which raises our concerns and uneasiness, and which will not help settlement of permanent peace and which will cause continuation of instability and lack of tranquility in this country for a long time."[129] This negative response was almost inevitable given Turkey's stance on Kurdish autonomy.

Omissions, ambiguity, and Turkish concerns aside, the document is a historical landmark for Iraq and its importance should not be overlooked. Still, as many critics rightly point out, it is difficult to determine how effective the interim law will be in easing the country's painful transition towards democratization given that many important features have yet to be decided. Only time will tell.

Conclusion

The theories developed by Ernest Gellner and Benedict Anderson have furthered our understanding of the historical and evolutionary processes of nationhood and nationalism. When applied to the problem of constitutional engineering for divided societies, the theories shed much light on which institutions can best affect a minority group's propensity to secede. The adoption of this thesis' recommendations by the Iraqi National Assembly will maximize Iraq's chance of successfully transitioning to a democratic style of government. However, the window of opportunity for making these critical decisions regarding structural, institutional, and electoral design is unfortunately

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[126] "Iraq Interim Constitution Signed," *CBS News Online*, March 8, 2004. Go to: http://www.cbsnews.com/stories/2004/03/08/iraq/main604622.shtml.
[127] "Iraq's Draft Constitution Hailed." *BBC News Online*.
[128] Ibid.
[129] "Turkey considered the interim constitution of Iraq as an arrangement raising Turkey's concerns and uneasiness," *TurkishPress.com*, March 8, 2004.

very narrow. The choices made *now* are vital in determining how the process of democratization will evolve.

In particular, crafting a constitution that reverses over a century of Kurdish repression by a string of successive Iraqi governments is critical to ensuring both the democratic viability and the territorial integrity of Iraq. It is no secret that the Kurds prefer to be endowed with their own polity rather than remain in Arab-dominated Iraq, despite what Barzani and Talabani say in public. As one university student put it, "Our choice now is federalism. But our *real* choice, and our right, is independence."[130] In January 2004, 1.7 million people in Iraqi Kurdistan, about 80 percent of the adults in the region, signed a petition asking for a vote on independence. It can safely be assumed that anybody who signed the petition would be in favor of independence.[131] Thus, the people of Kurdistan almost unanimously prefer independence to being part of Iraq. Increased cooperation between Kurdish parties and a strengthening of the Kurdish "imagined nation" should signal alarm bells in the minds off all Iraqis who have a stake in preventing the territorial dismemberment of Iraq. Thus, the desire for secession is great, and the ability of the Kurds to secede is improving.

As can be inferred by Gellner's theory, the best way to manage separatist tendencies is to dampen the Kurd's desire to secede by ensuring that their rights as a minority are well-protected and that they are well-represented in all levels of government. This ensures that two of Gellner's three nationalism-inducing situations are no longer met. However, giving the Kurds some autonomy over their own affairs is not enough to dampen their desires for an independent and free Kurdistan, particularly given that Iraq's state-building process, emphasizing an Arab high culture, concomitantly spawned the creation of a Kurdish pseudo-state. The Andersonian process of media-induced nationalism has further helped the Kurds imagine themselves a nation. Therefore, incentives to remain in the state must be coupled with disincentives to leave. The new constitution must also be engineered to encourage the development of intra-Kurdish political fragmentation. The historical record unequivocally shows that the internal Kurdish split has been one of the primary factors impeding the formation of a Kurdish nation-state.

Thus, Iraq's territorial integrity can only be protected by devolving substantial power to the Kurdish provinces via territorial federalism, awarding the Kurds representation in all branches of government through the employment of a parliamentary system, and finally, by splitting the Kurdish party leadership through the use of a proportional representation electoral law.

One must keep in mind, however, that all parties and people bring to the negotiating table their own biases, preferences, and agenda, and it will therefore be difficult to realize such an institutional package fully. As Donald Horowitz puts it, "It is

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[130] Anonymous, "Iraq's Kurds: Towards an Historic Compromise?", *International Crisis Group Middle East Report*, Number 26, April 2004, p. 6.
[131] Interview with Condoleeza Rice at the US Institute of Peace, August 20, 2004.

.one thing to prescribe and quite another to take the medicine."[132] Constitutional processes entail bargaining, which by definition involves the exchange of preferences. This bargaining will undoubtedly impede the realization of a single constitutional model. All parties to a constitutional convention bring their own selection biases. For example, those with an interest in a specific constitutional innovation or feature may focus on a single attractive case study to support their preference to the neglect of a range of relevant outcomes. Likewise, there is the historical bias to contend with. The historical record shows that neither Lijphart's pure consociational model nor Horowitz's incentives model have been implemented completely in any severely divided society in the post-World War II period. Comprehensive changes are much less likely than incremental or adulterated ones.

And, as political scientist Olga Shvetsova argues, if hybrid institutions are adopted as a result of either 'asymmetrical preferences and/or multiple source biases,' it becomes much more difficult to predict the incentives they create.[133] Indeed, as elaborated earlier, changing a single piece of the institutional package can alter the incentive structures built into the system, thereby impacting voting behavior. Thus, one set of institutions can work against another to dilute the package's conflict-reducing properties. And, as Horowitz notes, most countries suffering from the threat of secession fail to make the fundamental innovations in their institutional structure that ethnic healing requires.[134] Most changes made are artificial and watered-down versions of what is necessary to induce real change. The existence of fundamental conflict must be met by fundamental change. The institutional arrangements that are recognized as exacerbating ethnic conflict must be completely replaced by a package of institutions recognized as conflict-reducing.

Moreover, even if the aforementioned recommendations are implemented fully, those expecting immediate success should be should be cautioned for two reasons. First, scholars recognize an inverse relationship between the time when new institutions that address minority grievances are adopted and the likelihood of success. If constitutional amendments are made early on before the advent of sustained conflict, institutions have a better chance of successfully moderating ethnic tensions and preempting secession. Conversely, if constitutional engineering takes place after prolonged violence or a civil war, then the impact of institutional engineering will be more modest. In the case of Iraq, a lot of violence has already been perpetrated against the Kurds. Their identities have thus hardened significantly and they continue to sustain many grievances. Gellner's theory helps explain how the state-building process propagates nationalist sentiments of the aggrieved minorities that lack access to education and/or the high culture of the state. And, as Gellner argues, the act of targeting minority populations on the basis of their ethnic identity tends to reinforce that identity. When the state attacks or kills Kurds because they are Kurds, it is logical for members of those communities to define

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[132] Horowitz, *The Architecture of Democracy*, p. 35
[133] Olga Shvetsova, "A Survey of Post-Communist Electoral Institutions," *Electoral Studies*, Volume 18, 1999, pp. 397-409.
[134] Donald Horowitz "Some Realism about Constitutional Engineering," in *Facing Ethnic Conflict: Towards a New Realism*, Rowman & Littlefield Publishers, Inc: New York, 2004, p. 252.

themselves as Kurds. Anthony Smith, in his book *National Identity*, goes so far as to say that war may actually create ethnic identities.[135] Similarly, the secondary effects of state violence – voluntary and forced resettlement and economic stagnation – tend to reinforce ethnic identity as well. And although there is great heterogeneity in Iraq at large as well among Kurds in the country, decades of Kurdish repression has resulted in their identifying foremost as Kurds, and as Sunni/Shi'i, secular/religious, urban/rural, and tribe secondarily.

This leads to the next reason to downplay unchecked optimism in the case of Iraq: the fact that the impact of institutions in staying secessionism is modest compared to other factors. For example, it is well recognized that historical grievances have a greater effect on a group's propensity to secede than any one set of institutions. And then, of course, there are the other variables that can affect the outcome of democracy in Iraq, like the vagaries of the insurgency, which has degenerated into a full-scale battle in Sunni strongholds like Fallujah, and inconsistencies of U.S. policy in the country.

In other words, because a lot of damage has already been done and because there are so many other variables at play that can affect the likelihood of democratization, we should not expect a miracle in Iraq, even given the possibility of full adoption of this thesis' recommendations: a PR electoral system, parliamentarianism, and a cross-cutting federal structure that maintains the country's current 18 administrative units. However, deft constitutional engineering is the only tool available to the new government short of a protracted civil war and/or a continuous American occupation to thwart a Kurdish move for secession. For this reason, we must remain hopeful that institutional design can moderate Kurdish separatist tendencies and convert Iraq into a viable democracy.

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[135] Anthony Smith, *National Identity* (Reno: University of Nevada Press, 1994).