

# IRAQ

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## Preventing a New Generation of Conflict



*A project of the International Peace Academy*

edited by

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*To the Iraqis,  
who have paid the price of a generation of instability,  
in hopes that another generation will not join them*

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Methods for Sequential Portfolio Allocation in Multi-Party Executive Bodies: Evidence from Northern Ireland and Denmark." *American Journal of Political Science* 49, no. 1 (2005): 198–211.

55. D'Hondt would have to be supplemented by a rule that prevents oppositionist party fragmentation aimed at seizing key portfolios.

56. Al Stepan, "Federalism and Democracy: Beyond the U.S. Model." *Journal of Democracy* 10, no. 4 (1999): 19–34.

57. Horowitz, "Sunni Moment."

58. Makiya, "Present at the Disintegration."

59. ICG, "The Next Iraqi War?" Rend Rahim al-Franke, the director of the Iraq Foundation, made a clear appeal along these lines during her talk at a conference in Ottawa in February 2006.

60. Biden and Gelb, "Unity Through Autonomy."

## Federalizing Natural Resources

Brendan O'Leary

Just as the prime minister of one of Canada and the United States' major public intellectuals, advised us to consider whether there is a "conventional wisdom" on any matter of public policy. Where there is, he urged that its easy embrace should be resisted and that it be scrutinized as to what interests it served, whether vested or confused. There is a conventional wisdom on Iraq. It is that Iraq should be integrated and centralized if it is to avoid multiple disasters in addition to those it has recently experienced. A centralized state, it is held, is necessary to end the current insurgency (properly insurgencies), combat crime, hold the country together, promote a civic national identity against ethnic and sectarian elites, defend the state against its neighbors, prevent Iraq from becoming a haven for the export of international jihadism, and allow the US-led coalition to withdraw its troops.

The sources of the conventional wisdom are widespread, and the interests that sustain it cannot be fully analyzed here. It is encouraged both by pro-US and anti-US sentiments. US Republicans and Democrats, French republicans, and the European left all favor a strong state in Iraq, albeit for different reasons. The conventional wisdom is regionally entrenched in much of the Middle East, at least in those states to the west and southwest of Baghdad and north and west of Diyarbakir, and not just those that have an interest in Iraq as an Arab state. The conventional wisdom is extensively represented in this volume.

A central corollary of the conventional wisdom is that Iraq's central authorities should be firmly in control and ownership of its natural resources, and of the revenues from these resources, now and in the future. Baghdad's control of oil and gas is seen as a sine qua non for centralization. For most supporters of the conventional wisdom, the most glaring failure of the 2005 constitution is that it fails to achieve this imperative. As a result, the International Crisis Group has called for a "total revision of key articles

concerning the nature of federalism and the distribution of proceeds from oil sales" and argues that revenues from natural resources be "centrally controlled."<sup>1</sup> The conventional wisdom usually judges the constitution as a partisan document with provisions on natural resources that privilege Kurdish and Shia Arab regions, while collectively punishing Sunni Arabs for the sins of the Baathists. Kanan Makiya has described the constitution as a "punitive" document that penalizes Sunnis "for living in regions without oil." The constitution suggests, allegedly, that the "state owes the Sunnis of the resource-poor western provinces less than it does the Shites and Kurds."<sup>2</sup> Yahia Said, another centralist, has argued that the constitution means that "Baghdad and the non-oil-producing regions will be at the mercy of the oil-producing ones."<sup>3</sup> The International Crisis Group has warned that if Shia Arabs construct a nine-province Shia region, as permitted by the constitution, it would "leave the Sunni Arab community landlocked and without oil."<sup>4</sup> Donald Horowitz, explaining Sunni alarm at the constitution, traces that fear to a provision that "seems to tie the distribution of future oil revenues to the location of the resource in one region or another. Iraq's oil is in the Kurdish north and Shiite south."<sup>5</sup> Many who believe the conventional wisdom see control over natural resources as at the heart of the struggle for Kirkuk. Why else, the argument goes, does Kurdistan want to incorporate Kirkuk, if not for the fact that it sits on top of some of the world's largest oil fields?

Some supporters of a centralized Iraq, in which Baghdad controls natural resources, argue with breathtaking early revisionism that the constitution actually mandates their preferred world. This appears to be the curious position of the oil minister, Hussain al-Shahristani, appointed in 2006, who claimed on assuming office that the federal government's (alleged) control over exploration extended to all oil fields in the country, including those that are not yet in production.<sup>6</sup> The Turkish government has taken a similar line, seeking through its official spokesmen to play down the extent to which Iraq's constitution gives any control over oil to Iraq's regions.<sup>7</sup>

This chapter analyzes and defends the federalizing provisions on natural resources in Iraq's constitution of 2005. After the subjects of violence and security, the ownership and allocation of the revenues from natural resources are undoubtedly the most controversial political questions in contemporary Iraq, and in this book. The argument advanced here rejects the conventional wisdom and emphasizes the centralizers' failure to learn from Iraq's history. Iraq, it is maintained, can become and remain democratic, united, and at peace with its neighbors only as a pluralist federation, and this imperative requires decentralization and cooperation between regional and federal governments. The case for a pluralist federation has been made at length elsewhere, both by me and colleagues of mine,<sup>8</sup> and is also addressed in John McGarry's contribution to this volume, with which I agree.

The constitution's provisions on natural resources, I maintain, are appropriate for a pluralist federation, coherent, and politically and morally defensible. A centralized Iraq, with Baghdad in charge of its oil and gas, would repeat the institutional arrangements that made Iraq a prison for a significant share of its population and a threat in the region. A centralized Iraq presided over genocide at home and precipitated wars of expansion. The decentralized 2005 constitution, by contrast, precludes no community from equitable treatment, differing markedly in this respect from the status quo ante, in which the Baathists pocketed oil money, and disproportionately benefited Arabs, especially Sunni Arabs. The new constitution provides for an adequately resourced federal government in Baghdad, but not one that owns and controls oil and gas. It does not link Kirkuk's future territorial status to that of oil and gas, a major accomplishment of the negotiations. Contrary to the ill-informed thinking of the Iraqi federal oil minister, the constitution does not hand control over exploration in new fields to Baghdad. It does not necessarily leave Sunni Arab-dominated regions without their own future oil. And the constitution provides for an important federal role in perhaps the most important natural resource of all: water. This chapter defends these claims and is underpinned by an important political warning: The constitution's federalizing provisions, especially as regards natural resources, cannot be substantively renegotiated. That is because Kurdistan enjoys a veto over any such proposed amendments and, if necessary, will use this blocking capacity.

#### ■ Natural Resources in the 2005 Constitution:

##### Water, Oil, and Gas

Let us start with water, the natural resource that perhaps will be of greatest importance in the long run for the peoples of Iraq, the land of the two rivers, which is heavily dependent upon the mountains, streams, and rivers of Kurdistan.<sup>9</sup> The Euphrates flows from Kurdistan in Turkey and through Kurdistan in Syria, and major tributaries in the Kurdistan region of Iraq mightily amplify the Tigris. One must first observe that there were no fundamental difficulties in negotiating the relevant clauses for water, and that the consensus that they express may suggest that a loose pluralist federation may be able to work. Article 50, the constitutional oath of the members of the Iraqi Council of Representatives, places an obligation on the members to "ensure the safety of [Iraq's] land, sky, water, wealth, and federal democratic system" (my emphasis). Water, however, is federalized in a manner that is different from oil and natural gas.

Article 110, which specifies the "exclusive" competencies of the federal government, includes, at subsection 8, "planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to

Iraq and its just distribution inside Iraq in accordance with international laws and conventions.” This provision plainly grants the federal government exclusive responsibility for policy related to water flowing from outside Iraq into it and provides for a federal role in ensuring both the rate of flow within Iraq and in internally just distributions. This clause may fairly be interpreted as giving Mesopotamia (or the predominantly Arab parts of Iraq)<sup>10</sup> a federal stake in the rivers that begin in Kurdistan and as warranting the federation an international lead role in negotiating water responsibilities with Iraq’s neighboring states.

Article 114 of the constitution, which specifies shared competencies, where both the federal government and the regional governments may legislate (and which are subject to regional supremacy as we shall see), enumerates at section 7, “to formulate and regulate the internal water resources policy in a way that guarantees their just distribution, and this shall be regulated by a law.” This article must be read in conjunction with article 115, which grants supremacy to regional law, and with article 121 (2), which grants regions the power of nullification over federal laws outside of the exclusive competencies of the federal government. Article 115 does not require extensive commentary:

All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.

Nor does article 121, which is a provision under the chapter dealing with “Powers of the Regions,” with which article 115 should be read, require the services of a constitutional lawyer:

(1) The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this constitution, except for those authorities stipulated in the exclusive authorities of the federal government. (2) In case of a contradiction between regional and national [read “federal government”] legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national [read “federal government”] legislation within that region.

In the light of these two articles, which powerfully express regional legal supremacy in domains outside of the exclusive competencies of the federal government, how should we read the apparent clash between the “exclusive” competence of the federal government to plan for “just distribution” of water inside Iraq (article 110, section 8), with the “shared competence”

of the federal government and the regional governments for “just distribution” for “internal water resources policy” (article 114, section 7)?

The most straightforward—and intended—construction is as follows: The federal government has exclusive competence for *planning* the external dimensions of water policy. The federal government is under a constitutional obligation to plan a just distribution within Iraq. But any regional government is entitled to nullify (or modify) within its region any application of the law as regards “just distribution,” since the determination of “just distribution” is specified as a shared competence. The relevant articles express the technical acknowledgment of Iraq’s interdependence as regards water and grant the federal government the minimum necessary planning authority, but they also express the historic distrust of Baghdad governments by Kurdistan—and ensure that the Kurdish Regional Government can veto any law that in its judgment does not match international law and conventions on “just distribution.”

The Bremer dinars, the currency that may be L. Paul Bremer III’s most lasting contribution to the new Iraq, include a graphic that represents a beautiful waterfall at Gali Ali Beg, in Kurdistan. The waterfall is not named on the currency and is not named as being in Kurdistan. And the Bremer dinars do not use both Kurdish and Arabic—changes that are mandatory under the 2005 constitution. But the waterfall on Bremer’s currency may be taken as a metaphor for the treatment of water in Iraq’s constitution. The relevant clauses recognize interdependence but also the hidden power and importance of Kurdistan. They balance federal and regional interests, but prevent the former usurping and trumping the latter. They obligate the federal government to follow international law and conventions in planning distribution or else it will face the nullification of the relevant statute by the Kurdish Regional Government. Given the present and future importance of water resources for Iraq’s urban populations, and for agriculture, the necessary interdependence between water policy and hydroelectric power, and Saddam’s past abuse of central authority to build huge dams without any degree of local consultation or planning, these articles and subsections express a principled bargain—one which ensures that regions can block misbehavior by the federal government.

The “law” that must be made, though it is a shared competence, is subject to article 110, section 8, and therefore the planning law must be a federal law, but nothing in the constitution prevents regions from modifying or nullifying the law’s provisions as regards “just distribution”—provided they do so within the conventions of international law. Regional and federal courts will have to develop the requisite expertise in these domains since the relevant law’s constitutionality may be challenged both by citizens and regions. The constitution also exclusively allocates “planning” to the federal government. By implication, where there are regions, the organizational

implementation of the federal law shall be the responsibility of the regions unless they choose to share responsibility with federal bureaucracies.

In the broad-based coalition government formed in Baghdad in May 2006, a Kurd, Abdul Latif Rashid, was given responsibility for the federal ministry of water, whereas an Arab, Hussain al-Shahrastani, was given responsibility for the federal oil ministry. That is one of many examples of the difficult and exquisite political balancing that is required in contemporary Iraq. One may fondly hope that this example augurs well for the future flourishing of political accommodation. But if so, the oil minister, at least judging by his first significant press outings, would appear to need a thorough briefing on the implications of the constitution's provisions on oil and gas.<sup>11</sup> What follows attempts to provide exactly that.

Let us start with article 111, to wit, "oil and gas are owned by all the people of Iraq in all the regions and provinces." This article is certainly not straightforward, but its construction is best understood as follows. First, it does not explicitly indicate how this provision is to be regulated, or by whom. It is deliberately *not* a subclause of article 110, that is, the preceding article that specifies the exclusive competencies of the federal government. That is certainly deliberate, as a comparison with the relevant article in the Transitional Administrative Law (TAL) makes clear.<sup>12</sup> Therefore, it follows that oil and gas ownership are *not* within the defined list of exclusive competencies of the federal government. Article 111 must therefore be read in conjunction with article 115, which specifies that all other unstipulated powers belong to the regions (and governors are not organized in a region) and that where competencies are shared, and there is a clash, regional laws prevail: it should also be read in conjunction with article 121 (2), which specifies that outside of the domain of exclusive competencies regions have a general power of nullification.

Article 111 is also *not* specifically listed among the shared competencies of the federal government and regional governments (these are specified in article 114). Therefore, there should be no presumption that article 111—or article 112, which I shall examine presently—must be treated as a wholly shared competency, that is, one for which both the federal and regional governments are permitted to legislate. The federal government, by implication, can only automatically legislate for governors that are not regions.

This construction establishes that article 111 is subject to the supremacy of the law of any established region—which for the present simply means Kurdistan—as the negotiators intended. But does article 111 have any other constitutionally constraining meanings? Yes, in my view. There cannot be any exclusive non-Iraqi ownership of oil and gas. There is, however, no statement saying that ownership has to be *exclusive* to Iraqis; the article just requires that all Iraqis must be owners of all the oil and gas—

though presumably not that in all cars or trucks on roads between Basra, Baghdad, and Hawler (Erbil).

A reading of article 111 as a requirement that oil and gas be exclusively owned by Iraqis, or exclusively governed through a single public corporation, may contradict article 112, which, as we shall see, commends the "most advanced techniques of market principles and encouraging investment." Any reasonable court may presume that article 111 prohibits non-Iraqis from having more than 49 percent of equity in any oil and gas enterprise, but it should also presume that article 111 does not prohibit foreign direct investment, or equity sharing, in which Iraqi governments (note my use of the plural) would have a golden share. Presumptively, article 111 may suggest that some benefits from ownership must flow to all Iraqi citizens and territories—subject, of course, to articles 115 and 121 (2), which specify regional supremacy, including over article 111.

Finally, article 111 does not, in any way, mandate the continuation of a centralized, vertically integrated industry; indeed it must be read as expressly removing oil and gas ownership from the exclusive competencies of the federal government.

The next critical article is 112, which has two parts:

- (1) The federal government, with the producing governors and regional governments, shall undertake the management of oil and gas extracted *from present fields*, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law. (2) The federal government, with the producing regional and governorate governments, shall *together* formulate the *necessary* strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of market principles and encouraging investment [my emphasis].

How should we understand article 112? First, its provisions are also subject to articles 115 and 122 (2), which authorize regional legal supremacy. That is because, *inter alia*, article 112 is not part of the list of exclusive competences of the federal government and because the natural construction, which now follows, presupposes regional supremacy. Article 112 (1) makes it plain that the federal government's constitutionally prescribed role is *managerial*. It does not—and this is consistent with the reading just given of article 111—require that the federal management role take the form of managing a single public corporation. Moreover, the federal government's managerial role is confined to currently exploited fields. Equally vital, the federal government's managerial role is *shared* with the respective regions

and governorates where production takes place. But the Arabic version of this article subtly implies a lead role for the federal government in management as regards article 112 (1). This interpretation is not contested by Kurdistan, provided, of course, it is not abused.

Article 112 (1) also makes it constitutionally mandatory that the federal government (and the regional governments) plan a per capita formula for the distribution of revenues from oil and gas production from currently exploited fields. So, contrary to one element of the conventional wisdom, Sunni Arabs and Sunni Arab-dominated regions or governorates are not cut out of revenues from currently exploited fields. Far from it: no Iraqi is. One should also recall that at present, all of Iraq's oil and gas revenues flow from currently exploited fields. However, the per capita formula may, by statute, be modified by time-limited support for regions deprived under Saddam and "damaged after." An "allotment," which dictionaries treat as a synonym for quotas, shares, rations, grants, allocations, allowances, and slices, and (informal) "cuts"<sup>13</sup> will be specified by law to go to the regions unjustly underdeveloped under Saddam (read: Kurdistan and Kirkuk governorate, and the nine southern governorates), as well as regions "that were damaged afterwards." Any allotment has to be time limited, and it has to be consistent with a "balanced" development strategy. Therefore it would be unconstitutional for the Iraqi authorities wholly to dwarf the per capita allocations by the allotment reparations. Sensible advice to the Sunni Arab community would be to focus on developing a statute that places a premium on the per capita revenue allocations and that limits the period of reparations. That offers them far better prospects of collective reassurance than nonnegotiable demands to restructure the constitution.

Which are the regions that "were damaged afterwards"? I do not think, knowing the negotiators' intentions, this phrasing refers to the Sunni Arab-dominated governorates, which have been damaged by the actions of insurgents and the counterinsurgency operations of the federal authorities and coalition forces—though it would be open to Kurdistan and the new federal government to interpret the clause in that generous spirit. It is my understanding, by contrast, that the clause was intended to cover southern governorates that were damaged after a period of development under Saddam (during the Iran-Iraq War and after the Shia *intifada*) and Kurdistan (which did not get its fair share of Iraq's revenues during the period between 1992 and 2003, and which was outside the grip of the regime from 1992).

Article 112 is also important because of what it does not say. Its complete silence on future (or presently unexploited) oil and gas fields removes the warrant of any role for the federal government in their *management*, as well as over legislative competence. The injunction on future policy planning specified in article 112 (2) has an important "*together*"—and the Arabic version is equally clear on this. The "together" implies a full region-

al veto as regards the content of article 112 (2), even though the federal government has a tacit lead managerial role in article 112 (1).

So how then should the substance of article 112 (2) be constructed? It places an obligation on regional governments and governorate governments to formulate necessary strategic policies together with the federal government. The necessary policies flow from Iraq's membership in the Organization of Petroleum Exporting Countries (OPEC). It would be odd if Iraq's regions were to develop completely different exploitation and pricing policies. Iraq's OPEC membership, as long as that is maintained, may reasonably be held to necessitate regional—and producing governorate—agreements on production quotas. But necessity does not dictate a single vertically integrated oil or gas industry; and necessity does not require regions to link their new (or old) fields to existing Iraq-wide pipelines. Regions are constitutionally free to have their own investment strategies, oil and gas industry infrastructures, and exploration strategies. They are free to deem "necessary" whatever they wish with the federal government, and to revise such judgments. Unquestionably, it was the intention of the negotiators, and this intention is textually achieved, to grant future supremacy in ownership and management to the regions (and governorates) over unexploited fields of oil and gas. That is what article 112 (1) and (2), together with articles 115 and 121, accomplish. Article 112 (1) and (2) must be read together: the obligation to achieve the "highest benefit to the Iraqi people" is confined to policy as regards "present fields." Regions are not, by implication, required to make any federal-wide distribution of benefits from new fields of oil and gas. Nothing stops them from agreeing to that; but they are not obligated to do so. President Barzani of the Kurdish Regional Government has, however, indicated the willingness of his government to commit to such distributive arrangements, provided others (especially in the south and Baghdad) do so.

### ■ In Defense of These Arrangements

The constitutional provisions governing three key natural resources—water, oil, and gas—are wholly consistent with the vision of a pluralist federation. In addition, contrary to integrationist conventional government, they permit a sufficiently empowered and resourced federal government. There will be a sufficient revenue base, from present oil and gas fields, for a workable federal government, including enough for it to meet its significant security obligations in the short and medium term. Iraq's present fields have long lives ahead of them. As and when regions develop outside Kurdistan, there will be a corresponding reduction in the revenues of the federal government, especially if the regions exercise their constitutional right to monopolize internal security. In the long run, the federal government, which lacks

the *independent* power to tax, will have to develop revenues from other sources, which will require the consent of the regions if duties other than those on imports and exports are to be levied. That is as it should be. The constitution spells the death warrant of a highly centralized Iraq, but it delays the execution—to enable the regions to grow and to enable the federal government to establish with them the new political order.

The arrangements are both just and gradualist. The justice has already been elaborated: there is a constitutional obligation to have per capita allocation of revenues from existing fields to all regions and governors, and there is a constitutional obligation to redress past misallocations. The gradualism of the arrangements is less well known. In 2007, fully 100 percent of Iraq's oil revenues will flow from current fields; it is reasonable to project that 90 percent will do so in 2017 and that 80 percent will do so in 2027. There will therefore be a slow adjustment from a time when all oil revenues from currently exploited fields fund all of Iraq's governments to a time in which there will be an Iraq of regions with greater revenues from the to-be-exploited fields. This gradual shift will enable appropriate development strategies for both the future resource-rich and the future resource-poor regions. Well-run governors and regions will plan according to their respective futures and tailor their cloths appropriately—economic diversification planning should start now. There will also be opportunities for exploration *throughout* Iraq, because all three major communities predominate in some territory where there are good prospects of new fields—Baghdad, which should become a region itself, also straddles good prospects. What matters politically is that the historically underdeveloped regions have constitutional assurances that Iraq's future will not be like its past. These arrangements are exactly the necessary components of a constitutional order that will prevent the type of overcentralized, rentier oil state, which led Iraq to disaster.

The constitutional arrangements on natural resources also enable a creative settlement of the status of Kirkuk. The constitution enables Kirkuk governorate to vote to join the existing Kurdistan region by December 2007—and the other disputed territories have the same right. The votes are there for Kirkuk's incorporation into Kurdistan lawfully (judging by the outcomes of the January and December 2005 elections and by the outcome of the constitutional referendum in October 2005). Moreover, the full implementation of article 58 of the Transitional Administrative Law will ensure that there will be more pro-Kurdistan voters to vote for this change of status by December 2007—as the right of return of expelled persons will be implemented, as it should be. But what is insufficiently known is that the constitutional settlement of 2005 creatively and deliberately separates deciding the final territorial status of Kirkuk governorate from the questions of the ownership, management, and revenues of the Kirkuk oil field.

Under article 112 (1), the Kirkuk oil field shall be federally managed, in conjunction with *either* the Kurdish Regional Government, *or* the Kirkuk governorate (*or* both), and the revenues distributed according to the statute discussed above that must have both a per capita formula and a balanced development requirement. Therefore, *it is not true that if the Kurdistan region unifies with Kirkuk governorate that the rest of Iraq loses all stake in Kirkuk's oil field. It is not true; it is false.* The better this constitutional fact is appreciated, the greater the likelihood that the heat can be taken out of the referendum on Kirkuk's territorial status. Recognition of this fact by responsible international organizations, nongovernmental organizations (NGOs) such as the International Crisis Group, the government of Turkey, and Arab governments in the Middle East is a consummation devoutly to be desired.<sup>14</sup> Kurds will not be holding their breath, but the Kurdish Regional Government has done the right thing, by law, by prudent judgment, and by justice.

### ■ Conclusion

Praise for the constitutional settlement of natural resources enables me to conclude by commending both realism and principled conduct. The bargain of 2005 as regards natural resources is part of a coherent and principled remaking of Iraq as a pluralist federation that can work, and deserves a chance to work. The constitution obligates a per capita allocation of oil revenues from currently exploited oil fields across Iraq, and does not prevent any agreement among regions to share wealth from new fields. That the constitution can work is, of course, no proof that it will. Those who voted “no” and bombed “no” to the constitution persist in their campaigns. Ethnic and sectarian killings and expulsions are rife in mixed cities and governorates. But realism also requires me to warn that article 126 (4) of the constitution empowers Kurdistan's voters and the Kurdistan region with the powers to block any amendments to the constitution, especially those that weaken any region's competences—unless that region's parliament and people consent. No one should expect Kurdistan to accept any constitutional amendments that are detrimental to its interests.

The constitution confirms Iraq's reality. It is primarily divided into four main parts: Kurdistan (including Kirkuk), Baghdad, a Shia Arab–dominated south, and a Sunni Arab–dominated west and center. The territorial politics of Mesopotamia itself are undecided. If it wishes, the United Iraqi Alliance can preside over the formation of one large southern region, or two, or more such regions. For now, neo-Baathist Sunni Arab elites, jihadist religious fanatics, and the followers of Muqtada al-Sadr among the Shia cling zealously to the vision of a centralized Iraq. Oddly, the “international community,” with or without the United States, tends to empathize with—or sup-



port—the centralizing objectives of this mostly reactionary and mostly divided minority. In doing so, they falsely equate pluralist federation with wholesale disintegration and thereby feed vicious circles of misinterpretation. They also encourage neo-Baathism.

The constitution normatively establishes a pluralist, democratic framework acceptable to Kurdistan and the majority of Shia Arabs and (overly) harms no others' rights in a democratic political order. It provides incentives for Sunni Arabs to accept new democratic realities—in those parts of Iraq in which they comprise majorities within governorates they are free to decide exactly what levels of self-government they wish to exercise and which powers they wish to leave to the federal government, or to share with it.<sup>15</sup> Conceding all the nostalgic demands of Sunni Arab leaders is both unacceptable and impossible for the overwhelming majority of Iraqis—Kurds and Shia Arabs—and simply will not happen inside any democratic framework. Iraq may have no future; but if it is to have a democratic future, it has to be along the lines of the constitutional settlement of 2005, including its provisions for federalizing natural resources.

## Notes

1. International Crisis Group (ICG), "The Next Iraqi War? Sectarianism and Civil Conflict," *Middle East Report* 52 (February 27, 2006): ii.
2. Kanan Makiya, "Present at the Disintegration," *New York Times*, 11 December 2005.
3. Yahia Said, "Federal Choices Needed," *Al-Ahram Weekly*, March 2006, weekly:ahram.org.eg/print/2006/784/sc6.htm.
4. ICG, "The Next Iraqi War?" ii.
5. Donald Horowitz, "The Sunni Moment," *Wall Street Journal*, 14 December 2005.
6. *Financial Times*, 24 May 2006.
7. "Turkey Wary of Iraqi-Kurd Plans to Export Oil," Nicosia, Deutsche Presse-Agentur, 27 June 2006, f28; parsimony.net/forum68059/messages/4187.htm.
8. See the chapters in Brendan O'Leary, John McGarry, and Khaled Salih, eds., *The Future of Kurdistan in Iraq* (Philadelphia: Univ. of Pennsylvania Press, 2005), particularly Chapters 1–4.
9. Quotations from the text of the official constitution given below—and the numbering of sections, articles, and subclauses—follow the unofficial United Nations translation, kindly made available to me by Jonathan Morrow of the United States Institute of Peace. Throughout I have checked the pertinent meanings with other advisers to Kurdistan's negotiators, including those who have a command of Arabic and Kurdish that I cannot remotely match, and with those whom I advised during the 2005 negotiations. Some articles were negotiated in English before being rendered into Arabic—and then back into English through the UN translation. Only poetry has been lost in these retractions: Nicholas Hayson of the United Nations agreed at the conference that produced this volume that I had constructed these provisions reasonably; he agreed, in particular, with my readings of the provisions for oil and gas. I am grateful for that acknowledgment, though I do not presume that he agrees with the rest of my arguments.

10. I use Mesopotamia to refer to those parts of contemporary Iraq that are not Kurdistan, Kirkuk governorate, or the "disputed territories," that is, as a synonym for Arab-dominated Iraq.

11. *Financial Times*, 24 May 2006.

12. Art. 25 (E) of the Transitional Administrative Law made "managing the natural resources of Iraq" one of the exclusive competences of the Iraqi Transitional Government and declared, as part of that subclause, that they belonged "to all the people of all the regions and governorates of Iraq" (see Appendix 2, *The Future of Kurdistan in Iraq*, 324). The textual contrast with the permanent constitution is stark.

13. Since the clause was negotiated in English and translated into Arabic, it is fair to look at both the English and Arabic wordings—and also at the authorized Kurdish version of the constitution.

14. Elsewhere I have argued that what Iraq desperately requires in addition to its worthy constitution is tailor-made, urban power-sharing arrangements in its mixed cities, embedded in regional constitutions or laws for the relevant governorates—in Mosul, in Nineveh, or a northwestern or central region; in Kirkuk, within a unified Kurdistan region, and, of course, in Baghdad.

15. See John McGarry's chapter (Chapter 11) in this volume.