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Iraq's Constitution of 2005: The Case Against Consociationalism 'Light'

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ABSTRACT   Scholars and practitioners tend to favor transitory power-sharing arrangements and liberal forms of consociationalism. Iraq's constitution of 2005 has both, but the country has been in turmoil ever since. This article argues that Iraq's political problems can be traced, in part, to the combination of temporary and liberal consociationalism, what is called here consociationalism 'light'. The lack of durable national power sharing, the preoccupation with self-rule at the expense of shared rule, and the invention of 'fluid federalism' left post-Saddam Iraq ill-prepared for the challenges to come. What many see as the advantages of consociationalism 'light', its flexibility and open-ended nature, turned out to be important drawbacks. The case of Iraq therefore has implications for the debate about institutional design in other divided societies.

Introduction

In the literature on divided societies, peace agreements, and power sharing, there is an emerging preference for transitional over permanent power-sharing arrangements.[1] For Rothchild (2005, p. 251), 'power sharing arrangements may enhance the prospects of peace in the short term (…) while becoming a potential source of instability, ineffective governance, and inter-group conflict in the long term'. Sisk (2008, p. 197) agrees, stating that 'power sharing is at best a transitional device'. Unfortunately, 'surprisingly little attention has been paid to those provisions that end power-sharing arrangements: sunset clauses' (Schmidt & Galyan, 2017, p. 113). Butenschøn, Stiansen, and Vollan (2015) are an exception. After analyzing power-sharing arrangements in nine post-conflict societies, they conclude that extensive veto powers and constitutionally mandated coalition governments are best used for limited time periods only (p. 334).

Similarly, if faced with the choice between corporate and liberal types of consociation, 'academic proponents of consociationalism display a strong preference for the liberal version' (McCulloch, 2014, p. 502). Lijphart (1995), who first made this distinction using the terms self-determination and pre-determination, already listed seven advantages of self-determination versus only one possible disadvantage. Whereas a liberal consociation 'rewards whatever salient political identities emerge in democratic elections', a corporate

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consociation 'accommodates groups according to ascriptive criteria' (McGarry & O'Leary, 2007, p. 675).

The Iraq constitution of 2005 combines temporary and liberal consociationalism.[2] This makes Iraq a case of what is called here consociationalism 'light'.[3] Based on the literature and the successful case of South Africa, which also featured interim and liberal consociationalism (See Bogaards, 2014; Jung, Lust-Okar, & Shapiro, 2005; Sisk & Stefes, 2005), one would expect consociationalism 'light' to offer an attractive alternative to its opposite, the much-maligned permanent corporate consociationalism of Bosnia and Herzegovina (See, for example, Belloni, 2009; Bieber, 2002; Woodward, 1999). Iraq is therefore a challenging case for proponents of consociationalism 'light', yielding insights that can inform the wider debate about institutional design in divided societies.[4]

Ottaway (2016, p. 549) advises political scientists who study constitutions to reach 'sophisticated conclusions and then distill blunt recommendations'. The conclusion is that Iraq's constitution of 2005 suffers from a lack of durable national power sharing, a pre-occupation with self-rule at the expense of shared rule, and an experiment with what is called here 'fluid federalism'. The temporary and liberal nature of the main consociational provisions resulted in incomplete, informal, and increasingly voluntary power sharing and failed to provide Iraq with a stable framework for the accommodation of communal tensions. The recommendation is to fix these problems within the current constitution and to heed the lessons learned from the case of Iraq when thinking about the design of consociationalism in other divided societies, including Syria (Salamey & Rizk, 2018).

The article is organized as follows. The first section reviews the process of constitution making in Iraq. The next three sections take a closer look at the constitution's content: evidence of consociational power sharing, the balance between self-rule and shared rule, and the fluid federal set-up. The conclusion examines the desirability and feasibility of alternatives to consociationalism 'light'.

Iraq's Constitution of 2005

Studies on the Iraqi constitution of 2005 and the preceding Transitional Administrative Law (TAL) are replete with criticism of the process. Part of the problem is the notorious lack of planning by the US government for the postwar period in Iraq, what Diamond (2005, p. 292) calls 'the truly cardinal sin'. The main shortcoming of the constitution-writing process was the 'pressure-cooker approach' (Morrow, 2010, p. 586; see also Hay, 2014, p. 156) imposed by the American-led occupation, even though 'a truly legitimate process that leads to an acceptable and sustainable constitution cannot be rushed' (Benomar, 2004, p. 95).

On 20 March 2003 the invasion of Iraq began. Two months later, the Coalition Provisional Authority (CPA) was established to administer the occupation with the blessing of the UN Security Council (Caan, Cole, Hughes, & Serwer, 2007). Another two months later, the CPA created the Interim Governing Council (IGC), putting Iraqis at the head of ministries and helping to draft the TAL. The interim constitution was finalized in March 2004.[5] It contained a schedule for the handing over of power to an Interim Iraqi Government (IIG), which took place at the end of June 2004.

It is common to read that the Sunni Arabs were 'disenfranchised' in the January 2005 elections and subsequent constitution-writing process (see, for example, Walter & Ghadiri, 2009, p. 664), but it is more apt to say that by boycotting the elections for the

parliament and constituent assembly, Sunni Arab parties were 'effectively forfeiting their right to coauthor the constitution' (Morrow, 2010, p. 568). In June 2005, Sunni Arab negotiators were added as non-voting members to the assembly's drafting committee. However, in early August the constitutional negotiations were replaced by informal meetings among the leaders of the main Shia Arab and Kurdish parties, without any representation of the Sunni Arab community, resulting in what Dodge (2012) labels an 'exclusive elite bargain'.

For Lijphart, democracy in divided societies is possible only when political elites engage in a 'self-negating prediction'. This implies that they acknowledge the danger of the forces that threaten to tear the country apart, show a willingness to counteract these forces, an ability to do so, and in general a commitment to system maintenance (Bogaards, 1998). No such common understanding seems to have been present at the constitutional moment in Iraq. Al-Istrabadi (2009, p. 1646) notes how 'the parties did not share a mutual vision for how the new Iraq should be structured'. There was no consensus about either the interim constitution (Ottaway, 2005) or the final constitution (Papagianni, 2007).[6] As some feared (Makiya, 2003, p. 7), federalism was chosen for utilitarian reasons, not because of a principled commitment, and imposed on a people 'not entirely committed to the idea' (Dann & Al-Ali, 2006, p. 456).

Process matters in and of itself, but the implication that process shapes outcome and that a flawed process must result in a flawed constitution (Samuels, 2009, p. 174) is not backed up by comparative research. Ginsburg, Elkins, and Blount (2009, p. 219) do find 'an association between processes that involve the public in the adoption of the constitution and the presence of rights and certain democratic institutions in the resulting document', but are cautious in their conclusions. Widner (2008, p. 1532) goes further, stating that 'the choice of procedure does not really matter much' for the content of the constitution. The 'overarching conclusion' from an analysis of nineteen case studies of constitution-making over almost three decades is that 'context is paramount' (Miller, 2010, p. 604). In sum, in order to assess the working of Iraq's constitution, it is not enough to know about the process leading to its adoption: it is imperative to examine its content, a task accomplished in the next three sections.

Consociationalism in Iraq

Table 1 provides an overview of consociational features in Iraq's constitution.[7] For Lijphart (1977, p. 25) 'the primary characteristic of consociational democracy is that the political leaders of all significant segments of the plural society cooperate in a grand coalition to govern the country'. The transitional three-person Presidential Council was designed to result in a grand coalition. This institution was both temporary and liberal. It was limited to the first parliament (2005–2010) and left the composition open. Because the Presidential Council was elected by a qualified majority of parliament, it was 'likely' that it would be 'broadly representative' (McGarry & O'Leary, 2007, p. 692).

Iraq merely has '*voluntary* consociational arrangements in the federal government' (O'Leary, 2010a, p. 79, emphasis added), risking that some groups are left out. The Ethnic Power Relations dataset lists the Sunni Arabs as being 'powerless' after 2012, meaning their elite representatives do not hold power or do not have influence on decision making.[8] After the parliamentary elections of 2010, 2014 and 2018 it took several months to form coalition governments as no party or alliance could demand a majority. The so-called Erbil Power-Sharing Agreement that enabled Maliki to form a new government in

Table 1. Consociational elements in the 2005 Iraq constitution

Article	Content	Consociational feature
138	*President and two vice presidents elected on one list with a two-thirds majority by the Council of Representatives. A member of the Presidency Council can be removed by a three-fourths majority of the Council of Representatives. Decisions within the Presidency Council are made unanimous. (2006–2010).*	Grand coalition
9	Balanced composition of the Iraqi armed forces.	Proportionality
112	Revenues from oil and gas to be distributed in a fair manner in proportion to the population, with special allowances for regions disadvantaged by the previous regime and damaged afterwards.	Proportionality
138	*The Presidency Council can send back legislation to the Council of Representatives twice. The veto can only be overruled by a three-fifths majority of the Council of Representatives. (2006–2010).*	Mutual veto
142	*Amendments are successful if approved by a majority of the voters and if not rejected by two-thirds of the voters in three or more governorates (transitional).*	Mutual veto
126	Amendments need a majority of two-thirds of the members of the Council of Representatives, approval in a referendum, and ratification by the president. Amendments that take powers away from the regions need the approval of the regional parliament and a majority of the region's citizens in a referendum.	Mutual veto
117	Kurdistan recognized as a region.	Segmental autonomy
119	Governorates have the right to become regions.	Segmental autonomy
121	Regions have all executive, legislative, and judicial powers except for those exclusive to the federal government. Regions can amend the application of national legislation if this contradicts regional legislation in an area outside the exclusive authority of the federal government. Regions are responsible for internal security forces.	Segmental autonomy
114	List of competencies shared between the federal government and regions.	Segmental autonomy
4	Kurdish and Arabic are the two official languages, Turkomen and Syriac are official languages in administrative units where these groups 'constitute density of population', each region or governorate may adopt an additional official language if the majority so decides in a referendum, right of education of children in their mother tongue.	Segmental autonomy
125	Guarantees of rights of the 'various nationalities, such as Turkomen, Chaldeans, Assyrians', to be regulated by law.	Segmental autonomy

Note: temporary clauses are in italics.

2010 turned out to be no such thing, with the opposition complaining that the prime minister 'has either failed to implement or violated this agreement' (International Crisis Group, 2012, p. 1).

The constitution does not specify the type of electoral system. Neither proportional representation (PR) nor the principle of proportionality is constitutionally enshrined. Article 49

merely says, in a clause regulating the number of parliamentary seats, that 'the representation of all components of the people shall be upheld in it'. For McGarry and O'Leary (2007, p. 693) this phrase 'suggests a proportional representation system', but a whole range of electoral systems is compatible with the aims laid down in the constitution. Moreover, the type of PR matters, as the Iraqis know. The use of PR in a single national electoral district combined with a Sunni Arab boycott of the January 2005 elections resulted in their severe underrepresentation (Papagianni, 2007, p. 265). For the December 2005 parliamentary elections, the electoral system was changed to PR in districts coinciding with the boundaries between the governorates, which meant that Sunni Arab-dominated areas would have a fixed number of delegates regardless of the turnout. Nonetheless, the electoral system does not 'after all, offer guarantees of inclusiveness, as many consociational systems do' (McGarry & O'Leary, 2007, p. 693).

One of the most severely criticized decisions by the CPA was the dissolution of the Iraqi military and security agencies as part of a process of 'de-Ba'athfication' (Caan et al., 2007, p. 329; Dawisha, 2010, p. 880). The constitution foresees a 'balanced composition' of the armed forces but instead of the kind of integrative national army that can help with nation building (Simonsen, 2007), Iraq plunged into a civil war with a national army that became an instrument in the hands of the Shia Arab prime-minister fighting an assortment of Sunni Arab terrorist groups, militias, and tribes. The Kurdish region kept its own army and the main Shia parties had militias.

In consociational democracy, the principle of proportionality goes beyond representation and participation to include the distribution of spoils and resources. That is why Table 1 lists the proportionate distribution of the revenues from Iraq's main source of income, oil. However, there is an important caveat. Article 112 explicitly mentions 'present fields'. According to O'Leary (2007b, p. 197), this means that 'regions are not, by implication, required to make any federal-wide distribution of benefits from new fields of oil and gas', though they could.[9] At best, this interpretation makes a proportional distribution of oil and gas revenues increasingly voluntary over time. At worst, it means that the federal government and non-oil producing regions and governorates will be cut off from what has been their main source of income. The high stakes help explain why the issue has provoked repeated tension between Bagdad and Erbil, the Kurdish Region's capital. The constitution has not helped to settle this issue, with fluid federalism, discussed below, being blamed directly for the lack of progress in adopting federal hydrocarbon and revenue-sharing legislation (Alkadiri, 2010, p. 1323)

There is evidence of informal consociationalism. Although not by design, the Federal Supreme Court has an overrepresentation of minority judges (Bammarny, 2019, p. 78).[10] There is no written rule, but so far the presidency has been awarded to a Kurd, the prime minister has always been a Shia Arab and the speaker of the House a Sunni Arab. Saouli (2019, p. 80) sees a convergence between Iraq and Lebanon's consociational democracy, which has had a similar arrangement since independence.[11] In Lebanon too, the tradition of a Maronite president, Sunni prime minister and Shia speaker of parliament, has been informal. However, there is an important difference: in Lebanon the allocation of key positions of power to the country's main communities was decided in a gentleman's agreement between communal leaders in the National Pact of 1943. This informal rule is thus part of a foundational agreement that, although unwritten, has proven remarkably robust (Bogaards, 2019b). In Iraq, instead, informal power sharing is part of coalition politics. In case of

exclusion, there is no right that can be invoked, no agreement let alone pact that can be referred to.

Iraq has been called the most sectarian country in the region (Salamey, 2017, p. 94).[12] The sectarian apportionment system known as 'Muhasasa Ta'ifia' (Dodge, 2018) and the practice of clientelism following sectarian quotas (Abdullah, Gray, & Clough, 2018) qualify as proportionality. Boduszyński (2016) complains about sectarianism and informal quotas in Iraq but at the same time laments Sunni marginalization, implying that proportionality is not adhered to. Similarly, while on the one hand Hinnebusch (2016, p. 137) notes the pervasiveness of clientelism and patronage in Iraq, arguing that 'instrumentalized sectarianism is highly congruent with consociational democracy', on the other he observes 'the Sunni's effective marginalization in the consociational political system' (ibid.). This suggests limits to the inclusiveness of informal consociationalism in Iraq.

In sum, consociationalism in Iraq has been temporary, liberal, informal, incomplete, and increasingly voluntary. The only clause in the constitution on a grand coalition was transitional. The mutual veto was clearly present in the decision rules on the adoption of the constitution itself and during the first term of parliament from 2006 to 2010, but seriously weakened afterwards. The constitution only talks about proportionality in the armed forces and, for the moment, distribution of revenue from natural resources, it does not mention political proportionality. This leaves segmental autonomy, or self-rule, as the main consociational feature of the 2005 Iraq constitution.[13]

Self-Rule Versus Shared Rule

Federalism studies make a basic distinction between self-rule and shared rule (See, f.e., De Villiers, 2012). Shared rule is about what is done together, at the national level, and how this is done. Article 110 of the Iraqi constitution, listing the exclusive powers of the federal government, only contains nine matters, leading O'Leary (2009, p. 118) to conclude that 'the Constitution envisages an exceptionally limited federal government'.[14] According to Horowitz (2005), Iraq is 'probably the weakest federation in the world'. Article 115 states that all powers that are not reserved as exclusive to the federal government belong to the regions and governorates. The law of regions and governorates has priority in case of a dispute regarding shared powers, as listed in article 114. Article 121 specifies the powers of regions, which include the right to establish offices in Iraqi embassies and diplomatic missions.

The Regional Authority Index (Hooghe, Marks, & Schakel, 2008) is the most systematic attempt to measure the degree of self-rule and shared rule in comparative perspective.[15] Scores are calculated for each tier of regional government and then added up to arrive at a country score. Self-rule is captured through five dimensions: institutional depth, policy scope, fiscal autonomy, assembly, and executive. Shared rule is measured through four dimensions: law making, executive power sharing, fiscal control, and constitutional reform. For each dimension there are various levels of regional authority, ranging from a minimum of zero to a maximum of four in some domains.

Even an impressionistic application of the Regional Authority Index to Iraq yields a clear picture. The Kurdistan Region gets full marks on self-rule. An assessment of the powers of governorates is complicated by a divergence between their powers as outlined in the constitution and their de facto powers.[16] The Maliki government centralized power and actively

deprived governorates of their constitutional privileges (Romano, 2014a).[17] Still, self-rule in Iraq is pronounced.

The situation for shared rule looks very different. The first dimension of shared rule concerns regional involvement in national law making. The Regional Authority Index awards points when 'regions are the unit of representation in the legislature', 'regional governments designate representatives in the legislature', 'regions at a given level have majority representation in the legislature', and 'a legislature with regional representation has extensive regional authority' (Hooghe et al., 2008, p. 132). None of these apply to Iraq. One reason is that the Federation Council or federal chamber of parliament is mentioned in the constitution but has still not been established. This chamber is supposed to 'include representatives from the regions and the governorates that are not organized in a region' (article 65). Very few federations manage without a senate, leaving Iraq in the company of the United Arab Emirates, Venezuela, and some micro-federations in the Pacific Ocean (Watts, 2008, p. 147). Moreover, the fact that the constitution leaves it up to one part of parliament to set up the other part reduces the chances of the second chamber being counter-majoritarian.

The second dimension of shared rule in the Regional Authority Index is labeled 'executive power sharing' but in fact asks two questions: whether routine meetings take place between the central government and regional governments to negotiate policy and whether such meetings are used to reach legally binding decisions. In Iraq, there is no forum or structure to facilitate such negotiations between the various levels of government and to the extent such meetings have taken place, they were ad-hoc and improvised (Natali, 2010, p. 104).

The third dimension, fiscal control, distinguishes between direct and indirect regional influence over the distribution of national tax revenues. Because the regions and governorates scored zero on legislative and executive shared rule, strict application of the coding scheme to the case of Iraq should also result in a score of zero for fiscal control.

The final dimension of shared rule in the Regional Authority Index is constitutional reform. A sharp distinction is made between the veto powers of regional *governments* and regional *electorates*. Following this logic, Iraq should be scored one out of three at most, reflecting a scenario in which 'regional governments cannot block constitutional reform, but regional voters or their representatives can' (Hooghe et al., 2008, p. 136). Article 126 of the constitution stipulates that amendments cannot take away powers from the regions 'except by approval of the legislative authority of the concerned region and the approval of its citizens in a general referendum'. This article was suspended in article 142, which arranges for a parliamentary committee that should produce a report, within four months, with recommendations for amendments to the constitution. Nothing came of this. Article 142 has the same threshold for success as the referendum on the constitution: even with the majority of voters in favor, reform is rejected if two-thirds of the voters in three or more governorates vote against it, a requirement that gives the three predominantly Kurdish governorates a de facto veto. In any case, article 131, which says that 'every referendum in the Constitution is deemed successful with the approval of the majority of the voters unless otherwise stipulated', is now in force.

Anderson and Stansfield (2010, p. 229) warn that a parliamentary majority of two-thirds (followed by a referendum) may decide to change the constitution, including the very clause that seems to protect a Kurdish veto in article 126. The only thing preventing this scenario is that the president until now has always been a Kurd and his signature is needed. Still, it seems reasonable to give the Iraqi regions, not the governorates, a score of one on

constitutional reform. Tellingly, the only evidence of shared rule in Iraq following the Regional Authority Index is more about the regional defense of self-rule than about shared rule as such.

In sum, if we look at the powers of Iraq's governorates and regions with the help of the Regional Authority Index, we see a stark imbalance between self-rule (moderately strong for governorates to very strong for regions) and shared rule (non-existent for governorates, very weak for regions).[18] In all countries to which the Regional Authority Index has been applied self-rule is stronger than shared rule and in almost all countries, constitutional protection is the most significant attribute of shared rule. Iraq stands out, though, by virtue of the imbalance between extensive self-rule and largely absent shared rule.

The winners of the January 2005 election were the Supreme Council of the Islamic Revolution in Iraq (SCIRI), a Shia Arab party, and the two main Kurdish parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). As Morrow (2010, p. 587) explains, 'the regionalist camps within the Shia Arab and Kurdish parties were relatively uninterested in battling for Baghdad'. This is unusual, because groups with regional ambitions typically insist on detailed provisions regarding power sharing and power division (Bell, 2006, pp. 396–397). And for good reason: self-rule is incomplete without shared rule. Schneckener (2002, p. 366) notes how 'shared-rule mechanisms could strengthen self-rule, since they improve the minorities' opportunity to defend their autonomy at the state level'. Watts (2008, p. 23, emphasis in original) warns that in federations '*both* the elements of "self-rule" for constituent units and "shared-rule" through common institutions (…) are essential to their long-run effectiveness in combining unity and diversity'.[19] McGarry and O'Leary (2009, p. 21; see also O'Leary, 2010b; Wolff, 2007) conclude that 'federalism is usually not enough: consociational practices, particularly at the level of the federal government, are very important to the success of pluri-national federalism'.[20]

Instead, in Iraq, the Kurds 'traded some power-sharing for autonomy' (McGarry & O'Leary, 2010, p. 52, emphasis removed from original). Even in the context of a self-determination dispute, this choice is controversial. As McGarry and O'Leary (2010, p. 39) argue forcefully, self-determination disputes require 'consociation plus'. To accommodate self-determination projects, the basic consociational framework needs to be supplemented with additional features, for example arrangements that transcend national boundaries. Iraq did not get consociationalism 'plus'. It did not even get classic consociationalism. It got consociationalism 'light'.

'Fluid Federalism'

Who are the 'self' in 'self-rule' and who determines the boundaries of politically relevant groups and units? McGarry and O'Leary (2007) see Iraq as a liberal consociation in which the federal units define themselves and, to a large extent, their competencies. The only region that currently exists, Kurdistan, is an ethnically defined region, but that does not mean that 'the new Iraq has been clearly designed as an ethno-federal state' (Danilovich, 2014, p. 3).[21] Article 119 stipulates that any governorate or combination of the nineteen governorates can become a region through a referendum triggered by a request of one-third of the council members of the respective governorate(s) or the request of one-tenth of the voters.[22] So far, no new regions have been formed following this procedure. The initiative of several Sunni Arab provinces to prepare for referendums on becoming a

region in 2011 were thwarted by heavy-handed intervention of the federal government (Dodge, 2012, pp. 165–166; Romano, 2014a, pp. 561–562).[23] The closest yet is Basra, where momentum is building for a second attempt at starting the process of regionalization, after the first attempt in 2008 failed because of insufficient signatures (Isakhan & Mulherin, 2018). The constitution leaves open the extent of self-rule in that it 'gives regional authorities the right to alter how federal legislation is applied within that region' and provides that any region 'may surrender some or all of its powers to the federal authorities' (McGarry & O'Leary, 2007, p. 687). All these features, which can be summed up under the heading of 'fluid federalism', are listed as examples of segmental autonomy in Table 1.

Several academics and foreign policy makers have called for what Gelb (2003) labels a three state-solution: 'Kurds in the north, Sunnis in the center and Shiites in the south' (Similarly: Biden & Gelb, 2006; Brancati, 2004, p. 15). Elazar (1994, p. 101) already envisioned such a scenario at the time of the Gulf War, deploring a 'missed opportunity'.[24] More recently, such proposals have been phrased as a 'partition' of Iraq, with some in favor (Joseph & O'Hanlon, 2007; Kaufmann, 2006; O'Hanlon & Joseph, 2014) and others opposed (Sambanis & Schulhofer-Wohl, 2014; Visser, 2010, pp. 252–260).[25]

Proposals for partition of Iraq and the liberal consociational prescription differ in the process, not necessarily the outcome. For example, a three-part Iraq is entirely compatible with the Iraqi constitution and liberal consociationalism (See O'Driscoll, 2017). The constitution leaves the decision about the number of regions and their boundaries to the governorates. While this is appealing from a normative point of view, practically speaking the open-ended nature of regionalization and the possibility of recentralization create a permanent source of uncertainty about the territorial organization of the state.[26] The law that regulates the formation of regions allows for a federation 'that can be changed in perpetuity' (Visser, 2010, p. 199). In contrast, proposals for partition are finite.

Several scholars favor an asymmetric federation with a special status for the KRG (Al-Istrabadi, 2009, p. 1644; Anderson & Stansfield, 2010, p. 230; Kane, Hiltermann, & Alka-diri, 2012).[27] Asymmetrical federalism is the most common type of multinational federation (Stepan, 2001, p. 327), perhaps because 'bespoke arrangements based on asymmetry, although not without their difficulties, have marked advantages over the one size fits all approach associated with symmetry' (McGarry, 2007b, p. 114).[28]

These proposals have two things in common. First, the expectation that the units of a properly divided Iraq can prosper in relative isolation. The 'near-death experience' of the Kurdish Region (Stansfield, 2014, pp. 1336–1338) in the summer of 2014, however, shows that no region in Iraq can be safe when the rest of the country is burning.[29] Second, they all focus on self-rule and neglect the importance of shared rule, repeating the mistake made in the 2005 constitution.

Conclusion

Does Iraq have the wrong kind of consociationalism or simply too little?[30] Is liberal consociationalism to blame, the transitory nature of many consociational features, or the combination of the two, what is labeled here consociationalism 'light'? Many scholars have noticed and some also deplored the lack of consociationalism in Iraq. Dixon (2011, p. 317) questions whether Iraq's polity is consociational at all because the Sunni Arabs were not part of the government and did not vote for the constitution. For Hay (2014, p. 160), 'the Iraqi Constitution remains an incomplete attempt to contrive consociational

arrangements among groups with little shared vision of an Iraqi state'.[31] Visser (2012, p. 232) notes how the 'the degree of formal power-sharing at the level of the central government is in fact quite limited'. Plans for extra-constitutional institutions such as the Political Council of National Security, the Federal Oil and Gas Council, and the National Council of High Policies, which could be seen as 'attempts to create additional consociational layers in Iraq's power-sharing democracy' (p. 239) did not go far. Horowitz (2008, p. 1230) has difficulty detecting 'any institutions designed to reduce ethnic or sectarian conflict'.

Moreover, consociationalism has been weakened over time, not just pro forma but also de facto. Özpek (2012) observes that 'ethnic and religious groups have no guarantee of sharing executive power' (p. 134), that segmental autonomy is 'under threat' (p. 135), that the principle of proportionality has been violated because 'the Maliki government aims to subordinate the KRG by cutting their budget and imposing an Arab identity in the military' (pp. 136–137), and that 'de facto veto power of ethnic and religious groups did not continue' (p. 137). Similarly, O'Driscoll (2017, p. 320) notes how 'Maliki ignored the liberal consociational elements of the constitution'.

Several authors have pleaded explicitly for more consociationalism in Iraq. For Abu Ltaif (2015, p. 16), the institutional response to the threat from Islamic State should have been 'fortifying consociational arrangements in the political system'. McGarry and O'Leary (2007, p. 698) write that 'progress in Iraq requires the maintenance—and extension—of the principles of liberal consociation already present in Iraq's federation' (p. 698). They mention the option of having a fully inclusive parliamentary executive in Iraq, an idea enthusiastically embraced by O'Driscoll (2014).[32] In Belfast, all governments are inclusive by nature as government formation is done through a sequential allocation of cabinet posts to parliamentary parties using the Jefferson-d'Hondt formula (O'Leary, Grofman, & Elklit, 2005). Parties get to choose which ministry they want in turn, with the bigger parties getting to pick earlier and being entitled to more cabinet positions. As an additional advantage, this formula would greatly simplify the formation of governments, which so far has proven very difficult and time-consuming in Iraq.

The argument for corporate consociationalism in Iraq has not been made, although Biden and Gelb (2006) refer to Bosnia and Herzegovina, a prototypical corporate consociation.[33] McCulloch (2014, p. 509) comes closest when she suggests that 'it would seem liberal consociational rules, by themselves, cannot do all the work of bringing about stability and cooperation'. She recommends a mix of liberal and corporate consociational elements, as in Northern Ireland. In sum, many scholars have observed how consociationalism in Iraq is incomplete and in danger, but this article has been the first to integrate these accounts into a coherent critique of consociationalism 'light' as a particular package of temporary and liberal consociational features.

Could things have been different? The choices made in Iraq's 2005 constitution have to be understood in the context of forced democratization by an occupying power and the outcome of the 2005 elections, which saw the triumph of parties with ambitions for regional hegemony. Problems with the process and content of the document were subsequently aggravated by incomplete implementation.

What can still be done about the problems caused by consociationalism 'light' in Iraq? Importantly, change is possible within the present constitutional framework. Romano (2014b, p. 203; see also O'Leary, 2010a, p. 79) urges that 'for Iraqi democracy's sake, the 2005 Constitution should be given a chance'. In their detailed history of the negotiations

about the Iraqi constitution, Deeks and Burton (2007, p. 85) conclude that 'instances of ambiguity (…) may in fact enable the parties to move forward productively within the bounds of the constitution'. Therefore, to the extent that Iraq's politicians are still committed to the constitution, change is possible and should focus on remedying the flaws highlighted in the analysis here: an imbalance between self-rule and shared rule, 'fluid federalism', and a dearth of consociational features at the federal level.[34]

What lessons does Iraq hold for institutional design in other divided societies? Consociationalism 'light' is an attractive package for politicians and policy makers because it leaves many important questions open (Who will share power? How will territorial units organize themselves? What will be the relationship between the national government and the subnational units?) and facilitates agreement because of the introduction of temporary arrangements. In fact, 'power-sharing with sunset clauses may be all that is agreeable in particular cases' (McGarry, 2017, p. 284).

Unfortunately, it is precisely this flexibility that left Iraq badly prepared for what came next. The case of Iraq thus serves as a cautionary tale for divided societies in search of institutions that promote democracy and social peace.[35] Most scholars prefer liberal to corporate consociationalism and even consociational critics can admit to the necessity of temporary power-sharing arrangements. The combination of these features, what is called here consociationalism 'light', should thus be a popular option. However, as the case of Iraq shows, a homeopathic dose administered once is no substitute for a sustained cure with proven medication.

Notes

1. The notion of power sharing is broader than consociationalism and the two should not be confused (Bogaards, 2000). Here, the interest is in consociational forms of power sharing.
2. Together with Northern Ireland, Iraq is the main case of liberal consociationalism (McGarry, 2007a; McGarry & O'Leary, 2007).
3. I am not the first to use the term consociationalism 'light'. Skovgaard (2009) prefers consociationalism 'light' to multiculturalism 'light' as a characterization of the policies of European institutions towards Hungarian minorities in Romania and Slovakia. The promotion of power sharing is said to make these policies consociational while the lack of support for territorial autonomy makes them 'light'. On closer scrutiny, all elements of consociationalism were missing expect for the participation of minority parties in the national government. Therefore, 'minority rights plus' might be a more apt label for Skovgaard's policy package.
4. In the typology of case studies, this case study of Iraq should probably be categorized as a diagnostic study of an influential case (Gerring & Cojocaru, 2016). It is diagnostic because it helps to test the hypothesis that consociationalism 'light' promotes social peace and democracy. The case of Iraq is influential in that it can tell us more about the validity of the underlying assumptions than other cases, if only because the combination of interim and liberal consociationalism so far has been rare. It falls short of being a crucial case that can disprove the hypothesis (Bogaards, 2019a), as there are many other factors that contribute to Iraq's current predicament (For some of these, see Byman, 2003).
5. Although the US were heavily involved in the drafting of the interim constitution, which formed the basis for the 2005 constitution (Arato, 2009), the Iraqi constitution actually 'seems to bear little resemblance to the U.S. Constitution' (Elkins, Ginsburg, & Melton, 2008, p. 1157).
6. Wimmer (2003, p. 121) already predicted that 'Iraq lacks a political culture of moderation and compromise that many see as necessary for a power-sharing arrangement to work in a sustainable way'.
7. Table 1 only lists those powers that are specific to regions. This helps to distinguish segmental autonomy from territorial devolution and decentralization. According to Bammarny (2019, p. 270), governorates primarily fulfill administrative functions.
8. The data go until 2017 and are available at: https://icr.ethz.ch/data/epr/core/. For an introduction to the Ethnic Power Relations dataset, see Cederman, Wimmer, and Min (2010).

9. O'Leary, a consultant of the Kurdistan Regional Government since 2003, has been criticized as 'passionately pro-Kurdish' (Terrill, 2009, p. 665).

10. The Supreme Court was founded in 2005 but the rules governing the court's functioning and composition are not part of the constitution (article 93) and parliament has so far been unable to pass implementing legislation (Choudhry & Blass, 2014). In its judgments, the Federal Supreme Court has opted to stay out of most controversial issues (Bammarny, 2019).

11. The careful balancing of different ethno-sectarian groups in the CPA has also invited comparisons with Lebanon (Dawisha, 2005; Langohr, 2005).

12. Salamey (2017) uses the term 'communitocratic'.

13. Segmental autonomy comes in two forms: territorial and functional. Within the context of Iraqi federalism, the focus is on territorial autonomy. Barkey and Gavrilis (2016, pp. 37–38) doubt that an Ottoman millet-style functional autonomy could work in present-day Iraq, but the country has a history of language and religious rights (Bammarny, 2019).

14. I rely on the English translation made available on the website of the Iraqi national government, at: http://www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf.

15. See Harguindéguy, Cole, and Pasquier (forthcoming) and Schakel (2008).

16. For accounts of progress with decentralization in Iraq by American scholars who were active in the field, see Brinkerhoff and Johnson (2009) and Mingus (2012).

17. Maliki and his Islamic Dawa Party had always been less interested in local autonomy than SCIRI, the main Shia Arab party at the time of the drafting of the constitution.

18. See also Walsh (2018, p. 202) who observes that 'real shared-rule has not developed' and, referring to the independence referendum in the KRG held in 2017, opines that 'if more attention had been paid to strengthening the shared-rule aspect of the Iraqi federation some of these difficulties may have been avoided' (p. 213).

19. Typical for the lack of attention to national power sharing in Iraq, a report entitled 'Power-Sharing in Iraq' fails to mention power sharing in the national government (Phillips, 2005).

20. Khan and Kirmanj (2015) recognize the importance of both factors, as they favor a confederal Iraq with non-majoritarian institutions at the center.

21. Panov and Semenov (2018, p. 500) list Iraqi Kurdistan as an 'ethnic regional autonomy'.

22. The exception is Baghdad, which cannot become or merge with a region (article 124).

23. Little progress has also been made at the local level, especially in multi-ethnic Kirkuk, neither with the referendum on its future status announced in the constitution nor with local power sharing (see Anderson, 2013; Anderson & Stansfield, 2009; O'Driscoll, 2018; Wolff, 2010).

24. Numbers are contested, but Anderson and Stansfield (2005, p. 364) provide the following estimates: Kurds (15–20% of the population), Sunni Arabs (26–28%), and Shia Arabs (45–48%).

25. It should be noted there is no agreement on the meaning of partition, despite O'Leary's (2007a) conceptual effort.

26. On statebuilding in Iraq and the broader region, see Costantini (2018).

27. Anderson and Stansfield (2010) thereby revise their earlier recommendation to divide Iraq into five regions (Anderson & Stansfield, 2005). Khalilzad and Pollack (2014) recommend a 'one-country-two-system' solution with confederalism for Kurdistan and federalism for Arab Iraq.

28. Horowitz (2007) is more skeptical about asymmetrical federalism and expresses concern about the fate of minorities within new (local) majorities.

29. Focusing on the economy more than security, Natali (2010, p. 110) concludes that 'The survivability of the Kurdish quasi-state requires that it remain linked to Baghdad'.

30. Younis (2011) is one of the few scholars who argue that Iraq had *too much* consociationalism.

31. Comparing Afghanistan and Iraq, Hussain (2010, p. 271) detects more consociationalism in the former.

32. O'Driscoll (2014, p. 15) even laments that sequential proportionality rules were not 'instigated' by the US occupying forces.

33. Not counting the recommendation of Lebanese-style consociationalism for Iraq by a former Canadian ambassador to several countries in the Middle East (Bell, 2014).

34. Similarly, under the heading of 'Fixing the 2005 Constitution', Cameron (2007, p. 160) recommends to rectify the imbalance in power between the center and the regions, to establish key federal institutions, and to clarify the distinction between regions and governorates.

35. Including Syria, where a generally sympathetic account of the promise of consociationalism concludes with the warning that power sharing has to be limited in time (Aga, 2018, p. 79).

Acknowledgements

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