

Multi-national Federalism, Federacy, Power-Sharing & the Kurds of Iraq

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The future of Iraq is, and should be, a matter for the peoples of Iraq to determine, through their own constitutional deliberations, negotiations and processes of ratification. This phrasing emphasizes that outsiders can advise but that insiders should decide; it also highlights an insistence that Iraq is not comprised of just one people¹, though the peoples of Iraq may well agree to share a common state and a common citizenship. What political scientists and constitutional lawyers may usefully do as outsiders is to provide comparative reflections, useable knowledge from experiences elsewhere, that may help insiders clarify their preferences and negotiating strategies. It is our duty to clarify feasible proposals rather than to commend our own favored recipes; and it is important that we specify where there is no professional confidence over what constitutional and institutional designs work best, or simply well. The constitutional restructuring of Iraq necessarily involves debates that have already begun over the processes of constitution-making, as well as the full panoply of issues entailed in institutional design, such as the organization of executives, legislatures and courts, electoral and party-systems, territorial governance, human-rights protections, fiscal and monetary agencies and formulae, and the organization and accountability of military and policing institutions.

It is my task to address emergent ideas about federalizing a renewed Iraq. And, to do so through the prism of Kurdish interests, identity and ideas, the prime focus of the organizers of this conference, to whom we are all indebted. I will do so by distinguishing national from multi-national federations, and evaluating their merits; I will then elaborate the merits of ‘federacy’ as opposed to wholesale federal arrangements – drawing upon my own thoughts², and some unpublished work by David Rezvani³.

Federalism is a political philosophy that commends both shared and self-government⁴. *Federal political systems* encompass a range of possible political organizations that

¹ On the importance of peoplehood see Smith, Rogers M. 2003. *Stories of Peoplehood: the Politics and Morals of Political Membership*. Cambridge: Cambridge University Press.

² O’Leary, Brendan. 2003. The Kurds Must Not Be Betrayed Again. *Financial Times*, March 24th, 23.

³ Rezvani, David R. 2003. *Federacy: The Dynamics of Semi-Sovereign Territories* (unpublished manuscript).

⁴ See *inter alia* Elazar, Daniel. 1987. *Exploring Federalism*. Tuscaloosa: University of Alabama, King. Preston. 1982. *Federalism and Federation*. London: Croom Helm, King, Preston. 2001. *Federalism and Federation*. 2nd ed. London: Frank Cass.

reflect this philosophy: including confederations, federations, certain kinds of unions, federacies, associated states, leagues and cross-border functional authorities. *Federations* are a very specific federal political system, arguably first unambiguously invented in 1787 in the city where I live, Philadelphia⁵. In a genuine federation at least two governmental units, the federal and the regional, enjoy constitutionally separate competencies – although they may have concurrent or shared powers. Both the federal and regional governmental units are empowered directly to deal with their citizens – which differentiates most confederations from federations – and in a democratic federation citizens directly elect at least some components of both the federal and regional governments. Federations are ‘covenantal’, the authority of each government is derived from the constitution, and not from another government⁶. In authentic federations the federal government cannot unilaterally alter the horizontal division of powers: constitutional change affecting the division of competencies requires consent from both tiers of government. Therefore federations automatically require a written, codified constitution, and normally require a federal supreme court, charged with upholding the constitution and umpiring differences between the governmental tiers. They also usually involve a bicameral legislature – a chamber of the citizens as a whole, and a second chamber that represents the regions.

Federations vary extensively; and it will be a central part of my argument to suggest that, for Kurds and Iraqis, following the US model of federation would be inappropriate. Not because I harbor any hostility towards my new home and its institutions – to the contrary, but rather because it is plain that Iraqis and Kurds should look elsewhere for inspirations that suit their circumstances better⁷. Federations vary, first, in the extent to which they are ‘majoritarian’. All federations place some constraints on the powers of federation-wide

⁵ For elaborations on these distinctions see Watts, Ronald A. 1998a. Federalism, Federal Political Systems, and Federations. *Annual Review of Political Science* 1:117-37.

⁶ The expression is Elazar’s, op. cit.

⁷ Whatever one’s views on the merits of the Allied intervention and occupation of Iraq few doubt that to impose *mutatis mutandis* the current American constitution on Iraq would feed already extant anti-American nationalism amongst Arab Iraqis. The frequent exemplary invocation by some American neo-conservatives of the occupations and regime-transformations of (west) Germany and Japan (Italy, Austria and Korea are usually omitted) is oblivious to the fact these constitutional transformations were partly indigenous, and did not involve the simple export of American constitutional models.

majorities, but do so to different degrees⁸. The USA, Australia and Brazil for example, allow equal representation to each of their regions in the Senate, generating massive over-representation for small units such as Rhode Island or Tasmania. A majoritarian federation concentrates political power at the federal level, and facilitates executive and legislative dominance either by a popularly endorsed executive president, or by a single-party prime minister and cabinet. A federation is not majoritarian to the extent that it has inclusive executive power-sharing arrangements in the federal tier of government; institutionalizes proportional principles of representation and allocation of public posts and resources; and has mechanisms, such as the separation of powers, bills of rights, monetary institutions and courts, that are insulated from the immediate power of a federal governing majority. On this design choice, Iraqis and Kurds would be well-advised to avoid a strongly majoritarian federation. Kurds have been an enduring minority in Iraq and, judging by the historical record, would be long-run losers from the creation of a strongly majoritarian federation – in which either an Arab or even a Shi'ia majority might threaten their national, linguistic and cultural identities, as well as their regional and economic interests. Sunni Iraqis too have an interest in constraining the power of a potential federal majority that might be inimical to their religious and other interests. Shi'a may be the most tempted by a majoritarian political system, but they may be less homogeneous than some of them hope and others fear – given differences amongst them in religiosity, and dispositions towards Iran and other neighboring states⁹. The more homogeneously Shi'a mobilize and act then the greater the likelihood that they will generate a coalition of minorities against them.

Federations, secondly, vary significantly in the distribution of powers within the federal government. Some create very powerful second chambers. The US Senate is arguably more powerful than the House of Representatives because of its special powers over

⁸ Stepan, Alfred. 1999. Federalism and Democracy: Beyond the U.S. Model. *Journal of Democracy* 10 (4):19-34.

⁹ For recent discussions of Shi'ite politics in Iraq see *inter alia* Gardner, David. 2003. Time of the Shia. *Financial Times*, August 30/31, W1-W2, Jabar, Faleh A. 2003. *The Shi'ite Movement in Iraq*. The perspectives of Muhammed Baqir al-Sadr's, executed by Saddam Hussein in 1980, are widespread amongst Shi'a, and diverge from the political Islam of Khomeini and his successors. Historically communism was strong amongst the Shi'a of Iraq, but whether the Iraqi Communist Party will experience a significant revival in the 2000s remains to be seen. What is plain is that there are significant numbers of secular Shi'a., and that significant numbers of religious Shi'a do not agree with political leadership being monopolized by clerics. Two authorities remark on a 'dangerous tendency in the West to equate secular with Sunni and Islamist with Shi'ite', Fuller and Francke, op. cit., p. 108.

nominations to public office, and over treaty-making. Other second chambers, such as those in Canada, India and Belgium, are very weak¹⁰. Some have separately elected executives; some have executives chosen by the federal first chamber; and there are both single person and collective executives.

Thirdly, federations differ in the distribution of competencies between the federal and regional governments. In some federations the powers of the federal government are constitutionally circumscribed and delimited; in others it is the regional governments which have their capacities specified and delimited. In the German model the federal government makes broad policy and law while administration and implementation are in the hands of *Länder* governments, empowering both tiers with distinct enabling and blocking powers. In all federations the constitutional division of competencies (even as interpreted by the courts) may not always be an accurate guide to the policy-making autonomy and discretion held by the separate tiers. The superior financial and political resources of one tier (usually the federal) may allow it to weaken the other tier's capacities – as in the USA where the federal government's pre-eminence is now established¹¹.

Over the distribution of competencies it is not too difficult to foresee the likely preferences amongst representative leaders of the major ethnic and religious communities in Iraq. Given the persistent history of repressive dictatorial government from Baghdad, under both Ba'athist and pre-Ba'athist governments, it is extremely unlikely that Kurds will want to endorse a strong federal government¹². Kurds will want maximum feasible domestic autonomy in public policy and law-making. Given their persistent partial possession of and incorporation into central governmental power, Sunni

¹⁰ Watts, Ronald L. 1998b. Federalism, Federal Political Systems, and Federations. *Annual Review of Political Science* 1:117-37, Watts, Ronald L. 2001. Models of Federal Power-Sharing. *International Social Science Journal* (March):23-32.

¹¹ The proportion of public expenditure allocated by regions as opposed to federal governments may well be a better guide to their autonomy and power than the text of the constitution --- for discussions of such measurements see Watts, op. cit. 2001, p. 29, and Lijphart, Arend. 1979. Consociation and Federation: Conceptual and Empirical Links. *Canadian Journal of Political Science* xii (3):495-515., p. 505.

¹² See *inter alia* C. Tripp, 2002. *A History of Iraq*, revised edition. Cambridge: Cambridge University Press, Natali, Denise. 2001. Manufacturing Identity and Managing Kurds in Iraq. In *Right-Sizing the State: the Politics of Moving Borders*, edited by B. O'Leary, I. S. Lustick and T. Callaghy. Oxford: Oxford University Press.

Arabs may still retain a political culture that favors a strong central government, but that culture will surely be tempered by their current fear that others may be able to use that governmental power against them. Some Shi'a, by contrast, may be the most tempted to create a strong federal or simply strong central government.

If the makers of a new Iraq decide to create a federation, then whatever the distribution of competencies between a future federal government and the future regions, a critical choice will be whether that federation is to be mono-national or multi-national. *Mono-national or national federations* aspire to national homogeneity: to eliminate internal national - and perhaps also, ethnic - differences from lasting political salience. The goal of national federations is nation-building. We are conferencing in the capital of the founding and paradigmatic example of a national federation. The Latin American federations of Mexico, Argentina, Brazil and Venezuela, at various junctures in their history have adopted this US model. Germany, Austria, Australia, Malaysia and the United Arab Emirates are also national federations. National federalists think that one nation and one federation can be combined successfully. The earliest-federalists in what became the Netherlands, the German-speaking Swiss lands, the USA and the Second German Reich were stepping-stone nationalists: the prime function of federation was 'to unite people living in different political units, who nevertheless shared a common language and culture'¹³. They maintained federation was necessary to provide a united defense and external relations – tasks that confederations and leagues were less well-equipped to perform¹⁴.

American and American-educated intellectuals, political scientists and constitutional lawyers, often propose national federations to manage heterogeneous post-colonial and post-communist societies. Indeed, they have a distinct animus against multi-national federations, which they regard as divisive and likely to collapse through secession. As the

¹³ See Forsyth, Murray, ed. 1989. *Federalism and Nationalism*. Leicester: Leicester University Press., p. 4.

¹⁴ See Riker, William H. 1964. *Federalism: Origin, Operation, Significance*. Boston.

USA expanded southwestwards from its original largely homogenous citizenry of the 13 founding colonies – a citizenry which, of course, excluded African slaves and native Americans – no new territory received statehood unless minorities were outnumbered by White Anglo-Saxon Protestants¹⁵. Sometimes the technique deployed was to gerrymander state boundaries to ensure that Hispanic or Indians were outnumbered, as in Florida. At other times statehood was delayed until the region's long-standing residents could be swamped. America's nation-builders were even cautious about immigrant groups concentrating too much in given territorial locales, lest this give rise to ethnically based demands for self-government. Grants of public land were denied to ethnic groups *per se* to promote their dispersal: William Penn dissuaded Welsh immigrants from setting up their own self-governing barony in Pennsylvania¹⁶. This is why the US federation, in the words of one of its most distinguished analysts, shows 'little coincidence between ethnic groups and state boundaries.'¹⁷ It would be more precise, however, to say that the sole coincidence is between white majorities and state boundaries, and that that is no coincidence. National federation, as a strategy of growth and incorporation, aided the homogenization and assimilation of whites, the famous melting pot of what Milton Gordon described as 'Anglo conformity'¹⁸. Celebration of the homogeneity of the founding people of the federation was evident in the now sacrosanct *The Federalist Papers*. In the words of John Jay: 'Providence has been pleased to give this one connected country to one united people – a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and their customs, and who, by their joint counsels, arms and efforts, fighting side by side throughout a long and bloody war, have nobly established liberty and independence'¹⁹.

¹⁵ See Glazer, Nathan. 1983. Federalism and Ethnicity: The American Solution. In *Ethnic Dilemmas, 1964-82*, edited by N. Glazer. Cambridge, Mass: Harvard University Press.

¹⁶ Gordon, Milton. 1964. *Assimilation in American Life: The Role of Race, Religion and National Origins*. New York: Oxford University Press., p. 133.

¹⁷ Glazer, op. cit., p. 276.

¹⁸ Gordon, op. cit., *passim*.

¹⁹ Publius [John Jay], in Madison, James, Alexander Hamilton, and John Jay. 1987 (1788). *The Federalist Papers, edited and with an introduction by Isaac Kramnick, Penguin Classics*. Harmondsworth: Penguin., Paper II, p. 91

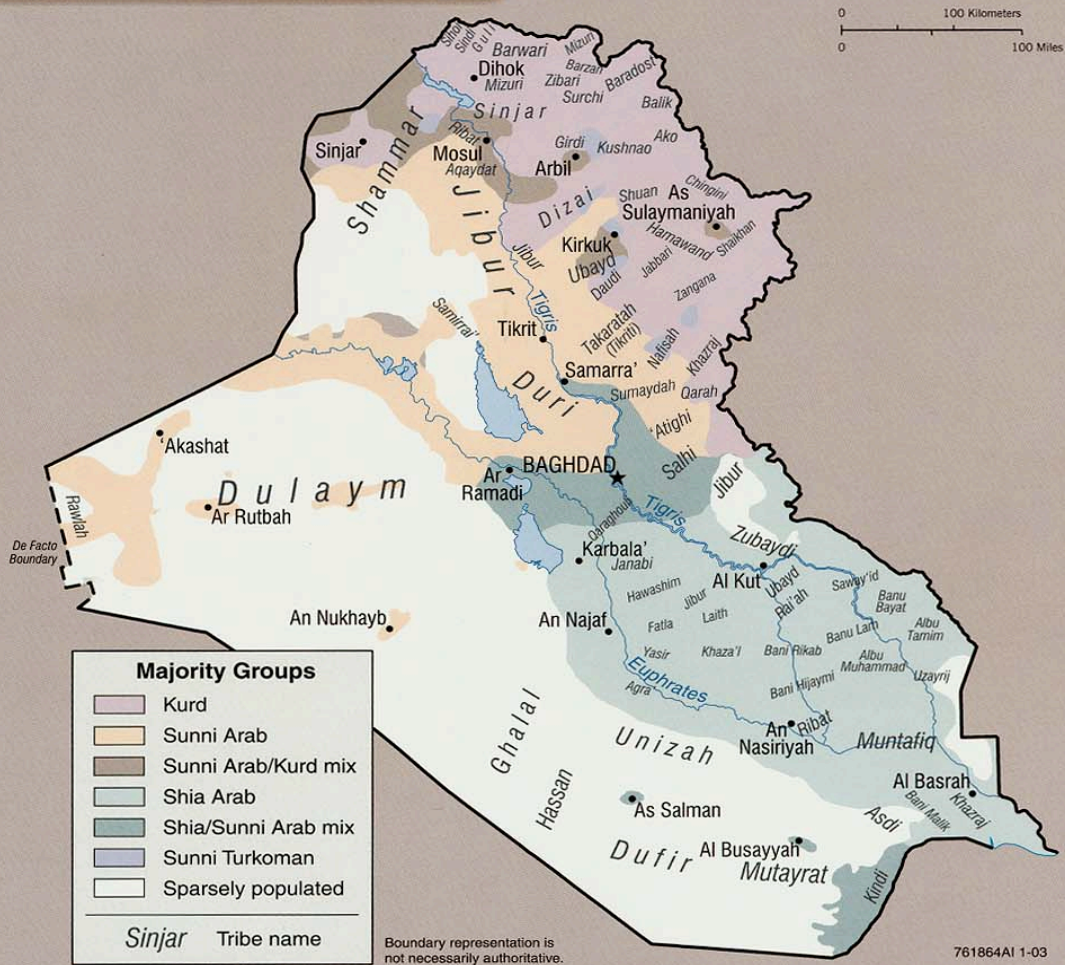
It takes little historical knowledge to argue that no one could plausibly advance John Jay's arguments during the making of Iraq's new constitution. Iraq may be contiguously connected on maps, but it has not had a united people, i.e. a people who think of themselves as descended from the same ancestors, who speak the same language, or who profess the same religion – Islam has, after all, divided them as much as it has united them. They neither flow from a common stock, nor are they united by a common immigrant or assimilationist experience. They have not 'by their joint counsels, arms and efforts' just fought a combined war of national liberation. To the contrary: only the Kurds fought with the Allies; the Shi'a were reluctant to rise given their previous abandonment by the 1991 coalition to Saddam Hussein's mercies; and some Sunni Ba'athists to this day are fighting the Allied occupation. It is true that many Iraqi Arabs, be they Sunni or Shi'ite, fought side by side in Saddam Hussein's long and bloody war with Iran, and that that war proved that for most of them ethnicity trumped religiosity, but some Shi'a did enroll with Iran, and most were at the front through conscription rather than by choice. Notoriously during that war Saddam organized genocidal massacres of Kurds, who were not in any sense 'his own people'²⁰; just as he would later engage in repressive massacres of largely Shi'ite Marsh Arabs.

It is essential to make these elementary comparisons in 'historical starting points' to appreciate the inappropriateness of American national federation as a model for Iraq's future. There is no equivalent to a sufficiently homogeneous founding people, blessed by Providence or not. The Shi'a have the potential to be a *Staatsvolk* in Iraq, that is a dominant people in control of the state, but fully mobilized they are unlikely to constitute much more than sixty per cent of Iraq's electorate²¹; between them Sunni Arabs, Kurds

²⁰ McDowall, David. 2000. *A Modern History of the Kurds*. 2nd and revised ed. London: I.B. Tauris. , pp. 343-67. It was a standard trope in the English language media that favored intervention in Iraq that Saddam Hussein had 'gassed his own people'. That he gassed people is not in question. That he shared a common peoplehood with his victims most certainly is.

²¹ Henry Kissinger, America's foremost 'realist', as late as January 2002, managed to write in *The Washington Post* ('Phase II and Iraq', January 13, Page B07) of 'the Sunni majority that now dominates Iraq' - an example of 'magical realism' according to Smyth, Frank. 2003. Saddam's Real Opponents. In *The Iraq War Reader: History, Documents, Opinions*, edited by M. L. Sifry and C. Cerf. New York: Simon & Schuster., pp. 565-7. In fact, many recent Washington administrations have tacitly backed Sunni minority dominance in Iraq because of their fears that the Shi'a may be carriers of fundamentalism, Khomeini-style. The Shi'a of Iraq are mostly Arab, but there are a small number of Shi'ite Kurds, Turkomans and Arabized Persians (Fuller, Graham E, and Rend Rahim Francke. 1999. *The Arab Shi'a*:

Distribution of Ethnoreligious Groups and Major Tribes



Ethnic Group	Estimated Population	Also Found In	Religion	Language
Arabs	16 to 20 million	Throughout North Africa and the Middle East, Iran	65-80 percent Shia, 20-30 percent Sunni, less than 5 percent Christian	Arabic (Iraqi dialect)
Kurds	3.6 to 4.8 million	Turkey, Iran, Syria, Armenia, Georgia, Azerbaijan	Mostly Sunni, Shia, and Yazidi minority	Kurdish
Turkomans	300,000 to 800,000	Related to other Turkic peoples in Turkey, Azerbaijan, Iran, and Turkmenistan	Primarily Sunni	South Azeri Turkish
Others	As many as 1 million	Mostly Christians, Iranians, and other groups found in the Middle East	At least 50 percent Christian; Shias, Sunnis, and members of other religions account for the balance	Mostly Arabic, some Persian and other languages

The Forgotten Muslims. New York: St. Martin's Press., p. 87). If exiled Iraqi Shi'a return disproportionately their demographic weight may increase.

and others have the power to resist any strongly assimilationist project that Shi'ites might attempt, and blocking such a project would unify them; and it is unlikely that the Allied occupiers would want to oversee the entirety of Iraq under a Shi'ite hegemony before their departure.

But, it is not only the demographic, ethnic and religious differentiation of Iraq's population which constrains the ambitions of those who might advocate a national federation; its demographic distribution, if data on this matter can be trusted, also tells against this idea (see Map 1).

Map 1.

It is, of course, feasible to have many regions in which Shi'a would be the local majority. Indeed it is probably not feasible to design regional boundaries that would not make the Shi'a dominant in many of them.²² But, it would be extraordinarily difficult, foolish and divisive to devise regional boundaries to prevent Kurdish or Sunni communities from becoming regional majorities anywhere in Iraq. In the case of the Kurds such a strategy would require the partition of the existing regional government's *de facto* jurisdiction and the addition of significant non-Kurdish population and territories into each new unit. Such design principles would inevitably return the Kurds to armed conflict with the rest of Iraq. No nationally mobilized people in recent history has voluntarily accepted or peacefully acquiesced in the partition of its homeland – and we must recall that the Kurds have just fought to regain control over their homeland. As for Sunni Arabs, there is little doubt that one reason why the Ba'athists remain partly embedded among them is the widespread fear amongst them that Shi'a will create a majoritarian dictatorship. In short, no better plan for provocative conflict could be devised than designing the territorial boundaries of the new Iraqi federation to prevent either Kurds or Sunnis from having regions in which they are the demographically and electorally dominant group.

²² Non-contiguous regions might have to be designed *or* there might be too few regions for a system-wide federation (see below).

Regrettably, these elementary considerations are overlooked by those who argue that a new Iraqi federation should be built around the eighteen provinces of Ba'athist Iraq²³. One American political scientist has argued that the regional boundaries should be drawn to prevent any of the three major communities, Kurds, Sunni Arabs or Shi'ite Arabs from having local majority control²⁴. This thinking derives from a venerable tradition that goes back to James Madison and in our times is articulated by Donald L. Horowitz. The underlying belief is that a federation should be built on balance of power principles – proliferating the points of power away from a focal center, encouraging intra-ethnic or intra-religious competition and creating incentives for inter-group co-operation – by designing regions without ascriptive majorities²⁵. There is nothing wrong in principle with advocating this design, but it has no prospect of success in Iraq. To design or re-draw regional borders along these lines would require the services of the armed forces of the Allied occupiers or future UN forces. This thinking is a non-starter with Kurds, because Iraq is not one nation. It is also difficult to see how this thinking could even be regarded as feasible before a reliable new census; and if it were known that the census would inform the drawing of such new borders that in turn might create perverse incentives to expel exposed minorities.

Advocates of multi-national federations have a different goal: they seek 'to unite people who seek the advantages of a common political unit, but differ markedly in descent, language and culture'²⁶. They seek to recognize, express and institutionalize at least two

²³ The US's most influential foreign policy journal published a scenario for re-building Iraq in the summer of 2003, Dawisha, Adeed, and Karen Dawisha. 2003. How to Build a Democratic Iraq. *Foreign Affairs* 82 (3):36-50. The Dawishas advocate maintaining 'Iraq's present administrative structure, under which the country is divided into 18 units', p. 39, while on the same page insist that the Kurds should have their own territorial 'unit in the federal structure'. This is contradictory, and whatever it means, the argument is outmoded by the *de facto* boundaries of Iraqi Kurdistan, which cut across prior provincial jurisdictions. For similar advocacy of the eighteen provinces see Rachel Bronson, et. al., *Guiding Principles for U.S. Post-conflict Policy in Iraq*, New York: Council on Foreign Relations, 2003.

²⁴ Brancati D. 2004 in press. Is Federalism a Panacea for Post-Saddam Iraq? *The Washington Quarterly* 27. Brancati's case is based on her doctoral research on parties, decentralization and ethnic conflict – much of which I agree with. It is the erroneous objection of blueprint thinking to Iraq to which I object.

²⁵ Horowitz, Donald L. 1985. *Ethnic Groups in Conflict*. Berkeley: University of California Press., chapters 14 & 15.

²⁶ Forsyth, op. cit., p. 4.

national cultures, on a durable, and often on a permanent basis. Multi-national federations involve the maintenance of two or more nations, and reject the strongly integrationist and assimilationist dispositions of national federalists. Multi-national federalists believe that it is possible for the citizens of such federations to have dual or multiple loyalties, e.g. a patriotic attachment to the federation and a nationalist attachment to their regional homeland. They believe it is wrong to assume *a priori* either that multi-national federations will lead to the abuse of the rights, interests and identities of regional minorities, or that they will necessarily make secessionists victorious.

Multi-national federalism has been advocated within both liberal and Marxist traditions, and has a significant following within the Anglophone academy²⁷, including both those who see federations as devices to hold peoples together as well as those who emphasize the merits of territorial autonomy for historic national minorities. Multi-national federations are workable. Switzerland and Canada are among the world's oldest states – they have lasted in recognizably similar forms since 1848 and 1867 respectively. But, while multi-national federations have their enthusiasts, no one can deny that in the twentieth century that they have had ‘a terrible track record’²⁸. Multi-national and multi-ethnic federations have broken down or have failed to remain democratic throughout the communist and post-communist world (Yugoslavia, Czechoslovakia and the USSR; and Ethiopia ‘lost’ Eritrea); and they have also broken down in much of the postcolonial world, in sub-Saharan Africa, South Asia and the Caribbean²⁹. In the Arabic world the

²⁷ See *inter alia* Hechter, Michael. 2000. *Containing Nationalism*. Oxford: Oxford University Press, Keating, Michael. 2001. *Managing the Multinational State: Constitutional Settlement in the United Kingdom*, edited by T. Salmon and M. Keating, Linz, Juan. 1997. *Democracy, Multinationalism and Federalism*. Paper read at Juan March Institute, Moore, Margaret. 2001. *The Ethics of Nationalism*. Oxford: Oxford University Press, Stepan, Alfred. 1998. *Modern Multinational Democracies: Transcending a Gellnerian Oxymoron*. In *The State of the Nation : Ernest Gellner and the Theory of Nationalism*, edited by J. A. Hall. New York: Cambridge University Press, Stepan, Alfred. 1999. *Federalism and Democracy: Beyond the U.S. Model*. *Journal of Democracy* 10 (4):19-34.

²⁸ Snyder, Jack. 2000. *From Voting to Violence: Democratization and Nationalist Conflict*. New York: W.W. Norton. , p. 327.

²⁹ O'Leary, Brendan. 2001. *An Iron Law of Federations? A (neo-Diceyan) theory of the Necessity of a Federal Staatsvolk, and of Consociational Rescue*. The 5th Ernest Gellner Memorial Lecture. *Nations and Nationalism* 7 (3):273-96.. For other discussions see Franck, Thomas M. 1968. *Why Federations Fail: An Inquiry into the Requisites for Successful Federation*. New York: New York University Press, Hicks, Ursula K. 1978. *Federalism, Failure and Success: A Comparative Study*. London: Macmillan, Watts, Ronald L. 1971. *The Survival or Disintegration of Federations*. In *Options for a New Canada*, edited by R. Watts and D. M. Brown. Toronto: University of Toronto Press, Watts, Ronald L. 1996. *Comparing Federal Systems in the 1990s*. Kingston, Ontario: Institute of Intergovernmental Relations/Queen's University.

United Arab Emirates is the sole surviving postcolonial federation – and it is a national federation, and hardly a model democracy.

The breakdowns of these federations do, however, have elements in common which the architects of the new Iraq would be well advised to bear in mind. John McGarry and I would highlight five key elements that have facilitated the breakdown of multi-national federations³⁰:

1. *Coercion*: They were usually forced together rather than being the outcome of voluntary agreements, e.g. the constituent republics of the Soviet Union.
2. *Authoritarianism*: They were not democratic for much of their histories, and when many such federations democratized that created the institutions and opportunities for secessions to occur, e.g. Bangladesh's secession from Pakistan; e.g. Slovenia and Croatia's secessions from Yugoslavia.
3. *Maltreatment of smaller nations*: They failed to resolve tensions between the largest or the historically dominant nation and smaller nations, e.g. between Malays and Chinese.
4. *Distributive conflicts*: They failed to develop or maintain economic distributive and redistributive formulae regarding economic policy, taxation, revenue-sharing, and public expenditures, that were widely regarded as fair, e.g. Czechoslovakia.
5. *Centralizing coups, putsches or maneuvers*: Breakdown was often preceded by authoritarian attempts to centralize the federations, e.g. the conduct of Serbian politicians in Yugoslavia.

The implications for Iraq of this rapid inspection of the failure of multi-national federations are straightforward. The conditions for a successful federation include the following. One: The federation must be a voluntary pact, and not regarded as an American or UN imposition. The federation must be ratified by its respective and prospective units –for the Kurds that means that they must have a referendum in their own unit to endorse any freely negotiated constitution. A foundational act of co-operation

³⁰ McGarry, John, and Brendan O'Leary. 2003. Federalism, Conflict-Regulation and National and Ethnic Power-Sharing. Paper read at Annual Meeting of the American Political Science Association, August 28-31 2003, at Philadelphia., August 28-31..

is more likely to promote future traditions of accommodation. Two: the federation must be democratic, with the full repertoire of liberal democratic institutions, universal adult suffrage, competitive elections, freedom for political parties and interest groups to mobilize, a constitution with the rule of law, human rights protections, and a free media. Three: constructive relations based on mutual recognition must be built between the three largest national and religious communities, Kurds, Sunni Arabs, Shi'ite Arabs, as well as the smaller minorities of Turkomen, Christians and others. Four: robust and adequate agreements have to be built over the sharing of Iraq's natural resources, a subject that John McGarry will address in the next panel. Lastly, there must be significant constitutional checks – and preferably some international arbitration mechanisms – that would inhibit future efforts to centralize the federation, e.g. there needs to be significant default mechanisms to protect Kurds should a governing coalition in the rest of Iraq in the future try to undermine Kurdistan's newly won constitutional status.

Inspecting the failures of twentieth century multi-national federations is not, of course, the only way to think about these matters. The major surviving federal multi-national democracies, notably Belgium, Canada, India and Switzerland, have had histories, institutions and practices that may separately or jointly explain their relative robustness:

1. Multi-national federations may well benefit from having one large group, a Staatsvolk. All other things being equal a Staatsvolk can feel secure and live with what it will regard as the price of multi-national federation. It has both the practical power to resist secession, and the capacity to be generous to discourage secessionism.
2. Conversely, multi-national federations that lack a Staatsvolk, if they are to survive as democratic and durable entities, must have cross-community power-sharing practices in the federal government. These practices must minimally encompass the interests of all the national, ethnic and ethno-religious communities with the capacity to breakaway. Neither the presence of a Staatsvolk, condition one, nor cross-community power-sharing practices in the federal government, condition two, are sufficient to ensure the survival of a democratic multi-national federation

- but judging by the record of the twentieth century the presence of one of these conditions is a necessary condition of enduring federations³¹.
3. Federations are more likely to be stabilized if they have non-interventionist neighbors who do not seek to play major roles in the lives of their cross-border co-ethnics or co-religionists.
 4. An authentic multi-national federation will be democratic. Democratic arrangements allow the representatives of national, ethnic and ethno-religious communities to engage in dialogue and open bargaining, which facilitates the development of political co-operation. Liberal democratic arrangements that protect individual rights and collective organization in civil society may serve to check systematic transgressions against such communities. Federations that protect collective identities help make the respective communities feel secure – and in consequence may facilitate the emergence of inter-ethnic and inter-religious co-operation.
 5. Prosperous and fair federations are more likely to endure than those that are not. One should not exaggerate the power of materialism in politics. It would be wrong, for example, to insist that prosperity is a necessary starting condition of the success of multi-national federation – Switzerland, Canada and India did not start rich, and India is far from being rich. But, federations that over time facilitate increasing per capita prosperity *ceteris paribus* have better prospects of success.

The application of these arguments to the future of Iraq may now be briefly sketched. First, Iraq has a potential Staatsvolk, Shi'a Arabs, who might be demographically reinforced by the return of deportees, exiles, and refugees. But, several factors tell against the materialization of this prospect. They have not been the historically dominant people in the state; and it is unlikely that they will be politically homogeneous – provided they get a fair stake in the new order. They have religious and secular cleavages amongst them; they have intra-religious cleavages; and they have class differences. Vigorous Shi'a majoritarianism would guarantee a prolonged Sunni Arab resistance that would not just

³¹ O'Leary, 2001, op.cit.

be political. And Sunni Arabs, by virtue of their past dominance, have greater resources than their potential rivals.

Second, if there is no compelling evidence that the Shi'ia can comprise a *Staatsvolk* our argument suggests that power-sharing at the centre as well as autonomy within the regions will be necessary to preserve the federation. Federalism, after all, involves both 'shared rule' as well as 'self-rule'. The exclusion of national, ethnic or religious communities from representation and power at the center is a sure recipe for conflict and secessionism. Durably democratic multi-national federations, Canada, Switzerland, Belgium, have had what political scientists call consociational or power-sharing practices in their federal governments: cross-community executive power-sharing, proportional representation of groups throughout the state sector (including the military, police and judiciary) and formal or informal minority veto-rights. And, it has been argued that India has been at its most stable when its executive has been descriptively inclusive of that state's diverse religions and linguistic communities³². This evidence strongly suggests that Iraq needs an executive that is cross-community and cross-regional in character. Unlike some, I take the nine-member collective presidency of the Governing Council as a good portent of sensible future compromises on the construction of a future federal executive. A five-person collective presidency comprised of representatives from five regions – a Kurdistan region, a Sunni dominated region, Baghdad and two Shi'a dominated regions – would necessarily have a cross-regional and cross-community character – and would not require any formal 'set-asides', the bugbear of many western constitutionalists. Given many Iraqis' interest in avoiding too powerful a central government, a collective presidency commends itself as the best means to create widespread security. The collective presidency might have responsibility for a circumscribed set of affairs – principally defense, foreign affairs, federal economic management, and the tasks of the head of state might be rotated and divided amongst two members. Swiss thinking, it seems to me, is to be commended rather than the restoration

³² Adeney, Katharine. 2002. Constitutional Centring: Nation Formation and Consociational Federalism in India and Pakistan. *Journal of Commonwealth & Comparative Politics* 40 (3):8-33.

of the monarchy, as suggested by the Dawishas³³. The collective presidency should be indirectly elected, like the Swiss, but to emphasize its federal character it should be elected by each of the delegations of regional senators, perhaps using the alternative vote within each delegation. It would be sensible to require a collective presidency to appoint ministers from parties in proportion to their strengths in the federal lower chamber, using a device such as the d'Hondt rule for the proportional allocation of portfolios: this would ensure a proportional and inclusive executive, removing the need for protracted bargaining over the distribution of posts in coalition governments. Under this model the largest party would have an entitlement to the first choice of ministerial portfolio, the next largest the second choice and so on. The ministers would be held to account both by the collective presidency and by the federal lower chamber. Measures to ensure that federal bureaucrats, military, police and judges are representative of Iraq's diversity would cement the necessary political accommodation.

Third, the external conditions for the success of federation in Iraq are not difficult to spell out: Turkey, Syria, Iran and Saudi Arabia will have to keep out of their neighbor's territory, and avoid sponsoring paramilitary organizations of any kind. The willingness of the Bush administration's national security advisor, Condoleezza Rice, to encourage the deployment of Turkish troops in Iraq suggests insensitivity on these matters: it has already opened tensions between Iraq's new foreign minister, Hoshiyar Zebari, and Ahmad Chalabi, this month's President of the new Governing Council³⁴.

The fourth and fifth conditions of long-run success in multi-national federations, democratization and economic prosperity cannot be assured in advance, but nothing in Iraq's cultures or communities' talents need necessarily prevent them. It would be my judgment, which I shall not elaborate here, that the lower chamber of the federal

³³ Dawisha and Dawisha, op. cit., p. 42. Their advocacy of the restoration of the Hashemites as reassurance for the Sunni seems naïve; it forgets that what is reassurance for the Sunni is not reassurance for the Shi'a, and ignores the secular republican and republican Islamist dispositions of both Kurds and Shi'ia. While republics in the Arab world have proven undemocratic so far, it remains the case that monarchies are nowhere limited and properly constitutionalized among the eight kingdoms (Jordan, Saudi Arabia, Morocco, Oman, Kuwait and the Gulf emirates). For an elegant essay on monarchies in the Arab world see Halliday, Fred. 2000. *The Fates of Monarchy in the Middle East*. In *Nation and Religion in the Middle East*. Colorado: Lynne Rienner.

³⁴ Brian Knowlton, 'U.S. aid offer prods Turkey on troops for Iraq', *International Herald Tribune*, September 10, 2003, p. 3.

parliament should be elected by party-list proportional representation, with each region having as many members of parliament as their population warrants, and that the second chamber should be elected by the single-transferable vote, with each region electing twenty senators on a party basis. It would be my judgment, also not elaborated here, that it would be symbolically appropriate to distribute the head offices of the executive, legislature and courts in different regions, and likewise the offices of federal ministries. But these are details I do not have time to address here. What I insist on is the possibility of a democratic federation in Iraq, but if, and only if, that future Iraqi federation is *bi-national, multi-ethnic*, tolerantly *multi-religious*, and *multi-regional*. Bi-national, because there are two nationally mobilized and linguistically distinctive collective communities, Kurds and Arabs. Multi-ethnic, because there are a range of other ethnic communities, notably Turkomen, who will need to have institutional recognition and protections, both at the federal and regional levels. Multi-religious, both to manage the Shi'a and Sunni divide, their internal divisions, *and* the non-Muslim religions, as well as those who have no religion. This, in my judgment, will require collective compromises on personal law, and a separation of the state from any distinctive religion, though it need not preclude the constitution from recognizing Islam as the major religion of the peoples of Iraq – a policy that would avoid establishing any clerisy. Regional and proportional funding of education might also resolve many possible religious sources of conflict. But, it is the multi-regional nature of a successful federation on which I wish to focus some discussion.

What should be the number of units in an Iraqi federation? That is, of course, up to the peoples of Iraq, and their negotiators. But three distinct regions have to exist on the logic of the foregoing arguments: Kurdistan, and at least one region dominated by Sunni Arabs. Those are the first two. Greater Baghdad, where up to a fifth of the population of Iraq is believed to exist, must also constitute a region, as it would be very difficult to carve it up amongst other regions. And, it is so large that it would be grossly undemocratic to have political impotence imposed on it in the manner of Washington DC – which has no vote in either the House of Representatives or the Senate. It follows that if Baghdad is not to be too large in relation to other entities in the federation, and thereby

wield too much power, that an Iraqi federation should have five regions if they are to be of roughly equally-sized in population. A re-configuration of the South, West and Baghdad into three regions, in which the Shi'ia would likely be preponderant, would make the construction of a federal collective presidency from the total of five regions easy, ensure proportionate weight for each major and minor community - without requiring each community to be organized as one bloc or bloc of parties, and still provide incentives for parties to compete – and co-operate - throughout the federation. Two- and three-unit federations have a poor track-record, and that is another reason why to this outsider a five-unit federation seems plausible. Canada and Australia with populations in the same range as Iraq have ten and six unit federations respectively – and both have some very small units, such as Tasmania and Prince Edward Island. Nothing, of course, should preclude each of the five regions from having extensive local governments. This type of regional design, it seems to me, is one that might flow relatively easily from the known preferences and dispositions of the likely negotiators of the constitution, but that remains to be seen.

Lastly, let me take up a question of special interest to Kurds, the notion of ‘federacy’. Many Kurds have been programmatically committed, for a long time, to a confederal or federal Iraq. Kurds equally have a long tradition of seeking territorial autonomy and having autonomy arrangements, territorial or cultural, betrayed by governments in Baghdad (or London or in other capitals in the world). Kurds cannot, of course, impose a federation on their prospective negotiating partners. They can only negotiate with those willing to make a deal with them. Kurds, however, have three immediate political priorities:

1. To promote a bi-national, multi-ethnic, tolerantly multi-religious and multi-regional Iraqi federation with a significantly sized Kurdistan as one of its units, and within that unit they should deepen and extend their own evolving democratic institutions and, as they intend, provide cultural rights for Turkomen that Turks have not given to Kurds in Turkey. Kurds seek a whole Kurdistan as a region of

an Iraqi federation, and power-sharing in the federal government, and full cultural rights for Kurds living outside Kurdistan.

2. To insist that any negotiated constitution be ratified by the people of Kurdistan, as well as the rest of Iraq.

3. To insist on default mechanisms that would protect Kurdistan in the event of breaches of any new Iraqi constitution.

But Kurds will also have to consider their options if the rest of Iraq chooses not to accept any mutually agreeable model of a bi-national, multi-regional federation. One option would be for Kurds to insist on a distinctive ‘federacy’ agreement³⁵. They can say that they will accept the rest of Iraq choosing to be unitary, or indeed choosing to be a centralized US-style national federation, provided that Kurds themselves have a ‘federacy’. A federacy is a federal arrangement that is not a part of a system-wide federation; it creates a semi-sovereign territory different in its institutions and constitutional competencies from the rest of the state; it creates a division of powers between the federacy and the central government that is constitutionally entrenched, that cannot be unilaterally altered by either side, and which has established arbitration mechanisms, domestic or international, to deal with difficulties that might arise between the federacy and the central government. Federacy is autonomy that is not devolution; it is not a revocable gift from the central government; it is domestically constitutionally entrenched so that the federacy can veto any changes in its status or powers; and, ideally, its status and powers are internationally protected in a treaty. In short, while Kurds have no right to impose a federation on the rest of Iraq, they have every right to insist on federacy arrangements for Kurdistan as one means through which they can exercise national self-determination. In this scenario they would probably seek looser power-sharing arrangements in the central government, especially in foreign relations, while seeking to protect the cultural and human rights of Kurds outside Kurdistan.

The Allied Coalition’s Chief Administrator in Iraq has said that the writing of Iraq’s new constitution will be the fourth step in Iraq’s return to sovereignty. He has indicated that

³⁵ See footnote 3 above.

cannot be done in ‘days or weeks’³⁶. That is so. The preparatory committee on how the process of making the constitution should be written is supposed to report by the end of this month. We all await its proposals with interest. Thank you for listening to me.

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³⁶ L. Paul Bremer III, ‘Iraq’s Path to Sovereignty’, *Washington Post*, September 8th 2003, p. A21.

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