Elections and Constitution Writing in Iraq, 2005

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The year 2005 was critical in Iraq's post-regime transition. Historians may well look back on it as a turning point, the year in which a buoyant experiment in nation-building (witness, for example, the high turnout at the polls) not only failed to produce a strong and popular new leadership but set the country on a path toward sectarian violence and civil war. At the time of writing – April 2006 – the outcome of these developments was not yet clear, but the outlook was grim – for Iraq but also for the wider region, as civil war threatened to draw in neighbouring states and precipitate a crisis engulfing the entire region.

The year was bracketed by two sets of elections, in January and December, and additionally saw a referendum on the new constitution in October. In other words, Iraqis were asked to go to the polls on three separate occasions within the span of a year. Their attitude toward these polls, the voter composition, as well as the results, helps explain the overall outcome, one of growing polarisation, sectarianism and civil strife.

The 30th January Elections

The two most important observations that can be made about Iraq's first popular election since the Baath regime's ouster in April 2003 was that the results enjoyed popular legitimacy thanks to a turnout that was impressive, enthusiastic and spontaneous, but at the same time that a Sunni Arab boycott undermined this legitimacy, because the results were skewed dangerously in favour of Iraq's other two principal communities, the Shiites and Kurds. This set the country on a course towards the Sunni Arabs' institutional exclusion from key aspects of the reconstruction effort, most notably the drafting of a constitution.

None of this was preordained. In both timing and design, the elections resulted from political decisions taken in response to specific crises that occurred earlier in the post-war period; these crises could have been avoided, and different decisions could have been taken. Be that as it may (books can be, and are being, written about this), the elections were scheduled for the earliest date possible from a technical perspective and the latest date acceptable to the dominant political actors – representatives of the majority Shiite community. This date, 30th January, therefore became immutable. Moreover, the US government repeatedly hammered on the need to adhere to the tight timetable prescribed by the interim constitution, the Transitional Administrative Law (TAL), that an unelected body, the US-appointed Interim Governing Council, had signed in March 2004 and which prescribed elections before the end of January 2005. When a Sunni Arab boycott threatened, lack of flexibility in extending the date resulted in the election being pushed through without them.

Sunni Arab exclusion was compounded by the electoral system's design, which resulted from the same time constraints: Given the agreement to hold elections no later than the end of January 2005, flexibility on their design was also limited. With this in mind, UN election experts insisted on a system of proportional representation in which Iraq was treated as a single district. This system favoured identity-based coalitions over smaller parties, and punished regional absenteeism: no seats were set aside for Sunni Arabs boycotting the elections or staying away fearing violence.

Unsurprisingly, the elections yielded an overwhelming victory for the United Iraqi Alliance (UIA), a coalition of Shiite parties that was cobbled together at

the request of the Shiites' foremost religious authority, Grand Ayatollah Ali al-Sistani, whose intervention had led to the scheduling of the elections in the first place. The UIA walked off with 48% of the vote, or 140 seats in the 275-seat Transitional National Assembly. The Kurdistan Coalition List, an alliance of the main Kurdish parties, won 26%, or 75 seats. The secular list of Iyad Allawi took 40 seats, and Sunni Arabs (distributed over various parties) obtained only 17 seats.

Three months later, at the end of April 2005, the UIA and KCL formed a government, sprinkling it with positions for independent Sunni Arabs who, like UIA leaders, were predominantly former exiles and were considered tokens by many in the Sunni Arab community. This government accomplished little during its one-year reign (it did draft the electoral law for the December and future elections) and enjoyed little popular legitimacy, despite its emergence from a popular vote. It was strictly transitional, a virtual caretaker government during a particularly perilous period in Iraq's journey toward the restoration of its sovereignty.

Constitution Drafting

When Iraq's constitutional process commenced in May, it was meant to be both inclusive and deliberative, thus to help re-stabilise a country that was witnessing growing insurgency and endemic lawlessness. Two obstacles to these objectives presented themselves at once. First, Sunni Arab absenteeism at the polls led to significant under-representation in the new national assembly and, consequently, in the newly-established constitutional committee. Second, the interim constitution, the TAL, set an extremely tight timetable for Iraq's constitution writing, one that mandated a completion of the drafting process by 15th August, with the possibility of a single six-month extension.

In the event, the constitutional process was neither inclusive nor deliberative. Instead, at insistent US urging, it was rushed so as to prevent insurgents from taking advantage of the political vacuum arising from an extended transition, and also – an unstated US objective – to allow for a swift hand-over of power to Iraqis and subsequent US troop withdrawal.

In July, after the 55 – member drafting committee had started its deliberations, fifteen unelected Sunni Arabs were added to protect their community's vital interests. Within a month, however, discussion of the knottiest issues was moved from the committee to an informal grouping of political party leaders, who tended to gather at party headquarters or leaders' homes, often without inviting Sunni Arab drafters. For all practical purposes, therefore, the latter were re-excluded from the drafting process from early August on. After about a month, they were presented with a document to which they had barely contributed, certainly its key provisions. They consequently decided to reject it as an unacceptable imposition likely to do irreparable harm to their community's fundamental interests, and threatened to boycott the popular referendum scheduled for 15th October.

The process, moreover, was rushed by a US government intent on completing the transition as per the TAL-mandated timetable, the end point of which were parliamentary elections on 15th December. Although it became clear towards the end of July that the drafters, who had barely been at work for a month, were far from finished, and that there had been no time to seek public input, or even to brief the public about the proceedings and the difficult compromises that would have to be made, the national assembly decided not to avail itself of the option to extend the process by six months, a decision that, according to the TAL, would have had to be made by 1st August. Exhortations by senior US officials to get the job done deterred those who either realised they faced an impossible task or saw folly in rushing the drafting of a document so fundamental to the welfare of future Iraqi generations. Having passed up the opportunity to gain extra time, the assembly then faced the obligation to approve a complete draft by 15th August. This deadline proved unrealistic, and therefore was extended several times by default, in flagrant violation of the TAL. In the end, a draft was approved by the Shiite and Kurdish parliamentary blocs in mid-September, printed, published, and distributed throughout the country only two weeks ahead of the referendum. No significant public discussion of its contents took place. Political parties did make efforts to educate citizens but, more frequently, simply urged them to vote either yes or no.

The 15th October Referendum

Facing a Sunni Arab boycott of both the referendum and parliamentary elections, and fearing that

this might bolster the insurgency, the US brokered a last-minute compromise between the parties in early October. The principal result was the insertion into the constitution, which had already been printed and circulated, of a provision mandating the constitution's early review following the December elections. In exchange, Sunni Arabs agreed to participate in the referendum.

The referendum on 15th October saw a significant turn-out, including and especially among Sunni Arabs. According to the TAL, the constitution would pass if approved by an absolute majority of voters nationwide and if not rejected by a two-thirds majority in at least three governorates. In the event, it was overwhelmingly approved in predominantly Shiite and Kurdish areas and rejected in predominantly Sunni Arab areas. Yet Sunni Arabs managed to breach the two-thirds threshold in only two governorates, Anbar and Salahuddin, falling just 85,000 votes short of doing so in a third, Ninewa. Sunni Arab leaders immediately cried foul, claiming that only fraud had kept them from defeating the constitution. The Independent Electoral Commission of Iraq (IECI) ruled differently, deeming the constitution ratified by public approval.

On balance, the constitutional process was a disaster. It deepened rifts where it was meant to heal them, fuelled the insurgency when it was supposed to have taken the wind out of its sails, encouraged ethnic and sectarian violence, and yielded a text that in its ambiguity, internal contradictions, divisiveness, and numerous lacunae carries the seeds of future discord. Weak and lacking consensus, approved by only two out of Iraq's three principal communities, the document that was meant to be a national pact threatens to be both the prescription and the blueprint for Iraq's dissolution.

The 15th December Elections

It was thus that a violence-wrecked and highly polarised country headed to the polls for the third time in a year, on 15th December. The electoral system was now appropriately adjusted to be one of proportional representation on the basis of not a single country-wide district but eighteen provincial districts. This meant that Sunni Arabs went into the election realising that, regardless of any boycott or otherwise-informed absenteeism, a number of seats would be set aside for them in governorates in which they predominate. For this reason, as well as the pre-referendum agreement on the constitutional review, there were no calls for a boycott this time; to the contrary, there were even reports of insurgents urging Sunni Arabs to register and vote.

Turn-out was again high, including among Sunni Arabs. But perhaps even more than in the previous elections, Iraqis voted by their self-defined communities: as Kurds, Shiites, or Sunni Arabs (with some small minorities also collecting a seat). The secular "middle", represented by Iyad Allawi's National Iraqi List (NIL), almost vanished.

The UIA, now expanded to include the movement of the populist cleric Muqtada al-Sadr, won 128 seats in the 275-seat national assembly. The Kurdistan Coalition (this time without the Kurdistan Islamic Union which, separately, garnered five seats) came in second with 53 seats. The Iraqi Consensus Front, a coalition of Islamist Sunni Arab parties, was third with 44 seats. Allawi's NIL had to suffice with 25 seats, and a secular Sunni Arab coalition, the Iraqi Front for National Dialogue, with 11 seats.

These results led to total deadlock. Under the rules of the new constitution, no single list could dictate its will, forcing it to ally itself with other lists to obtain the two-thirds majority required to form a government. By the end of April 2006, there was still no government. For two months, the main stumbling block was opposition by a gamut of parties to the UIA's choice for prime minister, Ibrahim al-Ja'fari, who had headed the government in 2005 and who was perceived as either incompetent or, in the case of the Kurds, as resisting Kurdish efforts to seize oil-rich Kirkuk through a reversal of the previous regime's Arabisation policies. In mid-April, Ja'fari agreed to step back; he was promptly replaced by a colleague in his Da'wa party, Jawad al-Maliki – signalling a change of face but not of outlook or future policy.

The international community, the Bush administration in front, repeatedly called for a government of national unity, one that would include Allawi's secular list. While such a government could still come about, hopes were fading in continued wrangling that it would have the strength and legitimacy to both govern and fight the insurgency. Iraqis were therefore faced with the prospect that either the absence of national unity, embodied in the dangerously divisive constitution, would lead to Iraq's disintegration, or that even a national unity government, stitched together months after the December elec-

tions, would prove incapable of restabilising their country.

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