

FEDERALISM STUDIES



Iraqi Federalism and the Kurds

Learning to Live Together

Alex Danilovich



IRAQI FEDERALISM AND THE KURDS

As a consequence of the US intervention in Iraq, Kurdish autonomous provinces have contributed actively to a de facto ethno-federalism analyzed here for the first time in a remarkable scholarly study by Alex Danilovich.

Gérard Chaliand, Nanyang University, Singapore

Putting forward a bold and vigorous case for a federal solution to Iraq's current social and political fragmentation Danilovich is under no illusions as to the problems and pitfalls to be encountered, and indeed transcended, if Iraq as a state is to survive. This book will raise a few heckles in some quarters perhaps, but it is nonetheless an honest attempt by a well-informed outsider to weigh the possibilities calmly and dispassionately. To those lay readers not directly involved in Iraq and its problems, it is certainly a refreshing antidote to the notion of Iraq's future as an endless cortege of funerals and car bombs.

Nigel M. Greaves, University of Kurdistan Hawler, Iraq

This timely book provides a thorough, systematic and detailed appreciation of an ever-sensitive issue. Valuable on-the-spot insight is combined with sober and lucid academic analysis of a high order. Anyone seeking an accessible and penetrating understanding of the structures, the core issues, and the condition of contemporary Baghdad—Kurdish relations will be well-advised to consult this book.

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Preface

Media reports from the Middle East are unavoidably tied with scenes of carnage and death, while the very name of Iraq has become synonymous with political instability. Coming to Iraqi Kurdistan in May 2009, I felt like I was always on the lookout for a deadly encounter. My anxiety grew stronger at the sight of block posts and armed uniformed people in the streets, and the books I was reading (*The End of Iraq*, *The Goat and the Butcher*) only compounded my tenseness. Now, with my fears more tempered after four years of field research in Iraq, I decided to tell a story based on what I have learned from direct observations and framed by theoretical insights.

As a professor of Political Science teaching Iraqi students, and in my off-campus interactions with people, I have realized that the country is undergoing enormous political upgrading and modernization, one aspect of which is its new federal system. This transformation is overly painful, problematic, but on-going and promising.

Federalism is clearly a liberal idea that puts limitations on the majority in order to accommodate minorities. The 2005 Iraqi constitution introduced this framework for state-building in yet another attempt to keep the country's unity. The constitution is not free of inconsistencies, contradictions and ambiguities, a result of difficult compromises between various parties, including international constitutional assistants. This aspect of the new Iraqi political system has captivated me, and the main focus in the book is placed on these new federal relations. In spite of many difficulties on the federal road and the prevailing pessimism, I entertain a rather hopeful vision for the future of federalism in Iraq, based on what I have directly observed and researched. The title of this book reflects its overall attitude towards Iraq's federal venture.

The idea to research the federal relationships of the new Iraq was embraced by a colleague, Dr Francis Owtram, and we jointly developed a theoretical explanatory framework for the book. He also contributed a chapter on federalism and natural resources sharing. Later Francis had to leave Iraq and could not contribute more as initially planned. Therefore, I take full responsibility for the organization of the book, possible errors, and style imperfections. I also acknowledge my limits in interpreting all the complexities, sub-plots and overtones of Iraqi politics that are not essential for understanding the federal relationship.

I am grateful to my Kurdish students, colleagues and friends for the many insights I gained from our discussions.

ALEX DANILOVICH

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Acknowledgements

I dedicate this book to my Kurdish students from whom I think I have learned as much as they learned from me. This book is in many respects the result of my interaction with them in the classroom, during office hours and individual supervision. They have proved avid learners and sharp thinkers. I particularly value the insights into their culture, traditions and Islam I gained from them as well as a wealth of empirical data they collected while working on the projects that I supervised.

I feel particularly indebted to Akam Mohammed Mustafa, Rahma Sabi and Nigar A. Mohammed.

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List of Abbreviations

CPA	Coalition Provisional Authority
CRS	Congressional Research Service
DFR	Department Of Foreign Affairs
HRW	Human Rights Watch
ICG	International Crisis Group
IDEA	Institute For Democracy And Electoral Assistance
IGC	Iraqi Governing Council
IKP	Iraqi Kurdistan Parliament
ISCI	Islamic Supreme Council Of Iraq
ISG	Iraqi Study Group
ITF	Iraqi Turkmen Front
KA	Kurdistan Alliance
KCP	Kursistan Communist Party
KDP	Kurdistan Democratic Party
KIG	Kurdish Islamic Group
KIU	Kurdistan Islamic Union
KJU	Kurdistan Judges Union
KNA	Kurdistan National Assembly
KPC	Kirkuk Provincial Council
KR	Kurdistan Region
KRG	Kurdistan Regional Government
KRI	Kurdistan Region Of Iraq
PJAK	Free Life Party Of Kurdistan
PKK	Kurdistan Worker Party
PUK	Patriotic Union Of Kurdistan
SCIRI	Supreme Council Fo The Islamic Revolution In Iraq
SDP	Socialist Democratic Party
TAL	Transitional Administrative Law
TAN	Transitional National Assembly
UIA	United Iraqi Alliance
UNAMI	United Nations Assitance Mission For Iraq
WMD	Weapons Of Mass Distruction

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Introduction:

Iraqi Federalism, a Large-Scale Social Experiment

Iraq, an embattled Middle Eastern country, is gradually emerging from war and ensuing ethno-sectarian violence. It has adopted a constitution that introduces a federal system designed to palliate conflicts and keep the country's territorial integrity. Since the inception of the first federal polity, federalism seems to have offered a mechanism to deal with divided societies, to appease ethnic violence and to preserve the international borders of states intact. Federations appear to produce these desirable outcomes better than other systems. The creation of a federal Iraq was meant to achieve the same goals exactly and was introduced under US auspices, with US military and political backing, and supported by only some groups within Iraq, notably the Kurds.

Introducing an ethno-federation in the Middle East was, it can be argued, an ambitious project, tantamount to a large scale social experiment. The idea of granting autonomy to the Kurds, say, in Turkey, Iran or Syria would not be considered a solution, but a major challenge to the national identity and previous policy of these states. The introduction of federalism in any of Iraq's neighbors would cause a revolution, yet Iraq has engaged in this experiment in an attempt to break the logic of zero-sum conflict and offer yet one more opportunity for Kurds and Arabs to learn to live together.

In addition to federalism, the new Iraqi constitution adopted in a 2005 referendum introduced a combination of overly contradictory principles in its constitutional system. It re-established Islam as a state religion¹, but offset it by the incorporation of liberal democratic principles, both of which constitute the foundation for legislation. Article 2 of the Constitution reads:

Islam is the official religion of the State and is a foundation source of legislation:

- A. No law may be enacted that contradicts the established provisions of Islam.
- B. No law may be enacted that contradicts the principles of democracy.
- C. No law may be enacted that contradicts the rights and basic freedoms.

The rights and basic freedoms spelled out in Section II of the Constitution amount to a Bill of Rights that sets typical liberal constraints on the government.

¹ Iraq under Saddam was a secular state, although Saddam in the later years of his rule used Islamic references in an effort to buttress legitimacy and expand his powerbase.

One of our Kurdish acquaintances wants to challenge the constitutionality of a law recently enacted by the Kurdistan Region's parliament. The law bans polygamy and thereby deprives him of his constitutionally guaranteed right to have several wives (under the established provisions of Islam guaranteed by the Constitution). On the other hand, this new Kurdish law is in good harmony with the liberal principles of the same constitution that proclaims equality, gender equality more particularly.

Most scholars see Islam and liberal democracy as antithetical, and from their perspective, the Iraqi Constitution lays irreconcilable principles in its constitutional groundwork, which is in the words of Cole (2006) an "attempt by ayatollahs to engage with the ideals of Jean-Jacques Rousseau." This constitutional innovation has a direct bearing on Iraqi federalism, as any piece of legislation enacted by the Kurdish parliament has to simultaneously satisfy both sets of principles—Islamic and democratic. The Constitution also gives the Federal Supreme Court a strong judicial review power making the Court a sharp instrument for managing federal relations.

The situation in Iraq resembles a huge experiment, in which social scientists can observe the consequences of actions taken on the scale of an entire country. The most acute questions that scholars have been curious about, may find answers in the process of this experiment:

- Can Western ideas take root and flourish in non-Western societies?
- Can a Western constitutional framework hold in a deeply divided society where politics is largely identity-based and revolves around ethnic, tribal and sectarian allegiance?
- Can Islamic principles successfully sit with Western liberalism within one constitutional system?

And an important country-specific question:

- Is Iraqi federalism a solution to the problem of the country's severe disunity or is it just a temporary fix as the Kurds jockey for position, whilst they bide their time for declaring independence?

The results of this experiment may also strengthen or undermine the value and utility of federalism as a possible "technological" solution to human problems. We find ourselves fascinated observers in this unfolding experiment, and this book focuses on one of the experiment's many aspects—the nascent federalism of Iraq.

Iraqi Federalism: A Marriage Made in Heaven or Hell?

The boom of literature on federalism can be partially explained by the prevailing view that federalism has a well-pronounced applied character, as opposed to the more theoretical nature characteristic of political studies in general. Federalism as a specific institutional arrangement seems to be quite easily employed to

manage domestic conflicts that have become increasingly common in the era of transition from authoritarianism to democracy. It appears that the best way to hold fragmented and falling apart countries together is to share power constitutionally and turn their threatened unitary polities into federations.

On the other hand, the introduction of federalism, ethno-federalism in particular, has often unintended consequences. Holding together federalism is designed to maintain the unity of multi-ethnic states; at the same time it can be a prelude to separation, as it allows an ethnic group to mobilize resources and prepare for ultimate secession. This phenomenon is known in literature as “paradox of federalism.” Iraq offers a graphic illustration of how this paradox plays out. The Kurds, who obtained significant autonomy in the new Iraqi federation, have now many governmental institutions required for independence—a parliament, a cabinet, specialized departments, including foreign relations, defense and security, all of which would serve them well if the Kurdistan Region decided to break away. Furthermore, federalism has given the Region the context in which it has been able to develop its economy and establish linkages with governments and businesses worldwide.

In the opinion of many, starting the process of state-building and democratization with the creation of an ethno-federation is a recipe for failure. Yet the new Iraq has been clearly designed as an ethno-federal state. Throughout the history of Iraq, the relationship between the Kurds and Arabs has ranged from rebellions in the 1960s to administrative autonomy in the 1970s, a no-fly zone in 1991, to a federation since 2005. Iraqi Kurdistan acquired its *de facto* autonomy after the Gulf War in 1991, and was detached from the rest of the country by the establishment of a no-fly zone under an extension of UN Resolution 688. Even at that time, given the arguably propitious conditions, the Kurdish leaders did not opt for full independence. They knew that any such attempt would be vehemently opposed by its neighbors with a significant Kurdish population—Turkey, Syria and Iran². Thus, in response to independence rhetoric in Iraqi Kurdistan, Turkey’s foreign minister, Abdullah Gul, stated that Turkey would intervene militarily to guarantee “Iraq’s territorial integrity” (Blandfield 2003). Another important circumstance that cut short considerations of full independence was the fact that some areas of Iraqi Kurdistan were not covered by the no-fly zone and remained under Baghdad’s control. Thus, staying within Iraq as a federal unit was a pragmatic choice for the Kurds even in 1991.

The current federal system in Iraq has not resulted from a typical devolutionary bargain struck within a unitary state, as usually happens in the holding together-type of ethnic federalism found in Canada or Belgium. The possibility of federalism in Iraq was brought into being by foreign intervention in two instances—first, the introduction of a no-fly zone in 1991 and then a direct military invasion and subsequent occupation in 2003. These circumstances along with a history of a bitter relationship between the Kurds and the Arabs that had culminated at one

2 The particular history of state-formation after World War I and ongoing geopolitics have always presented insurmountable obstacles to Kurdish statehood.

point in the use of chemical weapons against Kurdish civilians could not be inconsequential for the nature of the resulting federation. Therefore the Iraqi case is particularly interesting for the study of federalism, as on one hand, federalism was conceived by domestic actors as a step to assuage the unforgiving rivalry, and on the other hand, it was imposed by external forces.

Analysts and laymen alike try to understand what has been going on in the new Iraq over almost a decade. Will federalism hold, will Iraq survive as a country or will the edifice designed and constructed by foreign constitutional engineers collapse like a house of cards? Iraqi watchers, pundits and experts are utterly divided on that issue; the prevalent view is that the current federal system is not viable. Some even set specific dates when the Kurds will announce independence. Thus, Barack Obama's former election adviser claims that "the Kurds will win independence by 2016." His view is based on economic calculations, Kurdish energy resources, and the success of the Nabucco pipeline in particular (Khanna 2010).

From what we have observed over the last four years in Iraqi Kurdistan and being cognizant of the geopolitical constraints to Kurdish secession, we advance a somewhat optimistic interpretation that sees federalism in Iraq continuing in the future. This optimism is also tempered by the knowledge that not all federations have survived, and many now successful federal polities endured growing pains and deep conflicts in the past. It has to be said that all assertions are necessarily tentative with the Middle East in the whirlwind of systemic change engendered by the uprisings of the "Middle Eastern Spring," whose outworking will take decades to fully discern.

Furthermore, we are not so naïve to infer some deep bond between the different ethnic groups in Iraq. For the great majority of Kurds, federalism is and always will be a second best choice to full independence. They aspire to a position of autonomy that federalism may allow, a second-best choice, but one which is realistic and may have benefits, primarily the absence of war and associated increased security. For ordinary people this can be a life without genocidal persecution and a gradually improving standard of living; for elites the prospects of vast riches from the development of the oil resources and a share of Iraq's revenues.

Many peculiar features of Iraqi federalism can obviously be tracked down to US-led state-building since 2003, which itself follows on the previous periods of state-building after World War I, the war that ended several empires and engendered territorial chaos in the Middle East and beyond. Not only were the territories of established tribal communities divided by force, but some new state borders were drawn across the lands inhabited by ethnic groups residing there for millennia, as happened in many places—the Balkans, Nagorno Karabakh and particularly Iraq. The process of colonial state formation initiated in the Middle East by Britain after the collapse of the Ottoman Empire was followed in Iraq by the era of post-colonial monarchy and the decades of Saddam Hussein's state-building efforts in pursuit of integration and assimilation.

From the very beginning, Iraqi state-building has been an extreme example of the creation of an artificial state: a state constructed by Britain out of the Ottoman

vilayets of Mosul, Baghdad and Basra in order to allow British development of the hydro-carbon reserves of Mesopotamia. Although most states in the world are artificial and do not accord to the European Westphalian model, which was the outcome of more natural territorial revisions and dynastic alliances/marriages, taking place over hundreds of years, in the Middle East we see a starker mismatch of identity and territory, an incongruence which finds its most extreme expression in the state of Iraq. In Iraq, as in much of the Middle East, the state has had to compete for loyalty with both sub-state identities (tribe, sect and ethnicity) and supra-state identities (pan-Arabism and pan-Islamism). Saddam Hussein's solution was a highly centralized authoritarian state in which Sunni dominance was maintained in a regime run through the channels of the Ba'ath party and an inner circle of trust drawn from the Tikrit clan of Saddam Hussein's birthplace.

It is obvious that the development of Iraqi federalism and the Kurdistan Region's place in it must be set in the context of Iraqi embattled state-building, from the creation of an artificial state, a product of British colonialism, to the current federal architecture resulting from US invasion and occupation. Since Iraq's creation by the British, there has been a mismatch between state and identity, as the Kurdish nation has been living in four different countries. This incongruence is acutely felt in the Iraqi Kurdistan Region, which saw various attempts to gain autonomy in its relationship with Baghdad, most of which proved quite transient and short-lived.

The creation of a federal system of government is the latest attempt to build an Iraqi state with a view to accommodating the underlying issues of identity. It can be argued that under Saddam Hussein, as in the case of Yugoslavia and elsewhere, national identities were suppressed and when authoritarianism was removed, they came to the fore. A further point is that the experience of *Anfal*—genocide for the Kurds, and the Sunni-Shia conflict in 2006–7 have made it all but impossible for a sense of Iraqi identity, and the feeling of “altogetherness” to be built, an identity that all people in the state of Iraq could eagerly espouse.

In the Kurdistan region's interlocutory relationship with Baghdad, rhetoric of secession is sometimes used, though it should not necessarily be taken at face value. The political elite of the Kurdistan Region of Iraq, although often seen in the media and in some academic analysis as tied to a secessionist agenda, has been aware, of the geopolitical limitations of this landlocked region and, on the other hand, of the benefits of being part of a federal Iraq. Therefore passionate rhetoric about an imminent declaration of independence may quite often have blackmailish connotations in bargaining situations with Baghdad rather than real intentions.

The Iraqi case also demonstrates in its most acute form the importance of federal origins. Due to the autonomy experienced by the Kurdistan Region of Iraq prior to 2003, the reconstruction of the Iraqi state on a federal basis will necessarily have some characteristics of the coming-together type of federalism. If sufficient powers are not awarded to the Kurdistan Region, it is unlikely that the Kurds will support a re-strengthened Iraqi central state. However, the establishment and development of strong Kurdish institutions will continue to serve as a focal point of what might look like secessionist mobilization and cause suspicions and

anxieties in Baghdad and elsewhere. It is instructive to note that even today some opponents of a decentralized federation refer to Iraqi federalism as partition.

In this book, we examine the development of federalism in Iraq and the place of the Kurdistan region within it by focusing on the key issue identified in federalist studies as “paradox of federalism.” We try to determine which way the paradox of federalism is likely to play out in the new Iraq. Therefore we look at the most peculiar features of Iraqi federalism, the most likely area where the paradox can manifest itself. By doing so we try to answer the following question: Is federalism in Iraq a good means to maintain the territorial integrity of the country or is it used by the Kurds as a stepping stone towards a breakup of the country and ultimate declaration of independence?

We will explore this issue in detail through four empirical investigations of the key aspects of federalism in the Iraqi context: (1) Kurdistan Region’s security arrangements, (2) its activism in the international arena, (3) quandaries of revenue sharing and (4) constitutional inconsistencies likely to affect the federal relationship.

Federal Regions’ Armed Forces

The Kurds are currently quite anxious about the increasingly strong central government based on a stable and entrenched Shiite majority in the parliament, which underpins Iraqi Prime-Minister al-Malaki’s ambitions to create a strong and united Iraq with Shiites in the core. Based on a vast parliamentary majority, al-Malaki attempts to build up a strong executive, quite often overlooking some constitutional constraints in the process. The Arab Shi’a, the electoral majority in Iraq excluded from power under Saddam’s Sunny minority regime, now insist that Iraq should be governed “democratically,” meaning by the Shi’a majority, forgetting about the constitutional limitations on the majority rule in the form of federalism, constitutionally established power sharing mechanism and the Bill of Rights.

These new developments are laden with serious consequences for the federation. Having experienced Iraq’s central government’s brutal treatment, the Kurds are fearful of a strong government in Baghdad. The stronger the al-Malaki government becomes, the more suspicious the Kurdistan Regional Government grows, and the balance is not easy to achieve. Occasional statements of an anticipated declaration of independence are uttered by some Kurdish officials in spite of the geopolitical consequences of defying Turkey, Iran and Syria, and the absence of great power support for such a move. The USA, as the main architect and guarantor of the current federal system, and mindful of the view of its NATO ally Turkey, has never encouraged Kurdish ambitions to achieve independence; the USA has always seen a federal Iraq as the best vehicle for Kurdish aspirations. The Kurdish elite are also aware of the possibility that their neighbors can very easily exert economic strangulation just by closing their borders; as a result Kurdish oil would not reach international markets, as there are only two possible

transit routes—Baghdad’s controlled pipelines and Turkey’s controlled outlets. Occasional independence rhetoric is used as a threat and bargaining tool in Erbil’s relationships with Baghdad, with no real intentions and consequences, while the possession of a strong ethnically-based regional army is a more tangible instrument in dealings with Baghdad.

Federated unit armed forces, also known as state guards, state military reserves, or state militias are rather uncommon in modern federations. Territorial defense forces in ethno-federal states can potentially be a dangerous security arrangement. Iraqi Kurdistan possesses powerful armed forces called *Peshmerga* (literally, “those who defy death” in Kurdish). Obviously, the possession of a powerful army by an ethnic federal unit poses many questions and provides additional support to the view that the federal unit is preparing to break away.

We should bear in mind, however, that the current Kurdistan Region’s military and security forces resulted from the merger of the military and security arms of the two main Kurdish political parties—the Kurdistan Democratic Party and the Patriotic Union of Kurdistan. The merger is not full, as the parties keep exercising control over their respective security units. There is still a sense of distrust even among these two Kurdish parties.³ In other words, the existence of Kurdish armed forces is a legacy of previous conflicts, not a new development within the recently established Iraqi federal system.

Kurdistan’s Activist Foreign Policy and Diplomacy

Foreign countries have played significant roles in the fate of Iraqi Kurdistan. Kurdish national aspirations have been caught in the geopolitics of the region—the Iranians positioned themselves as friends of the Kurds, to be able to exert pressure against the government in Baghdad in the 1970–1980s. Syria used Kurdish nationalism against its own regional rivals, notably its support of the PKK in its struggle against the Turkish state. During the twentieth century, “the Kurds have been used repeatedly by the US, Israel and Iran to destabilize the state of Iraq, then left to their fate once immediate strategic goals have been achieved” (Anderson and Stansfield 2004: 180). An acute reflection of the Kurdish experience with foreign countries during the twentieth century is metaphorically expressed in a popular saying: “Kurds have no friends but the mountains.” Yet the Kurdistan Regional Government (KRG) now maintains a very active international relations agenda and keeps over a dozen representative offices in various countries across the globe.

Although it is not uncommon for federated units, such as Quebec or regions and communities in Belgium, to actively engage in international relations, the

3 A conflict over resource sharing between these two parties led to a bloody civil war in Kurdistan in the 1990s. In order to complement the revenues from the UN Oil for Food Program, the two parties were engaged in cutthroat competition over the boarder fees of Iraqi oil smuggled through the Turkish and Iranian borders.