FEDERALISM IN IRAQ

CHALLENGES AND PROSPECTIVES

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Introduction

Since its establishment in 1921 till 2003, the Iraqi State had a central shape in which the authorities were ruled by the central governance, whereas the other regions and provinces were granted with minor authorities within which they were supervised and guided by the centre of the State. However, After the American invasion to Iraq, new ideas stemmed from the Civil Administration Systems as well as calls to apply the Kurdish model of 1991 were appeared.

The concept of federalism in Iraq is recently discussed. The first calls for establishing a federal Iraqi state appeared at the begging of the nineties of the last century after the Iraqi invasion to Kuwait and the march apprising where the north part of Iraq with its Kurd majority were dissent from the central authority by the help of the International alliance. In 4/10/1992 the parliament of Kurdistan set a decision in which adopts the federal system in Iraq. Meanwhile the shITIES parties called for privilege the project all over Iraq, then it was agreed to adopt a unity federal democratic Iraqi state. The resolution aroused a large debate in the political and intellectual impacts concerning the futuristic consequences over the Iraqi community as well as the neighbouring countries.

Since that period till the collapse of Saddam's regime the federalism subject was raised by the Kurd political powers from time to time in the international congregations, after the deterioration of the Bath regime in 2003, the transitional administration law approved federalism as the shape of the new Iraqi state by referendum took place on 15 October 2005, chapter four of the Iraqi constitution stated that the governor system in Iraq is republic, Federal, and democratic in which powers are shared with the federal government and the regional authorities The federal system is based on the historical, geographical facts and not upon nationality, ethnicity or religion. Article 58 states that federal system in Iraq is designed in away prevents concentrating the authority in the federal government such concentrating that allowed to continuous decades of oppression and tyranny, the system also urges the regional government to act in away that grants the citizen rights and enables him to participate in administrating affairs.

On the political Iraqi scene, there is a lively controversial debate concerning the federal principles ranged from approval to refusal. However, the majority of the Iraqi people stands in an impartial position for the picture is not completely cleared.

The secession of Iraq into three major ethnically- or religiously-defined regions or cantons remains a long-standing fear of many Iraqis and many people and governments across the region. Many Islamist and nationalist believe that federalism in Iraq is an introduction towards division Suspicions may be raised for the Kurds ambition to establish their independent Kurdistan though they present their support to a unified Iraq and to adopt the constitution that accommodates their claims. They have repeatedly indicated that they will work with the representative government to create a constitution for a federal Iraq that
addresses the needs of all the communities in Iraq. However, there is a subtle but important distinction in how the federalist concept might be applied. The Kurds have tended to favour an explicitly Kurdish self-governing portion of Iraq. Another option would be a northern self-governing section (or several such divisions) which are organized on a regional but not ethnic basis. Most Kurds seem to favour the former approach, while most other political powers including the American officials favour the latter approach as a way to reduce ethnic tension in a post-Saddam Iraq. Further, Kurds explicitly have opposed the division of historic Iraqi Kurdistan into multiple federal units, an idea which has support among some American analysts.

The negative potential consequences of failing to design a federalism that would establish and stabilize democracy in Iraq extends beyond Iraqi borders. The failure to design and implement a sustainable federal design Federalism may undermine establishing stable democracy in Iraq. Iraqi federal government must be designed to give regional governments their sufficient political and economical autonomy and it should limit the influence of identity based political parties. Moreover, Stability in Iraq and neighbouring countries depend on how the new federal Iraq will be.

In this consequence, the question which raised to mined is how can federalism in Iraq become a solution that unify the different spectrums and components of the Iraqi community and if there is any national l opposition stands against establishing a federal Iraqi state? Do values of trust and tolerance help the Iraqi society to deal with federalism as the best solution in the actual transformational management?

The Raise of Ethnic Question

A brief historical and political background about the Iraqi history may help to understand that Iraq -unfortunately-fulfils all conditions for pervasive and conflictual politicization of ethnicity. Iraq, however is too homogeneous to allow an obvious answer to the question "who is the people?" (Wimmer, Democracy and ethno-religious conflict in Iraq), Iraq is characterized by deep diversity along different dimensions, particularly ethnicity, religion, language and nationality. According to ethnic diversity it is comprised respectively of Arabs (75-80 percent of the population), Kurds (15-23 percent), Turkomen (3-10 percent), and Assyrians and Armenians (3-5 percent). Though there is not any Iraqi official census referring to the number of diverse religious Arab groups, it is explored that within the majority Arab population between Sunni (32-37) and Shi'a (60-65 percent) and there are also a number of other minority religious groups, such as Christian and Yazidis. Iraq also linguistically diverse, with the dominant language being Arabic (80 percent) and Kurdish (20 percent). It is nationally diverse, for Kurds almost certainly view themselves as separate national group.

In the year of independence in (1932) the Iraqi population was made up of 21% Sunni Arab speakers, 14% mostly Sunni Kurdish speakers, 53% Shia Arab speakers, 5% non Muslim speakers and 6% other religious groups such as the Sunni Turkmen and the various Assyrian-speaking Christian sects. Before that time certainly during the Ottomans Empire, only a few modern civilized institutions were existed, and none had a trans-ethnic reach. All the mentioned linguistic groups, especially the Kurds and Shia’a were subdivided into tribal confederations; a considerable part of the overall population consists of herdsmen while the overwhelming majority was farmers and peasants. The literacy rate remained between 5% and 10% in the remote Ottoman provinces later to become Iraq. (Al Wardi, History of Iraq, 2002). In this social environment, it was difficult that political clubs, bourgeois, trade unions and
farmers associations to be flourished. Degrees of effective control over the masses of the population were below the level comparing with other larger Arab countries like Egypt with its history of the nineteenth century state-building. Therefore, the new State-leaders and the political factions forming in the newly introduced parliament relied exclusively on appeals to the solidarity of a particular ethno-religious group in order to legitimize their rule. Hence the politics of ethnicity started when the British appointed King Faizal the First of Hijaz, the commander of the Arab forces that participated in the War against the Ottomans as a ruler of Iraq. The king and his officers, whom were known as the adherents of the Pan-Arab nationalism, dominated the politics in the first decades of independence, they constituted almost half of the premiers appointed during the mandate and the monarchy as well (1921-1958). The rest coming from Ottoman bureaucratic or the Sunni notable families, while the Shia constituted only four out of the individual appointed as premiers. During that era, the Arab speaking population had the sense of loyalty towards their family, their village or their religious Sheik but not towards the people of the other Arab countries. Thus, the idea of an Arab nation and the national solidarity was completely absent in Iraq during the 1920s. According to the new rulers policy, the diverse structure had to be overcome and the different pieces of this mosaic should be melt together into a conscious Arab nation capable of facing the imperialism European threats. The new regime aimed to assimilate the different minorities into the mainstream of Arabism and Islam as the center of the nation culture. Schools, the army, and the unified administration were stimulated to perform this project. A unified administration was directed towards a wide reform which the Young Turk reformers were unable to perform in that remote corner of the Ottoman Empire.

Ascendance and power spread of Pan–Arabism enabled the Sunni Arab to dominate the state administration and the army, at the same time the other ethno-religious factions were ousted. The influence of the Sunni domination increased gradually, during the monarchy, there were about 15% Kurds in the higher ranks of the administration and 25% in the lower ranks. While in the decades after 1958 (after the monarchy collapse and declaring republic in Iraq) the Kurds only held 25% within the higher and the lower tiers of the administration. The Bath party included 54% shia’a among the members of the Central Command. Their participation was reduced during the period (1963-1970). However, during their ascent to power from 1930 up to the ba’ath rules onwards, the goal of the Pan–Arabist group in establishing a United Arab Nation was never achieved. The more the regime attempts to enforce its concepts on society, the fierce becomes the reaction of the other groups towards these concepts, giving rise to ever higher levels of repression and domination. This in turn aroused the felling of discrimination based on ethnicity especially among the groups who refused to merge in the Arab nation and those who were excluded increasingly from the state power. Exclusion from power on the bases of ethno-religious background gave rise to ever more articulated Kurdish nationalism and a politicized Shi’ism. (Wimmer, Democracy and Ethno Religious Conflict in Iraq p.115).

Even more important than the question of autonomy was the ethnic composition of army, which was widely increased after the independence of the State. Compulsory recruitment met with great refusal by the tribal leaders who quit realistically predicted that they were delivered the rank and file for army commanded by Sunni Arab elite of Baghdad. Three years after independence; most of the southern tribes rouse up in a widespread rebellion which overwhelmed the region. The rebellion was brutally put down by the Iraqi troops and the Royal air forces. Men that were or seemed to be leaders of Shia’a tribes faced summery execution. Politics in that region were essentially transformed and the indirect authority of the head tribal was replaced by a close supervision by a newly founded department of Tribal Affairs.
While in subsequent decades more shia’a participated in the political process where most of the cabinet and the parliaments members were from the Shia’a-, this did not fundamentally changed the estrangement of the Shia’a population from the Iraqi-State. The sense of exclusion was fiercely aroused in 1991 after the repression of the apprising at the end of the Gulf War. The consequences of the apprising deepened the cleavages between the Sunni and Shia’a Arabs.

As with the shia’a, Kurdish political leaders resisted from the start the formation of the new state. They still hoped that the Kurdish nation state would be cut out of the Ottoman Empire, as had been promised by the imperial powers at the end of the War. Then it became clear that these promises are not going to happen. While the status of the northern provinces of Mousel was still debated Turkey, Britain and the league of the Nations, Kurdish leaders demanded for separation from the mandate power they also demanded for recognition their language as an official one, practiced at schools and the official institutions.

In the different wars between this nationalist movement, Baghdad had always to be more conscious about the Kurdish leaders and their demands for autonomous region. The reprisals against fighters and the civil population became, in each round (1932, 1940-1944, 1958-1978, 1980-1988), increasingly violent and were directed at larger sections of the Kurdish population.

At the end of 1988, the Iraqi army lunched a gassing campaign of the so called Anfal, against the Kurdish town of Halabja, in retaliation for their alliance with Kurdish movement and Iran. The campaign was a brutal symbol of genocide character in the last decades of the past century. the last campaign fostered feeling of unity and shared destiny among the Kurdish people, the Kurds now have a clear sense of nationhood and feel more then ever before alienated from the Iraqi State.

At the end of the 1991 Gulf War, the rifts which had steadily deepened over past decades between ethnic groups in Iraq became obvious to the world. Ethnicity and religion today are the main crosscutting lines in the country. The history of political mobilization and violence along ethno-religious lines outlined.

The final collapse of the bath regime has generated an evident ethnic insecurity dilemma, similar to the one being played out in Afghanistan. The question rises to mind is what ethno-political system if any, can maintain the national integrity of Iraq, curb ethnic separatism, relieve fears jealousies and tensions, and reassure the neighbouring nations?

This question has invited the attention of scholars and the analysts to present various suggestions for the new Iraqi political system. Federalism is seen by many as a way to reduce ethnic conflict in a sustainable way. However federalism may also provide a ground for responding counter reactions which may lead to radicalization of ethnic politics in new form as in the case of the former Yugoslavia and Czechoslovakia when escalating fight between center and federal entity over the distribution of resources led to federal collapse. Federalism may also arouse human rights violations rather than reduce especially for members of ethnic minorities living within the authority of the majority government in a federal unit.

Many analysts suggested that considering the separate geo-ethnic groups that almost unanimously do not want to be part of the same country, a loose federation is the only hope to hold Iraq together.(Peter W. Galbaraith ,”Kurdistan and a Federal Iraq: how the Kurds Created Facts on the ground.” Carnegie Endowment for International Peace, Nov 2003, Vol.1 (5)).In the same notion, a proposed federation of Iraq into three states would be joined in a bicameral parliamentary system providing equal power to the states in its upper chamber and proportional representation in its lower body.
The nature of the group identity is contested not only with the Shia community but also with members of the Sunni community, many of whom views Shia’s proposal for federation as sectarian rather than nationalistic. They prefer to give autonomy for Kurds, but not for Shia’s, the argument for this differential treatment is that political autonomy for Kurds reflects their national character which somehow has a legitimate basis whereas for their Shia there is no national differentiation, hence political autonomy reflects simple sectarianism, and the desire for political control. (International Crises group report, No. 19)

On the other hand, many scholars, political parties and Iraqi citizens considered ethnic –based federalism “a mistake” leading potentially to depredations such as ethnic cleansing. The separate federal statue of the Shia predominant areas is however a little more difficult to achieve than that proposed for the Kurdish area since there is a large intermix measure of intermixture between Shia and Sunni Arabs even in the Iraqi southern areas. therefore the delineation of the shia’a majority area with a special status may lead to a great difficulty. As the Shia’s religious identity needs to be protected by the government of Iraq, it should not encouraged to be stated at the expanse of the unity of Iraq

In order to overcome the ethnic conflict problem, scholars most prefer instead a territorial – based federalism that would preserve Iraq’s present administrative structure of 18 governorates, each maintaining a mixed ethnic and sectarian population, territorial federalism is said to determine the incentives for politicians at the provincial level to pursue a policy of ethnic antagonism. In a territorially defined system such as Switzerland, the federal system do not lie on ethnic boundaries consequently an aggregation of ethnic demands via provincial governments is discouraged. The current situation in Iraq provides an opportunity to apply a non ethnic federalism Since the Kurds are split between two dominated Kurdish powers which both calls for a unified Kurdish region including Kirkuk. Territorial federalism may also determines the religious conflict between the Shia’a and Sunni groups when it avoid the impact of establishing a state based on a powerful sectarian majority which means avoid repeating establish a state in which other ethnic diversities rights were oppressed.

Advocates of federalism share a common point of departure that ethnic regional and religious” identity “cleavages drive the essence of contemporary politics in states such as Iraq, which their future fundamentally depends on management designed for ethnic pluralism. They propose that the political manifestation of these cleavages in any future state specially that in transition, must be recognized through a territorial federation. (Imad Salamy, Frederic Pearson. The Crisis of Federalism and Electoral Strategies in Iraq, p196).

While these propositions have provided potential remedies, there is no credible method that determines which particular approach is most appropriate given various political circumstances. A system derived from states with a history of democratic traditions and higher level of economic development like that of the US, Canada or Switzerland, may lead to a failure when it is applied in divided societies or in the developed countries. Therefore the people of the states in transition accept the democratic transitional system rather than be imposed from the outside. The political leaders and the citizens should be a warred of the circumstances in inter-ethnic demographic mix: The ethnical conflict history, the existent of ethnic cross border linkages the degree of economic development and resources distribution; and finally the will to establish a democratic State.

Whether federalism in its national, ethnical or territorial form is implemented in Iraq, strengthening Iraqi national institutions, particularly the National Assembly, the parliament and judiciary, in addition to disseminating the democratic culture, would be the only safeguard that guarantees national integrity from division and fragmentation. The ability of the government to represent the diverse Iraqi political ethno-sectarian and national cleavages, will determine to a large extent Iraq’s national unity and democratic future. Devising means toward establishing an accommodative and representative democratic state would be an essential condition for achieving such end.
Power Distribution According to the Iraqi Constitution

Iraqi first constitution was drafted in 1925 during the British mandate. Five years had passed since the Iraqi revolution in 1920, thus some deemed the document as a tool to legitimize indirect British rule. Despite the complaints in 1920s, the 1925 constitution was drafted after a heated debate among Iraqis, within not just the drafting committee, but the public as a whole. Monarchy was the frame of the ruling system in Iraq in that era. In 1958, the military coup of Abdul karim kasim overthrew the monarchy and established the republic of Iraq. The coup also set a "provisional constitution" designed to legitimize the successive regimes that promulgated the documents. Minorities rights were explicitly mentioned, however they were never been in act by the successive dictatorships that ruled Iraq from 1958 -2003. The 1985 constitution ended Iraqi's parliamentary period and dissolved the powers of the former prime minister, concentrating all the powers on the executive authority represented by the president.

In 1968 the Bath party was the"governing leadership" in Iraq ,two years later a provisional constitution was set ,the constitution stated that all authority rested in the party and the revolution "Al Thawra" the constitution also acknowledged the Arabs and the Kurds as two equal nationalities within the Iraqi union. In 1973 the Iraqi government established the autonomous Kurdish region despite the protest of the Kurdish leaders for the city of Kirkuk was not included. Therefore, the region remained autonomous in theory till the Gulf war when the safe heaven was established in the north of Iraq in 1991. While the constitution included articles related to linguistics and cultural rights, reality witnessed the attempts to Arabize the various regions and cities and deporting the Kurds especially from the city of Kirkuk.

After the Gulf war and as an attempt to pay lip services to the promises related to democratize the Iraqi society, the Ba'th drafted a permanent constitution, yet the constitution failed to be implemented due to the Iraqi invasion for Kuwait. Nevertheless, ratifying the constitution has only a formal shape since only Saddam Hussein had the executive powers. Various laws and prohibitions were issued to decrees the newspapers and media outlets as well as to glorify the "Wise governorship "of the Bath regime.

This system remained in act till the collapse of the Ba'th regime in 2003. On that time, a transitional administration law for the interim government was formed, later on a commission specialized in drafting a permanent constitution was established, in the political vacuum; plans were debated on how to draw up a new Iraqi constitution that could accommodate diversity in Iraq at the same time grants a fair distribution of powers. After months of controversial debates upon particular articles in the draft constitution, the new Iraqi constitution was ratified by the General Assembly in October 2005.

The new constitution explained the authorities within the government; it did not detail those of the federal regions. Chapter three of the New Iraqi Constitution divides the federal government into four branches: legislative, executive, judicial, and independent institutions.

In part one, the legislative authority describes the two legislative councils, the Council of Representatives and the Council of Union, the Council of Representatives is responsible of certifying treaties and international agreements; approving high level judicial ,military and ambassadorial appointments ,and approving the budget and final accounting submitted by the Cabinet. The council also elects the president of the republic or remove him for violating oath,
constitution or treason. The council of union is tasked to examine bills related to regions and provinces all the creation will be organized by law whereas part two details the executive authority for both the president and the cabinet. It specifies the requirements for a presidential candidate and the necessary two third votes for appointing the president of the republic by the council of Representatives. This part determines the president tasks as well as his legislative approval powers. The "symbol of the nations unity" is not directly elected by the people ,his powers are protocolorary in nature ,he is required to act with the prime minister or the Council of the representatives .Presidential succession goes to the Deputy of the President of the Republic and then to the president of the Council of Representatives.

Cabinet carries out planning and implementing the general policy of the state, proposing draft laws, issuing regulations and decisions to implement the laws, as well as preparing the draft of the general budget and final accounting statement and development plans. The prime Minister has direct executive responsibility for the general policy of the nation.

In part three, the judiciary, creates an independent judicial branch of government to oversee correct application of laws according to the constitution, the judiciary consists of: the Supreme Council, the Supreme Federal Court and the General provisions.

The constitution promotes not just federalism as a national governing structure, but an extreme version of federalism in which all powers not specifically assigned to the central government devolves automatically to the regional authorities - setting the stage for a potential division of Iraq largely along ethnic and religious lines. The constitution anticipates a weak national government, with financial, military, and political power all concentrated within regional authorities. The constitution states directly that all powers - military, economic, political or anything else - "except in what is listed as exclusive powers of the federal authorities" are automatically reserved for the regional or provincial governments. In all those areas of regional power, the provincial governments are authorized to "amend the implementation of the federal law in the region" meaning they can ignore or override any constitutional guarantee other than foreign affairs or defence of the borders.

Economical Challenges

It is normal that the problem which is suffered by the progressive advanced economy differs from that in a developed economy hence each economy structure has its own structural problems which is related to its economic system.

So it is believed that the main problem which faces the advanced countries economy is how to insure the persistence of their output device by activating the demand .whereas the problem that faces the developed countries economy is how to establish an output device which is capable to get the benefit of using all the economical resources (financial resource, humanitarian resource, and taxes resource….etc.)So the main controversial debate will be the capability of a federal system in Iraq to uplift the development process

.In other words the arguments pivot around the question:

Is applying a federal system in Iraq or any developed country suffering from a huge economic disasters of a continuous war will lead to implement the economic development welfare, integration between cantons, better ability to reform and remedy or lead but to more
corruption, increasing the governmental expenditures, dispersing the national wealth and create a poor canton nearby a rich one.

Federal system proved its efficiency and success in several countries, but we should admit that what it is successful somewhere may not be other where. So we should study the surroundings circumstances and the available practicability in Iraq as a country starting its way to become a federal state.

Then and just then we may predict whether federalism is a common solution or it is a futuristic danger?!

We should analyze and observe the obstacles of development in Iraq :A-Poverty B-Corruption C-Occupation and blockade D-Absence of Democracy E-Discrimination F-Education and Literate Level.

Taking into account that the new Iraqi constitution did not mention the way in how the welfares would be distributed

AS it is well notable that the debate over federalism also has an economic component, the bulk of Iraq’s oil resources are located in Kurdish- and Shia-controlled regions, with the richest reserves in the south. The constitution may allow a federal unit to keep a large percentage of revenues collected within its borders, while contributing only a fraction to the central government. Sunnis worry the plan would choke off the remainder of Iraq from the nation’s oil resources, which provide approximately 90 percent of the total revenues. The Shi’a of the south and the Kurdish Factions are united on the issue that they should profit from Iraq’s oil resources since both groups feel they rarely benefited from the State’s largess during the B’athist era, in their view, federation will prevent a tyrannical centre from monopolizing Iraq’s oil recourses and allow for fair distribution of revenues according to Iraq’s demographic structure. However, some Sunni would argue that the oil revenues were dominated by a particular regime and the Sunni in general did not benefit from the wealth any more than the Shi’a of the south or the Kurds, thus according to Sunni’s view point a federal system that gave control of oil to the Kurds or to the Shi’a would only continue to deprive them from their rightful share in this resource. Though the constitution states in its first lines the distribution of wealth fairly through calling for independent body to oversee the distribution, it does not determine the fear of Sunni rejectionists in that they will not have guarantees to Iraq’s oil in the south and the north, especially if the Shi’a decides to form a federal entity.

Article 104 stated “A public commission to monitor and allocate federal revenues shall be established according to a law. It will include experts from the federal government, regions and governorates and representatives for them”. However, mention of the exact percentage of the distribution is avoided directly in the articles109, 110, at the same time the issue of the oil-rich city of Kirkuk has been controversial. The Kurds wish to administer it under its federal jurisdiction, for both sentimental and economic reasons, realizing that if it fell under their federal jurisdiction their percentage of oil revenues would increase substantially. The Arab side has been unwilling to concede on this issue. The solution was to delay the issue all together since the Kurdish leaders have accepted the fact that the issue will not resolved until 2007,”We called for a quick political solution to the issue of kirkuk ,but agreed to postpone this solution to the end of 2007”.(Al Marashi. Ibrahim, Iraqi constitutional Debate.)
It is reasonable to ask how a constitution can protect Iraqis from abuses of government in a part of the world were governments have a history of paying lip service to the separation of powers and other elements of constitutional architecture to the existent they exist.

In the middle East including Arab States and Iran, constitutions tend to be weak. Such institutions allow the executive branch to control and manipulate the legislature and judiciary under the cover of law. (Revenue Watch. Report no 8, p 2) while few countries in the Middle East witnessed signs of progress, most Middle Eastern Constitutions only ostensibly distribute power. Hence, the answer for this question is to strengthen constitutional provisions that limit executive authority in the Middle East—not abandon constitutions altogether a means to safeguard the public interest.

It is likely to refer that differing important decisions on the management of oil revenues almost certainly will lead to corruption and conflict, it will also feed the resentment of ordinary Iraqis who have long felt dispossessed in a land of potentially tremendous wealth. Iraqis can feel that they have a real stake in the government that may provide transparency and accountability, if the management of revenues is the most concrete and critical place to set a constitutional precedent.

Therefore the Iraqi constitution needs to ensure that both national government and the regional government have a role in petroleum exploration and development, and in deciding how to spend the resulting revenues. Iraq has to find a compromise solution somewhere between its historically ultra centralized model. At the very least, local government official government should the right to participate in the negotiation of oil exploration and production contracts in their region. At the national level, decisions should be made in the national legislature, to ensure the participation of elected officials throughout the country.

Conclusions:

The application of federalism in Iraq depends on the necessity to provide a wide and clear identification for the proposed federal system so that the majority of the Iraqi people may reach an individual convince towards the type of the applied federal system that accommodates the Iraqi diversity. However, this needs a wide development for the governmental institutions, holding conferences and workshops that aim to disseminate the culture of democracy and ethnic diversity. It is also needed to make the constitutional procedures that guarantee the unity of both the territory and the people of Iraq as well as assisting the rights for the citizens of the regions to identify the administrative relationship between the capital and their regions in such a way that recognizes the limits of coordination between them.
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