Set up to fail: Consociational political structures in post-war Iraq, 2003-2010

Nussaibah Younis

School of Government and International Relations, University of Durham, UK

Since Lijphart’s development of the theory of consociationalism in 1969, dominant schools of thought have accepted that ‘power sharing’ and ‘group autonomy’ are the basic preconditions of democratic governance in divided societies. The constitution and electoral framework adopted by post-invasion Iraq instituted many of Lijphart’s recommendations, including proportional representation, federalism, and a parliamentary system with a weak presidency. But this democratic framework has failed Iraq. Almost a year on from its 2010 parliamentary election and still without a new government, Iraq is facing constitutional crisis. This article uses the case study of Iraq to uncover fundamental flaws in orthodox arguments about democracy in divided societies and goes on to recommend changes that would better enable stable and effective governance.

Keywords: consociationalism; alternative vote; proportional representation; sectarianism; electoral systems; post-war Iraq

Introduction

Consociationalism is a form of democracy in which ethnic, religious, or other groups in a society are given the autonomy to manage their own affairs in addition to being guaranteed power within the national government. These principles are supposed to enable the peaceful management of a state made up of discrete constituent communities. Consociationalism, however, is often introduced into a society when civil conflicts have made ethno-religious identities particularly salient. The system assumes that this salience is a ‘natural’ or ‘essential’ part of the country in question. By embedding communal identities into the political system, consociationalism assumes that these identities will always be the most important constituent political identities in a ‘divided society’.

Extensive scholarly research has demonstrated that identity is fluid and multivalent, re-shaped by the prevailing culture, and in response to social, economic, and political contexts. Consociational political structures are inherently weak because they are inflexibly bound to group identities and cannot respond to reformulations or even dissolutions of group identities over time. Moreover, consociational structures can actively reinforce communal cleavages in society. By instituting power sharing structures and ensuring group representation, consociationalism incentivises politicians to base their programs and their constituencies around communal identities – thereby crowding out inclusive and inter-communal national ideologies. In a consociational democracy citizens are incentivised to accept ethno-religious identities over other available identities because the political structures reward cohesive groups with access to state power.
and resources. Consociational systems thus perpetuate the community at the expense of the nation, rendering the state continually vulnerable to instability and internal conflict.

The adoption of consociational power structures in Iraq risks entrenching communalism, whereas an alternative political system could incentivise the reintroduction of inclusive, nationalist ideologies to the country. Iraq’s collective memory certainly encompasses periods when communal identities were the most relevant political signifiers for the majority of the population. But this collective memory also touches on periods when broad cross-communal movements captured people’s political allegiance, whether it was pan-Arabism, socialism, or Iraqi nationalism. It is therefore critical that Iraq’s political system incentivises politicians to draw on Iraq’s legacies of cross-communal co-operation, rather than invoking memories of bitter inter-communal conflict.

This article challenges theorists of consociationalism on three fronts. It starts by addressing the history of political identity in Iraq, demonstrating that the salience of communal identities changes over time and in response to specific contexts. The article goes on to assess the weaknesses of the constitution adopted by post-invasion Iraq, arguing that its consociational principles undermine political stability and fail to allow for post-conflict reconciliation. Lastly, scrutiny of Iraq’s electoral system reveals that proportional representation (PR), the system recommended by consociational theorists, has failed to provide Iraq with moderate and effective government.

**Iraq’s competing collective identities**

It is easy to understand why Iraq is branded a ‘divided society’. Much of the violence to engulf Iraq since the US invasion has been characterised as sectarian: mass casualty bomb attacks have targeted Shi’ite shrines in South Iraq whilst a single Shi’ite militia, The Badr Brigades, is held responsible for the kidnap and murder of hundreds of Sunnis. Sectarian violence dragged Iraq into a bloody civil war between 2006 and 2008 which claimed the lives of up to 3000 civilians a month, and inter-communal violence remains a significant obstacle to political stability in Iraq. The endless headlines reporting sectarian violence, however, confer a sense of fixity upon Iraqi identity, suggesting that its ethno-sectarian divisions are primordial and timeless. In fact, these identities are heightened and politicised in response to social contexts, and they can change, dissolve, and reformulate themselves as these contexts change. The most recent manifestations of Iraqi political identity obscure a complex history of the mobilisation of Iraqism, pan-Arabism, communism, and communalism. Any political system that hopes to bring stability to Iraq must recognise that sectarian violence in Iraq today is historically contingent, and that Iraq’s past demonstrates the possibility of a politics based on competing national ideologies rather than competing ethno-sectarian identities.
Iraq in the 1950s and 1960s was characterised by struggles that cannot be explained by ethno-sectarian differences. Iraq’s experience of modernisation and urbanization generated a vast expansion of the education system which in turn enabled the growth of a large urban middle class (Eppel 1998, p. 229). These educated and wealthy urban dwellers – often referred to as the *effendiyya*1 – were newly cut off from the rural structures of authority that had previously governed their intellectual and social lives. Their exposure to a modern education equipped them with literacy, and thereby the ability to communicate their ideas in print, as well as introducing them to concepts of secularism, nationalism, and socialism. As Benedict Anderson (1983, p. 116) famously states, ‘print literacy’ makes possible the ‘imagined community’ that is the nation, and thus changes in material wealth and access to printing allowed educated urban Iraqis to reconstruct their identities in along different axis. These new identities did not negate pre-existing religious, ethnic, or regional identities – they simply provided a new ideological structure for the articulation of political demands. Armed with these new tools, the *effendiyya* and the Iraqi labour movement took a leading role in propagating nationalism and in agitating for political change. The concomitant development of an Iraqi labour movement further strengthened and supported the nationalist political designs of the *effendiyya* (Farouk-Sluglett and Sluglett 2003, p. 22).

The nationalist movements which culminated in the Iraqi 1958 revolution appealed primarily to the urban *effendiyya* and the urban working class, and not to traditional communities in the rural South. The rural South, dominated by Shi’ite communities, looked to its *mujtahids* (religious scholars) for guidance at this time. The Shi’ite *mujtahids* of this period rejected the secular nationalism that had swept Iraq’s urban centres, calling for Shi’ites to reassert their religious identities (Lukitz 2009, p.15). The *mujtahids* came to blows with the nationalist government over matters that they believed to be under their jurisdiction. For instance they protested vociferously against plans in 1959 to introduce a single national personal status code because they had previously had control over matters of personal status in Shi’ite areas (Stilt 2004, p. 751).

The conflict between the nationalists who dominated the urban centres and the *mujtahids* seeking to safeguard their positions in Iraqi society cannot be characterised as a sectarian struggle. Nationalist leaders were Shi’ite as well as Sunni; communists counted Kurds and Shi’ites amongst their supporters; and opposition to the state came from Sunni tribal leaders as well as Shi’ite *mujtahids*. The nationalist movement in the 1950s and 1960s was ‘fundamentally non-religious,’ (Sluglett and Farouk-Sluglett 1978, p. 85) and where the movement was divided internally it was divided between the workers and the *effendiyya* on the basis of class rather than religion. As for the stand-offs between the post-1958 state and the *mujtahids* and tribal leaders, these conflicts can be conceptualised as broad struggles for power between community leaders in the periphery against the new usurpers of power in the centre (Stansfield 2007, p. 52).
In contrast, the 1980s and 1990s witnessed a decimation of the Iraqi social fabric in response to three wars and a severe sanctions regime (Dodge 2007, p. 27). These events served to undermine cross-communal solidarity and strengthened sectarian identities. During this time many Shi’ites felt singled out, sidelined and oppressed as a community by the Iraqi state. The eight year war with Iran placed Iraq’s Shi’ite population under intense scrutiny, putting many Shi’ites under considerable pressure to prove their loyalty to the Iraqi nation. The strains of the Iran-Iraq War were compounded in the years following its conclusion, as a series of Shi’ite-dominated uprisings against Saddam Hussein’s regime in 1991 were brutally put down – resulting in the deaths of thousands of mostly Shi’ite activists (Goldstein, p. 1992).

The Iran-Iraq War, the First Gulf War, and the international sanctions regime imposed on Iraq in the 1990s all had a devastating economic impact on ordinary Iraqis. Severe inflation demolished the purchasing power of the average Iraqi household and led many middle class families to the brink of destitution. The contraction of state welfare services in response to economic pressure also led many Iraqis to rely increasingly on familial, tribal, and sectarian networks in order to survive (Bunton 2008, p. 643). Economic realities in this period thus incentivised the strengthening of sub-state communal relationships, at the same time as the regime’s monopoly over the public space prevented the development of any national cross-communal projects outside of the confines of the Ba’ath party (Sidahmed 2007, p. 74).

As for the Ba’ath party itself, it ceased to be a communally-neutral political arena where Iraqis could compete for influence regardless of their backgrounds. The plummeting of popular support for Saddam’s regime led him to rely increasingly on a narrow support base located in loyalist tribes, in his hometown of Takrit, and in his own family and clan networks (Dawisha 1999, 563).

The contrast between these two extremely different periods in Iraqi history – the 1950s and the 1980s/1990s – demonstrates the historical contingency of politicised Iraqi identities. In the 1950s social processes created new classes of Iraqis who were able to formulate broad and inclusive national political ideologies. Conflicts during this period arose from class differences and competing urban and rural conceptions of the state. The immense hardships suffered by the Iraqi population during the 1980s and 1990s, however, led to an increased reliance on tighter ethno-sectarian networks. The contraction of the middle class and the stranglehold that Saddam’s regime kept over national Iraqi civil society prevented these challenges from being met by alternative, national political ideologies. Active manipulation by the state further compounded the atomisation of Iraqi society into mutually suspicious communal groups. Both systems of political identity can therefore be understood as products of the incentive structures present in their particular historical contexts.
The flawed Iraqi constitution

Arend Lijphart (2004) recommends that constitutional design in divided societies ought to be based on three core elements: an electoral system of proportional representation, a parliamentary system, and federalism. These recommendations have been embedded into the Iraqi political system but they have served to undermine Iraq’s political stability. Moreover, Lijphart’s instructions fail to include directives that are crucial to political stabilisation in divided societies. Most divided societies that turn to consociationalism do so in the aftermath of inter-communal conflict, but Lijphart does not consider the position of post-conflict reconciliation initiatives in his constitutional design. The failure of consociational theory to address post-conflict reconciliation speaks to a fundamental flaw in consociational approaches to divided societies. Consociationalism looks at societies in the aftermath of civil conflict and sees their divisions as permanent, neglecting to explore processes that could allow for the de-politicisation of ethno-sectarian identities. The Iraqi Constitution has also failed to recognise the crucial role that it could play in post-conflict reconciliation, and has instead instituted clauses that have directly retarded the reconciliation process. This section addresses the weaknesses of Iraq’s parliamentary system, the problems associated with its adoption of federalism, and the impact of its ‘De-Ba’athification’ initiative on inter-communal reconciliation.

The parliamentary system

Lijphart (2004) recommends that direct presidential elections should be avoided in divided societies because such elections are essentially majoritarian contests in which the largest communal group is always likely to win. Such an outcome would contradict the principle of power sharing which, Lijphart argues, is best served by a prime minister ruling in tandem with a broadly inclusive cabinet. According to Lijphart, the prime minister’s need to maintain a majority in parliament acts as a moderating force over his actions.

The Iraqi Constitution follows Lijphart’s advice by instituting a parliamentary system in which a powerful prime minister rules alongside a weak and indirectly elected president. The prime minister is responsible for the ‘general policy of the state,’ he is ‘commander-in-chief of the armed forces,’ and he is director of the Council of Ministers and the Council of Representatives (Article 78). Article 61 also declares that the prime minister will be ‘delegated the necessary powers’ to ‘manage the country’ during a state of war or a state of emergency. In contrast, the president is described by the Constitution as simply a ‘symbol of the unity of the country’ (Article 67) with the power to issue pardons, ratify international treaties, award medals, and accredit ambassadors (Article 73). The result is that an extraordinary level of executive power is concentrated in the office of the prime minister.
This has had two serious effects on Iraqi politics. Firstly, it renders the office of prime minister vulnerable to abuse with potentially devastating effects. The only Iraqi prime minister to be elected under this Constitution to date used the position to amass tremendous personal power, some of which has been improperly used. Furthermore, such a concentration of power heightens political competition for the office of prime minister, preventing speedy and effective coalition building processes in post-election periods. Because Iraq uses a system of proportional representation, no one party is ever likely to gain a majority in an election. Therefore a process of cross-party coalition building must follow every election. In these negotiations all parties angle for the position of prime minister, because this is seen as the only position that matters. This zero sum game prevents the efficient transfer of power, leaving the country vulnerable to political instability after every election.

Nouri al-Maliki was the first prime minister to be elected under the Iraqi Constitution ratified in the autumn of 2005. Maliki, a long time member of the Da’wah Party, was considered a compromise candidate for the job by the parties that made up the Shi’ite United Iraqi Alliance coalition. During his five year term as prime minister, Maliki built a personal power base in the security establishment and bolstered the electoral prospects of his Da’wah party, thereby demonstrating the immense power that the office of prime minister affords. Maliki took direct control over security forces and military operations, placing personal allies in the security apparatus (Gompert et al. 2010, p.30). He has taken security decisions without consulting the cabinet for authorisation, including unilaterally forming personal intelligence and military units outside the jurisdiction of the Ministry of Defence and the Ministry of the Interior (Gompert et al., p. xv). Maliki also created tribal-support councils in provinces across Iraq that are seen as Da’wah Party tools for controlling and influencing local populations. These benefits of the position of prime minister have enabled the once obscure Maliki to emerge as the most powerful figure in Iraqi politics.

There are widespread claims that Maliki’s incumbency has been used to shore up electoral support for his Da’wah Party at the expense of other members of the United Iraqi Alliance (Serwer and Parker 2009, p.8) and the results of the 2010 parliamentary elections seem to confirm these claims. Whereas in the 2005 elections Maliki’s Da’wah Party and its main competitor, the Islamic Supreme Council for Iraq (ISCI), had been roughly equal, the 2010 election results showed a vast expansion of the Da’wah Party at the same time as the virtual decimation of ISCI. Prime Minister Maliki personally won approximately 622,000 votes in his Baghdad constituency, the largest number of votes won by any Iraqi politician by some distance, and the State of Law coalition which is dominated by Maliki and his Da’wah Party won 89 seats in the 2010 elections. In contrast ISCI, which ran as part of the National Iraqi Alliance, won an estimated 8 seats with most of the seats in their bloc going to the Sadr movement. Whilst ISCI’s disastrous electoral performance is partly due to disillusionment with its ideological platform, it also
appears to have suffered because it participated in Maliki’s government without having control over the prime ministerial position, subjecting it to blame for shortcomings of the administration without credit for government successes.

The stalemate that engulfed the Iraqi political establishment after the March 2010 parliamentary elections can in part be attributed to the concentration of power in the office of the prime minister. In the elections no party received the votes necessary to form a majority in parliament. The top three lists were the secular *Iraqiya* with 91 seats, Maliki’s State of Law coalition with 89 seats, and the Iraqi National Alliance (INA) with 70 seats. State of Law was widely expected to go into coalition with the INA to form a Shi’ite coalition similar to that which governed after the 2005 parliamentary elections. The appointment of a Prime Minister, however, has been a major sticking point and has prevented a deal from being struck. The Sadrist bloc, which accounts for approximately 40 seats out of the 70 won by the INA, refused point blank to allow Maliki another term as prime minister in the immediate aftermath of the election. The Sadrists accused Maliki of using state forces for political ends during his time in office, insisting strenuously that he be removed. Maliki’s refusal to compromise on his grip over the premiership led his State of Law coalition into negotiations with Ayad Allawi’s *Iraqiya* list. But Maliki’s insistence on retaining the office of Prime Minister, and Allawi’s refusal to give up hope of taking that office himself, led to the swift breakdown of negotiations.

The failure of Iraqi politicians to reach a timely power sharing deal after the March 2010 elections was extremely damaging for confidence in the Iraqi political process and for security and stability in the country. An amendment to the Constitution in order to increase the power of the presidency, vice presidency, and of the cabinet at the expense of the premiership would mitigate the prime minister’s ability to abuse this position of power for personal political benefit. Some Iraqi political parties have already proposed dividing responsibility for the military, for the economy, and for energy between different offices – thereby creating further checks and balances on prime ministerial power (Pollack 2010). Moreover, the dispersion of power between several governmental positions better enables post-election compromise between those parties seeking to form a governing coalition. Such reforms would provide a very good solution to post-election impasses, allowing parties to share the positions of prime minister, president, and vice president between them – instead of being locked in a zero sum battle for the position of prime minister.

A weakness inherent in this arrangement, however, is the creation of several competing centres of power within government that could prevent decisive and effective leadership. This article advocates that the reform of prime ministerial powers should only be undertaken in tandem with a reform of the electoral system. The adoption of the alternative vote system (AV) would incentivise political parties in Iraq to form coalitions before the election on the basis of shared principles and
shared appeals to voters – rather than on the basis of naked political advantage after the election. In this context, alliances made prior to the election would enter government in coalitions based on shared policy programmes. The existence of multiple positions of power in government would enable each coalition partner to act as a check on the other’s deployment of political power without undermining the effective execution of policy programs.

**Federalism**

Lijphart (2004) is a great advocate of federalism as a way of ensuring the group autonomy that he believes is necessary for effective government in a divided society. Many other scholars of Iraq have also seized on the concept of federalism as a solution to inter-communal violence in the country. Stansfield and Anderson (2005), for instance, recommend that Iraq be divided into five regions: one predominately Kurdish, one Sunni, two Shi’ite, and a mixed, standalone region for Baghdad. There has also been support from the American political establishment for the promotion of federalism in Iraq. In 2007 the US Congress took the extraordinary step of adopting a non-binding resolution in support of a federal political settlement for Iraq.

Iraq’s Constitution allows potentially extraordinary levels of power to be devolved to the regions. Section Five, Article 117 of the Constitution recognises the ‘existing authorities’ of Kurdistan as a ‘federal region’; it sets out the process by which other governorates can become regions; and it lays down the powers that are to be exercised by those regions. The region-forming process can be started by a request from one-third of the council members from the relevant governorate or by one-tenth of the voters in the relevant governorate, and the final decision is made by a general referendum. Those governorates that become regions are expected to adopt their own constitutions (Article 120), to ‘exercise executive, legislative, and judicial powers’ within their region, and even to construct their own internal security forces (Article 121). Moreover, Article 121 establishes that regional legislation is to take precedence over national legislation when contradictions are found. Beyond its provisions for regionalism, the Constitution also guarantees individual governorates broad financial and administrative independence and gives their ruling governorate councils complete independence from ‘the control or supervision of any ministry,’ (Article 122).

In order to understand why such dramatic provisions for regional autonomy were included in the Constitution, it is important to look at the context in which the constitution drafting process took place. Politicians from Kurdish nationalist and Shi’ite religious parties dominated the drafting process, because Arab Sunnis and secularists largely boycotted the election for the constitution drafting transitional assembly. The discussions between Shi’ite and Kurdish leaders, particularly over issues of federalism, were based on a fundamental lack of trust in each other and in the new Iraqi political establishment (Al-Istrabadi 2009, p.1645). A priority for both the Kurdish and the Shi’ite parties was, therefore, to extract as much local and
regional autonomy for themselves as possible – to protect themselves against the potential actions of future governments. This was especially important for Kurdish politicians who were aware of their inflated influence over the constitution drafting proceedings in lieu of serious Sunni and secularist participation. The constitutional provisions allowing for extremely powerful regions were not constructed on the basis of popular demands for separatism in most parts of Iraq, and only served to increase inter-communal suspicion and hostility.

Constitutional provisions allowing localities to control their own internal security forces has proven extremely dangerous in a still unstable Iraq. Local politicians have been able to exploit their control over local security forces to attack political opponents. In Basra in 2008 local security forces were embroiled in highly politicised battles against militias that supported rival politicians (Visser 2008). Moreover, the continued existence of the Peshmerga, which amounts to an independent Kurdish army, keeps alive the possibility of an extremely violent and protracted conflict in North Iraq should the Kurds fail to meet their key demands through the political process (Stansfield and Anderson 2009, p. 135). There are regular reminders of the instability caused by deploying the Peshmerga alongside national Iraqi security forces in border towns between Northern Iraq and Iraqi Kurdistan, for example in July 2010 fighting erupted in the Diyala province between the Peshmerga and Iraqi soldiers allegedly over a matter of parking. Episodes of violence between local and national security forces throughout Iraq demonstrate that constitutional provisions for locally maintained security forces ultimately undermine efforts to stabilise Iraq.

The provisions for federalism have also proven to be extremely divisive amongst Iraq’s population, and have directly contributed to violence in Iraq since the Constitution’s ratification. Divisions between the Fadhiila party and the Islamic Supreme Council of Iraq (ISCI) over federalism in Basra led to violent clashes, with Fadhiila seeking to prevent ISCI from absorbing Basra into a Shi’ite sub-state in South Iraq (ICG 2007, p. 7). ISCI proposals to create a sub-state out of nine Shi’ite-dominated provinces in Iraq that would encompass 80% of Iraq’s oil reserves have also reinforced Sunni and secularist fears that Shi’ite religious parties want to divide Iraq for their own benefit, a fear that has further fuelled inter-communal violence (Hiltermann 2007). In the years since the ratification of the Constitution the Iraqi population has shown little appetite for the development of strong regional powers based on communal constituencies. ISCI attempts to gather the 10 percent of votes needed to bring the matter to referendum in Basra failed abjectly, and ISCI has since faded as a political force in favour of the Da’wah Party which favours strong central government.

Provisions for strong Iraqi regions were established in the Constitution through a process predicated on mistrust, from which major Iraqi political forces were excluded. The devolution of security responsibilities to localities enabled the politicisation of regional security forces, and prevented the effective suppression of
political violence. Plans for the carving up of Iraq into communally-based regions found little support amongst the Iraqi public, but instead stoked sectarianism and fuelled further violence. The adoption of federalism as recommended by Lijphart has therefore failed to contain inter-communal conflict and in some cases has even exacerbated such conflict.

This argument against federalism does not apply in the same way to Iraqi Kurdistan. Kurdistan is the only region in Iraq whose population overwhelmingly favours separation from the rest of Iraq. The long history of Kurdish separatist mobilisation, the existence of a de facto Iraqi Kurdish state since 1991, and a continued desire for autonomy suggests that when it comes to federalism Kurdistan should be treated differently. While it is crucial that the Constitution is amended to prevent the deployment of Peshmerga forces to ethnically mixed border towns in Iraq, other constitutional provisions for regional independence ought to be preserved for Kurdistan. Kurdistan must, however, be treated as a special case and the Constitution ought to be amended to prevent the formation of strong regions able operate independently of the central government in other parts of Iraq.

De-Ba'athification

Lijphart’s advice for constitutional design in divided societies fails to include directives to facilitate post-conflict reconciliation. One of the most damaging elements of the Iraqi Constitution has been its approach to the process of ‘De-Ba’athification,’ a scheme which aims to rid Iraqi society and politics of the ideas and structures of the former ruling Ba’ath Party. The inclusion of this policy in the Constitution alienated a significant proportion of Iraqis from the political process, and undermined the legitimacy of the new political system. Moreover, politicised abuses of the policy have led directly to violent conflicts and have threatened to derail the entire political process.

The De-Ba’athification policy was first adopted by the Coalition Provisional Authority (CPA). The CPA’s first Order, ‘The De-Ba’athification of Iraqi Society,’ (2003) banned the top four ranks of Ba’ath Party members, ‘from future employment in the public sector.’ The Order goes on to state that all government employees in the top three levels of management would be interviewed for connections to the Ba’ath Party, stating that, ‘any such persons determined to be full members of the Ba’ath Party shall be removed from employment. This includes those holding the more junior ranks of ‘Udw (Member) and ‘Udw ‘Amil (Active Member).’ Ba’ath Party membership was virtually a requirement for advancement in the public sector under Saddam’s regime. Membership alone did not indicate ideological commitment to the Ba’ath cause nor, in many cases, did it imply any criminal wrong-doing on the part of those members (Dawisha 2004, p.8). Not only did the Order remove a vast number of senior managers from the public sector at a vital time for reconstruction, it also alienated a significant part of the population (many of them Sunnis and secularists).
and pushed them outside of the political establishment (Chandrasekaran 2008, pp.79-81).

Articles in the Iraqi Constitution that deal with De-Ba’athification form a major source of Sunni and secularist opposition to the document, and their provisions have been used to undermine fair and equal Sunni and secularist participation in the political process. Article 7 of the Constitution prohibits ‘the Saddamist Ba’ath in Iraq and its symbols, under any name whatsoever,’ and declares that it may ‘not be part of political pluralism in Iraq.’ And Article 135 prohibits those who are ‘covered by De-Ba’athification statutes’ from running in elections for the Council of Representatives, and from becoming president or prime minister. Article 135 also allows the Higher Commission for De-Ba’athification to continue its work, and states that the Commission shall only be dissolved by an absolute majority in the Council of Representatives.

When it comes to defining who is and who is not a ‘Ba’athist,’ much is based on personal judgement and interpretation, making it critical that the De-Ba’athification process be as politically neutral as possible. Unfortunately the Iraqi De-Ba’athification Commissions have been intensely political from the start. In January 2010 the Justice and Accountability Commission (formerly the Higher Commission for De-Ba’athification) disqualified 458 individuals and nine political parties from participating in March’s parliamentary elections. The Justice and Accountability Commission (JAC) is headed by Shi’ite politician Ali al-Lami and heavily influenced by Ahmed Chalabi, both of whom actually ran as candidates in the 2010 elections. The JAC’s disqualifications heavily penalised Sunni and secularist candidates and even barred one of the most prominent Sunni political leaders – Salih al-Mutlaq – from participation in the election. Lami and Chalabi’s involvement in the Commission led to furious accusations of political partisanship and almost ended in a Sunni boycott of the entire election.

Since the candidate disqualification debacle of the 2010 elections, back room negotiations between the political parties have temporarily silenced the JAC. Long-term action is needed, however, to prevent the political manipulation of the 2010 election from recurring in the future. Articles 7 and 135 of the Constitution must be amended to disband the JAC and to prevent the formation of a similar body in the future. There is nothing to be achieved by discriminating against former Ba’ath Party members for their former affiliation alone. Those members who committed criminal actions should be prosecuted by the courts, and those who did not should be re-integrated seamlessly into Iraqi society. In this matter South Africa’s inclusive and forgiving ‘Truth and Reconciliation’ program should be taken as a model, rather than the ineffective and socially scarring ‘De-Nazification’ program imposed on post-war Germany (Payne 2006). Finally, dissolving the JAC would be an important symbolic step, reassuring the country’s Sunni and secular constituencies that the injustices of the Commission have been addressed and will not be repeated.
Consociationalism is often described as more realistic than alternative approaches to divided societies, but its failure to provide a path to cross-communal reconciliation shows that it is ultimately a short-sighted theory. As the case of Iraq has shown, in divided societies it is critical that newly empowered communal groups are not able to abuse their newfound power over the state to penalise formerly powerful communal groups. The constitution should provide a blueprint for reconciliation and long term peace building, and should never be used – as has been the case in Iraq – for taking revenge and for advantaging one group over another. Once again consociational theorists have failed to acknowledge the ability of political institutions to incentivise the continued politicisation of communal identities. Embedding a sensitive reconciliation initiative into the constitution can lay the foundations for a long term peace in a divided society by encouraging the breakdown of politicised inter-communal divisions. And if such an initiative is not included in constitutional design, the constitution risks being hijacked for the benefit of those groups who happen to dominate the constitution drafting process.

While changes to the Constitution are just one part of the process that is required to normalise Iraqi politics, it is crucial to lay the foundations for stable government by instituting a robust constitution based on national consensus. The Iraqi Constitution is a fundamentally divisive document in urgent need of reform, and many of its flaws reflect the deficiencies of consociational recommendations for constitutional design. Iraq’s adoption of a parliamentary system with a weak symbolic president has offered excessive power to the office of the prime minister, thereby laying the office of the prime minister open to abuse. The concentration of power in a single office has also prevented the swift transfer of power between elections, subjecting the country to regular periods of serious political instability. The embracing of severe decentralisation outside of Kurdistan has led to chaos, violence, and instability in many provinces. Moves towards federalism in the South were not based on popular demands for separation, and served only to stoke inter-communal suspicion and to exacerbate the civil war. Meanwhile, the existence of competing provincial security forces has led to de-stabilising local violence, and is not a viable long term solution to Iraq’s political needs. Finally, the inclusion of the ‘De-Ba’athification’ process in the Constitution has unnecessarily retarded the process of inter-communal reconciliation. Removing the De-Ba’athification clauses from the Constitution and instead setting out a process for reconciliation could better lay the ground for a long lasting and inclusive political settlement.

The failure of proportional representation in Iraq

The adoption of proportional representation (PR) is a core element of the political structure recommended by consociational theorists for divided societies. Lijphart (2004) asserts that ‘PR is undoubtedly the optimum way’ of ensuring that the constituent groups in a divided society are fairly represented. His approach is widely supported by academics and practitioners (Reynolds 1995; Villiers et al. 1998). Advocates of PR argue that proportional systems are the fairest because they most
faithfully translate votes into seats. They argue that proportionality is particularly important in a divided society, where the electoral system cannot be seen to favour the largest ethnic group if it is to retain legitimacy in the eyes of minority groups. The effectiveness of PR systems has been challenged by a number of scholars, but few have advocated alternative electoral systems that can successfully manage the challenges posed by divided societies. Donald Horowitz (2003), who makes a powerful case for the adoption of the alternative vote system (AV), is one important exception.

Horowitz argues that consociational scholars are wrong to judge the success of an electoral system simply on the level of proportionality that it achieves. Such a perspective assumes that electoral systems are neutral mechanisms capable of translating independently occurring voter preferences. Horowitz shows this to be a mistaken assumption. He recognises that electoral systems themselves contribute towards shaping voter preferences, and therefore electoral system success must be judged according to the social and political outcomes that the system produces rather than simply proportionality. The alternative vote system requires voters to rank candidates in order of preference. When the votes are counted, the candidate who receives over 50% of first preferences is elected. If no candidate obtains over 50% of first preferences, the lowest ranking candidate is eliminated and this candidate’s second preference votes are allocated to the remaining candidates. If this redistribution of votes pushes any candidate above the 50% threshold then they are elected, and if not this process is repeated until a candidate surpasses the 50% threshold. Horowitz believes that such a system incentivises the political moderation that is crucial for long term democratic success in a divided society. Because politicians are forced to seek second preference votes from voters outside their normal constituencies, they are encouraged to formulate moderate political programs that appeal to groups external to their core support base.

Horowitz’s arguments have largely been discounted by scholars of consociationalism because of the limited evidence Horowitz was able to provide and because ultimately AV is a majoritarian rather than proportional system. In his critique of Horowitz, Lijphart (1991) contends that AV will ultimately fail in divided societies because ‘it makes it difficult for a minority to be represented by members of its own group,’ a situation that Lijphart believes is untenable. This article uses evidence from Iraq to refute Lijphart’s critique of Horowitz, arguing that PR has failed to engender political stability in Iraq and that AV would be much more likely to provide Iraq with a durable and effective political framework.

The first electoral framework for post-invasion Iraq was codified in the 2004 Electoral Law, and provided for closed-list PR, executed in a single national electoral district. This means that voters were able to vote only for party lists, not for individual candidates within those lists, and that they could vote for any party regardless of location. The results produced by such a system are usually highly proportional, and can result in an extremely fragmented parliament split between
numerous small parties. The closed list element gives parties total control over which candidates are elected: they rank their candidates and the highest ranking are elected without voters having had any say candidate selection. This system was chosen by the chief of the UN Electoral Assistance Division, Carina Perelli, largely on the basis of immediate practical considerations (Dawisha and Diamond 2006, p. 92). The lack of reliable census data in Iraq would have made it very difficult to draw electoral boundaries, making single district PR the easiest way to hold a speedy first election post-invasion. Moreover, the Coalition Provisional Authority (CPA) firmly believed that the electoral system ought to be as proportional as possible, to ensure that all religious and ethnic groups were represented in parliament. It was based on this belief that the CPA had attempted to appoint Kurds, Shi’ites, and Sunni Arabs to the interim Iraqi Governing Council in numbers roughly proportional to the sizes of these ethno-religious groups in Iraq. By taking this approach, the CPA has been accused of encouraging delegates to think of themselves as ethno-religious leaders competing with other ethno-religious leaders to secure the best deals for their respective communities (Jaber 2004, p.9). Once instituted in post-invasion politics, assumptions about the politicised nature of Iraq’s communal groups became the basis for the development of the country’s electoral laws.

The 2004 Electoral Law was used to administer Iraq’s first post-invasion national elections. These elections, held on 30th January 2005, were to elect a transitional assembly which would be charged with writing the constitution, ratifying the constitution via a referendum, and then holding national parliamentary elections. The transitional assembly would therefore have extensive power to draw a blueprint for how the new Iraq should be governed, making it critically important that the electoral system incentivised cross-communal co-operation, inclusivity, and compromise. The 2004 Electoral Law failed to produce this outcome. The closed list system separated voters from individual politicians, forcing voters to support anonymous party lists instead of trusted and well-respected local individuals (Dawisha and Diamond 2006). The single national district encouraged voters to vote with reference to divisive identities at the national level, instead of potentially unifying local identities, resulting in the success of Kurdish nationalist and Shi’ite religious groups in the polls. For example, under a system of multiple districts a Shi’ite living in a Sunni area of the mixed Diyala province would be likely to vote for the local Sunni party that had the best local reputation and that made the most effort to reach out to Shi’ites in the area. In a system with a single electoral district, however, national religious Shi’ite parties make electoral appeals to Shi’ites living all over Iraq on the basis of their religious identities – encouraging them to vote on the basis of this identity rather than according to the best interests of their local area. The 2004 Electoral Law caused even greater concerns when it was widely rejected by Sunni Arab politicians who were concerned that – because the Sunni Arab vote is concentrated in a few districts – their electoral power would be significantly diluted in a system using a single national district (Bjornlund et al. 2007, p. 129). Despite early calls for a Sunni boycott of the election, the Electoral Law was not amended
and no serious attempts were made to address Sunni concerns. The results of the January 2005 elections were, therefore, catastrophic in that Kurdish and Shi’ite parties won virtually all the seats in the assembly and proceeded to construct the new Iraqi polity without input from a major ethno-confessional group – the Arab Sunnis. This outcome further spurred inter-communal violence in Iraq and can even be seen as a major factor contributing to the outbreak of the Iraqi civil war (Whitaker and Buncombe 2005). The constitution that emerged from the problematic assembly created by the January 2005 elections continues to be viewed as illegitimate by a significant proportion of the Iraqi population – thereby undermining the stability of the Iraqi state.

The transitional assembly made few amendments to the 2004 Electoral Law in preparation for Iraq’s second post-invasion national elections, which were to be held in December 2005. They introduced electoral districts so that Iraqis were now voting for local rather than national party lists, but they retained the closed-list system so that voters continued to vote for parties rather than individual candidates. The introduction of electoral districts was a positive development and aided fairer Sunni representation, however, the continued use of the closed list system perpetuated a dependence on parties rather than candidates and hampered the ability of voters to take local politicians to account for any shortcomings (Dawisha and Diamond 2006). Most political parties continued to campaign on the basis of ethno-sectarian appeals, although this time those appeals were more localised, and the election results demonstrated that Iraqis had once again voted overwhelmingly along communal lines. Ultimately there was no reason for political parties to appeal to voters outside of their own immediate support bases, and instead parties focussed on consolidating their grip over the localities over which they had gained some influence. Rather than incentivising politicians to transcend communal politics, the second 2005 elections ‘further entrenched...the logic of electoral politics as an identity referendum,’ (Dawisha and Diamond 2006, p. 96). The biggest losers in this election were, therefore, the secular nationalists led by Ayad Allawi, because of the fierce grip that local communalist politicians held over their constituencies all over Iraq.

The dominance of ethno-sectarian parties in Iraqi politics since the 2005 elections has been extremely detrimental to Iraq’s political progress. Politicians were embroiled in the bloody civil war that broke out between 2006 and 2008, with many reports accusing the Shi’ite-dominated government of packing the state security forces with former Shi’ite militiamen and using them to execute hundreds if not thousands of Sunni Arabs (Cole 2007, p. 116). In the context of escalating violence, public confidence in the government plummeted as the government was seen as acting only on behalf of those Arab Shi’ites who supported Prime Minister Maliki, rather than acting in the interests of Iraqis as a whole (Cordesman 2007, p. 38). In the aftermath of the civil war there was widespread ‘identity politics fatigue’ amongst Iraqis, many of whom – having experienced the terrible consequences of
identity-based violent conflict – grew wary of political appeals based on identity rather than on policy. This is a trend that has been increasingly recognised by politicians since the civil war. According to one secularist Iraqi minister, ‘the majority of parties learned one thing – that they have to get rid of anything related to religion. Although they are religious people, they are all trying to say now: “we are Iraqis”’ (ICG 2010, p. 9).

Electoral campaigns for the 2010 parliamentary elections took on a distinctly more nationalist flavour. The Islamic Supreme Council of Iraq (ISCI), a fundamentalist Shi’ite party that had campaigned for the creation of a Shi’ite super-state in South Iraq, was virtually decimated in the 2009 local elections – forcing a reconsideration by Shi’ite parties of how best to appeal to voters. Voter and candidate disillusionment with the Sunni Iraqi Islamic Party (IPP), the main component of the Sunni Islamist Tawafuq list that had run in the 2005 elections, allowed Ayad Allawi to construct a far stronger secular Iraqiya list with many former Sunni Islamist candidates (ICG 2010, p. 10). Nouri al-Maliki, head of the ‘State of Law’ coalition, distanced himself from his previous sectarian stances and campaigned for national reconciliation and inclusive government on the basis of Iraqi nationalism (Shadid 2010). These developments were aided by amendments to the electoral system that introduced an open-list system (Law 26 2009). This meant that voters could vote either for a party list in their local area, or for individual candidates within party lists. The result was that many politicians with poor local reputations or who had performed badly in office were thrown out by voters regardless of where they stood in their internal party hierarchies (Makiya 2010, p. 5).

The results of the 2010 elections – in which Allawi’s secular Iraqiya list came first with just three seats more than Maliki’s State of Law coalition – have been hailed as a triumph of Iraqi nationalism against the forces of ethno-sectarian separatism. Nonetheless, Iraq’s electoral system has undermined this positive result by failing to ensure a peaceful and efficient transfer of power. At the time of writing, eight months had passed since the election was held on March 7th 2010 and Iraq’s politicians had not yet formed a government. With violence steadily rising, the failure of Iraq’s electoral system to produce a government has been a disaster for public confidence in the political process and even risks propelling Iraq back into a state of civil war. The electoral quagmire is an almost inevitable result of Iraq’s system of proportional representation combined with the failure of the Constitution to enable effective coalition building. The highly proportional system prevents any one party from winning with a clear majority, thereby forcing parties to enter into coalitions in order to govern. The system also encourages parties to wait until after the election before entering into such coalitions – so that smaller parties can decide on the basis of the results which party to support in order to give them maximum leverage. Two outcomes of this system make it extremely dangerous for post-conflict divided societies like Iraq. Firstly, there is always likely to be a delay between the declaration of election results and the formation of a government – opening the door
to violent instability after each election. Secondly, because smaller parties are incentivised to wait until after the election before entering into coalitions, political alliances are made secretly and on the basis of political expediency without voters having any say in whom their party allies itself with. This period of power-brokering takes place between the political elites and prevents the development of an inclusive and accountable national politics based on policy rather than on elite power-wrangling.

The alternative vote electoral system has some clear advantages over the various PR systems that Iraq has tried. The political market of ‘second preference votes’ that exists in an AV system not only encourages politicians to moderate their political campaigns for wider appeal, it also encourages political parties to create coalitions on the basis of second preference vote trading before the election takes place (Reilly 2001, p.173-179). Because these coalitions need to jointly appeal to their shared voters, politicians are incentivised to create coalitions on the basis of shared values and policy platforms. The early formation of these coalitions would better facilitate the formation of a governing coalition in the aftermath of an election, and the grounding of these coalitions in policy fundamentals would mitigate the utilitarian nature of post-election struggles for power. Moreover, because AV yields less proportional results than PR, Iraqi elections would be more likely to result in a clear winner and therefore a smoother transfer of power.

These advantages are crucial to the stabilisation of Iraq’s democratic system and post-civil war society. In the case of Iraq, adopting the system of AV advocated by Horowitz could prevent Iraq from squandering the recent positive developments towards national unity that have been demonstrated by the 2010 elections. Meanwhile, the system of PR defended by Lijphart has shown itself over the last six years to be a weak and unsatisfactory system that has not encouraged cross-communal co-operation and has failed to allow for effective transfers of power.

Conclusion

Consociationalism overturned orthodox approaches to the study of democratisation. It showed that Europe’s experience of democratisation was not the only – or even the optimum – way in which democracy could be introduced to other parts of the world. The theory sought to introduce approaches that were better attuned to the social and political realities that characterise different countries. It wanted to bring a level of realism into theories of democratisation, forcing a deeper examination of case studies and giving recommendations a higher level of specificity. In the decades that have passed since the theory’s development, consociationalism has become a new orthodoxy. It is increasingly prescribed to so-called ‘divided societies’ in the absence of comprehensive assessments of the potential impact that it may have on the country in question. Many of the ‘divided societies’ that come under scrutiny by
scholars or practitioners are in complex post-conflict situations, and there is a tendency to oversimplify the divisions in these societies by ascribing them to primordial ethnic or religious divisions. The fact that many of the objects of study are in the developing world, and that most scholars and practitioners in the field are from Western democracies, exacerbates the potential for the essentialisation of those ‘Other’ societies. There needs to be a re-balancing of the study of democratisation, particularly when dealing with post-civil conflict societies. Scholars need to recognise the multitude of factors that contribute towards civil conflict, and avoid the trap of seeing ethno-sectarian divisions as inevitable features of societies that seem intractably ‘divided’. A reassessment of the theory of consociationalism in light of the evidence provided by numerous case studies over the last three decades shows that its recommendations can have extremely damaging consequences. And this paper’s examination of consociationalism as applied to Iraq strengthens the case against it. It is time for the consociational orthodoxy to be challenged.

Long-term political stability will only prevail in divided societies when ethno-sectarian divisions are depoliticised. Political systems in such societies must establish frameworks that incentivise the development of inclusive, policy-based, and cross-communal national politics. The alternative vote (AV) system can be used to incentivise pre-election cross-communal coalition building on the basis of political programs. A process of post-conflict reconciliation can be integrated into the constitution to allow for the healing of scars left by inter-communal conflicts. And the constitution can provide for a parliamentary system in which there are effective checks and balances on prime ministerial power, and in which central government exercises a responsible monopoly over state violence.

The future of Iraqi politics depends significantly on the ability of its politicians to make the necessary changes to the Electoral Law and Constitution. Iraqi civilians have shown a willingness to turn away from sectarian politics: violence throughout 2009 and in the early months of 2010 fell to the lowest point since the US invasion, and in the 2009 local elections and the 2010 parliamentary elections Iraqis voted overwhelmingly for Iraqi unity and against sectarianism for the first time since the war. These positive developments are, however, being hampered by Iraq’s political system. The conduct of the election and the failure of winning parties to form a government have cast a serious shadow over positive developments in voting behaviour. The politically motivated disqualification of primarily secularist candidates from participation in the elections threatened to derail the entire election. And back-room dealing between the political elites for power in the new government has alienated much of the electorate, enabling violent groups once again to take advantage of political instability in Iraq.

The current transitional period in Iraq is creating precedents and entrenching institutions that will shape the country’s politics for the next generation. The failure of Iraq’s electoral system and Constitution to provide for the fair and efficient transfer of political power in 2010 is threatening to further entrench violent division
in politics and on the streets. It is critical that changes to the Constitution and electoral system are made to better enable the development of a strong and effective political system. The start of 2011 will provide Iraq with a rare opportunity to rectify these weaknesses in its political process. The controversy surrounding the execution of the 2010 elections, the failure of the winning parties to create a government for six months, and the withdrawal of American combat troops are all factors that provide an opportunity and an impetus for reform that may not come again.

Notes

1 Eppel (1998; p. 229) describes an effendi as, ‘an individual who had attained any Western education whatsoever (from the completion of a grade or two, all the way up to university), adopted Western dress, and deviated to some extent from traditional frameworks.’

2 There were, however, fewer Shi’ites than Sunnis in the ranks of the nationalist movement (Marr; 1985; p. 88)

3 The Article does come with a caveat, namely that regional legislation only supersedes national legislation ‘in respect to a matter outside the exclusive authorities of the federal government.’

4 With the exception of Kurdistan, where there is strong popular support for independence.

5 I refer to the Alternative Vote system as applied to single member districts. When AV is applied to multi-member districts, results are unpredictable and can be vastly disproportional. Multi-member AV is thus not a system that this article advocates.

6 Some independent candidates formed party lists consisting of just of themselves, in which case voters knew who they were voting for.

References


Bunton, M. 2008. From Developmental Nationalism to the End of the Nation-State in Iraq? Third World Quarterly. 29 (3) 631-646.


Middle East Policy. 16 (1), 134-145.