

Report

Iraqi Federalism: Empowering the Governorates at the Expense of the State



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Introduction

When the United States occupied Iraq in 2003, it annulled the country's amended provisional constitution of 1970. This constitution had for the first time in the history of Iraq recognized the principle of autonomy as the basis for the form of the Iraqi state. In 2004, Paul Bremer, the United States' civilian ruler of Iraq, issued the Law of Administration for the State of Iraq as a substitute for the annulled constitution. Bremer in his capacity as the head of what was known as the Coalition Provisional Authority - the body that took over ruling over Iraq since its occupation - appointed what was known as the Transitional Governing Council. The Council was composed of twenty-five Iraqis selected on the basis of ethnic and sectarian quotas, regardless of their qualifications; often sub-standard or non-existent. The Law of Administration for the State of Iraq was then referred to this Council which declared it to be the temporary constitution of the land. Under this law, the three Kurdish provinces (governorates) in northern Iraq were declared to be an uncompromisable unified political and administrative bloc, which, of course, was essentially their status under the Law of Self-Government promulgated in 1974. The same Law of Administration for the State of Iraq adopted the principle of federalism as the basis for a new Iraqi state without consulting the Iraqi people through any kind of referendum. This, in effect, committed drafters and legislators of any future permanent constitution to this principle. In addition to other articles, the Law gave provincial authorities broad powers beyond those of the central authority, in addition to a right to claim what the Law called 'disputed areas' without listing what these areas were. This effectively created for a situation that gave space for perpetual conflict between the governorates and the capital.

Indeed, the permanent constitution was drafted within a three month period adopted all of these conditions. In addition, the new constitution included a prohibition on the cancellation of, or infringement upon, the articles of the Law of Administration for the State of Iraq (that the new constitution superseded), articles that grant the Kurdish provincial governments wide and extensive powers. Article 143 of the new constitution ensured that these articles of the Law of Administration remain valid. These and other additional articles enabled the governors of the Kurdistan region to enjoy powers that were greater than the federal powers of a weak central state that was shackled by a constitution that did not allow it to reduce the powers of a governorate that should have been lower in the chain of command. The Kurdistan region, for example, was allocated seventeen percent of the central state's budget. Rules governing the investment of mineral wealth (namely, oil) in the region were left vague and subject to the laws and policies issued by the regional government. Furthermore, according to the text of the constitution, the regional government's position would take precedence over that of the federal (central) authority in the event of conflict between the two. This also sees the central authority obliged to cover the costs of the region's security forces (the

Peshmerga) from the central treasury. Additionally the region was granted the right to establish its own representative offices abroad as part of Iraqi embassies.

What is important in this regard is that this arrangement did not get the consent, let alone the consensus, of the committee that prepared the constitution, and whose task it was primarily to discuss and approve the contents of the Transitional Administrative Law - with some minor changes. When the constitution was put forward for a referendum (its adoption requiring the approval of all of the Iraqi governorates, with the opposition of three governorates considered sufficient to nullify the constitution's adoption), the Electoral High Commission declared that it was officially rejected by two governorates (Anbar and Salah al-Din). Opposition groups, however, claimed that several other governorates also voted against it, including Nineveh, Diyala, Muthanna, Dhi Qar and Qadisiyah. In fact, it was officially announced that the percentage of votes opposed to the draft in Nineveh (Mosul) amounted to fifty-five percent of the vote, but that the central authority considered that this percentage did not constitute the two-thirds majority required to constitute a rejection of the constitution. It is notable that the primary data on the votes cast against adoption of the constitution in Nineveh show that the proportion of those opposing the adoption were far greater than the percentage officially announced. Further the announcement of the voting results was delayed, leading opposition groups to voice skepticism about the vote count and the results. It was in manner that the constitution was declared to be in effect, and how the principle of federalism for Iraqi Kurdistan was adopted, while giving the other governorates, with the exception of Baghdad and Kirkuk, the right to form their own federations, either on their own or in blocs. This was also how the permanent constitution sowed the seeds that could potentially threaten the unity of the country. This can arguably be seen as a means of dividing and sowing strife in the country, rather than being a tool for the unification of Iraq and the Iraqi people.

Federalism: The Transformation of the Political Stakes

Shortly after the adoption of the constitution, the contradictions and differences began to appear between the central government and the regional government of Iraqi Kurdistan. The regional government of Iraqi Kurdistan had then set out to draft and adopt a constitution for the region that gave powers to the regional government that infringed on those of the central government. Since any conflict or contradiction between the permanent constitution and any regional constitution or laws are to be resolved in favour of the region and its regional laws (according to article 115 and article 121, ii of the permanent constitution), the central authority remained powerless in the face of the region unilaterally taking such decisions without consulting with the central authority. In this way, major problems arose between the central government and the region, especially on the jurisdiction and powers of the regional government and how it

investments the natural resources not only within the region, but in other areas beyond its borders described by the constitution as 'disputed areas,'. As such these areas were considered by the regional government as areas it had jurisdiction over. Thus, the regional government of Iraqi Kurdistan has enjoyed the privileges and revenues of other governorates, with the result that these other governorates have been denied revenue. This is also not to mention the suffering of these governorates in light of the dominance exercised over them by the central government and political parties at the helm, and insecurity that characterized the Kurdistan region. In addition, the policies of the central government were characterized by obvious and large-scale corruption and mismanagement, leaving most of the country in a state of instability and lacking in services.

With a growing intensity of these problems, other governorates increasingly began to call for the formation of regions (gubernatorial federations) akin to that of Kurdistan. These calls were underpinned by several other factors, including: the central government's inability to bring about the development of the governorates; sectarian and political fragmentation that Iraq has witnessed; the failure to form a government that lasted for longer than a year after the 2010 elections; the various political rifts and sharp divisions between the parties that had agreed to form the government; the unfair and provocative way in which the central government dealt with the governorates and personnel from the scientific establishment who belonged to sects other than those of the governing political parties; and the relative affluence of the Kurdistan region compared to the material poverty of the other governorates. Also bolstering these calls to form regional governments were the deep political differences between Iraqi politicians involved in the political process, especially those who felt marginalized by the current Iraqi prime minister, Nuri al-Maliki. It is noteworthy that the first of the governorates to call for the formation of a federation was the same one that voted against the constitution and opposed the adoption of a federalist structure for the country. Similarly, political figures who had opposed the federalist idea on the grounds that it would lead to the dismemberment of Iraq were among the most vociferous in supporting the new provincial calls to form federations. In this new situation, all those who called for the formation of federations did so on the grounds that the constitution sanctioned such a step. This was true, given that Article 119 of the permanent constitution not only approves of but facilitates such measures. Meanwhile, the central authority that represents religious political parties welcomed the federalist structure, encouraged the adoption of the permanent constitution that approves of and fortifies the federalist principles, and ignored the potential problems that would arise as a result of that constitution's provisions that were not fully thought through. As such they became the main opponents of the formation of regional governments, mobilizing fiercely against it. It is perhaps useful to recall here that the US administration, which promoted the federalist idea and spoke at that time about the need to divide Iraq into three regions -

the Kurdish north, Sunni centre/west and Shi'a south -as the ideal solution to Iraqi problems (problems that were, of course, created by the US' intervention in the first place), began to voice its reservations about such prospects. Indeed, this reached a point where the US warned the leaders of the Kurdistan region of the consequences of separation from the central government, advising them rather to solve their problems with federal authority through dialogue and discussion.

Close scrutiny of the calls to form different regional governments reveals that these calls have been underpinned by motives that have differed from one governorate to another. In the southern governorates (Basra, Maysan, Dhi Qar and others), the majority of the population belong to the same community as that of the dominant coalition in the central government. The main motivations behind these governorates were a grievance against the central government's neglect, particularly around the granting of financial allocations required for development. In the western governorates (Anbar and Salah al-Din), the majority of the population come from a different sect to that of the ruling coalition and the motivations largely centered on the government's insistence on the treatment of these governorates' populations as followers of the former regime. This saw the people of these governorates subjected to the excessive employment of the 'terrorism and de-Baathification' laws (namely, the Justice and Accountability Law). While in the case of the governorates bordering on Kurdistan (Diyala, Kirkuk and Nineveh), the main motivations stemmed from grievances against the dominance of Kurdish political parties and forces, and their encroachment upon these bordering governorates under the pretext of 'disputed areas.'

In addition to these reasons and motivations, there are three other reasons and motives for the call for the formation of new regional governments:

1. The inequitable policies pursued by the central authority. These policies often take sectarian forms that effectively marginalize the other winning bloc in the elections, denying them what they perceive as their legitimate voting rights. This is in addition to the weakness of the central authority and its inability to make any felt improvement in the daily lives of the citizenry.
2. The self-interest of the politicians calling for the formation of new regions, and the material interests that would accrue to them and to the regions they hope to establish. One politician illustrated this clearly when calling for the formation of a region for his governorate. He stated that each year Kurdistan receives more than ten billion dollars from the central treasury, while his governorate received only two hundred million dollars per year to cover its needs.
3. The influence of some neighbouring countries that are pushing for the formation of regions inhabited by a sectarian majority similar to that of the neighbouring state.

As for those calling for the formation of regions for the benefit and interests of the actual populations of these governorates, they are at best an anomaly. This is evidenced by the fact that those calling for the formation of such regions are politicians who feel that the central authority pays them no heed, or by members of governorates who wish to increase their authority. There is no evidence of any genuine mass popular movement calling for the formation of such federations. Perhaps it is useful to recall that the demand to form a region in Basra governorate, called for by some members of the governorate, did not receive popular support. Also, the demand for the formation of a region of a particular sectarian character in the south, a demand led by one of the influential sectarian religious leaders, also did not have necessary popular support. To date, the current prime minister Nuri al-Maliki has been able to thwart these demands, either by ignoring them (Basra), suppressing them (Diyala), or through his efforts to woo over powerful tribes with influence in the governorates (as in Salah al-Din, Anbar and Nineveh governorates) with the promise to increase the powers of the governorates within a highly decentralised political system. Although he has managed to thwart these calls thus far, he has not been able to silence them completely.

Federalism's Potential Pathways

The primary purpose of any constitution is to unite the country it was written for. It is clear, however, that the current Iraqi constitution has become an instrument of division rather than unification. This despite the fact that the text of the first article of this constitution states that 'The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this constitution is a guarantor of the unity of Iraq.' In practice, however, Article 119 erases the first article that stipulates: 'One or more governorates shall have the right to organise into a region based on a request to be voted on in a referendum submitted in one of the following two methods: First: A request by one-third of the council members of each governorate intending to form a region. Second: A request by one-tenth of the voters in each of the governorates intending to form a region.' The Iraqi Parliament, the highest legislative authority in the land, has stipulated that in order for federal status, a governorate seeking to form a region has to submit a request to the parliament where it is to be decided on by a vote. This is the requirement that has enabled the prime minister to block such applications, as he has refused to refer the requests to form such regions to the parliament.

With this, however, it can be argued that as a result of the contradiction between the two articles of the constitution quoted above, and article 119's express authorisation and facilitation of the establishment of regional federations, demands for the creation of such federations will continue, and the path of such demands will take two main directions.

The first of these is represented by the central government, and is characterised by its fierce defence of the first article of the constitution and its work to thwart any attempt to establish new regional federations, while approving of the broadened scope of the principle of the decentralisation of power to the different governorates. This is what Prime Minister Maliki calls for, and puts forward in his meetings with different personalities and clans in the governorates that aspire to form new regional federations. The second trend emphasises Article 119 as well as the articles in Part 5 of the constitution (powers of the governorates, Articles 116 - 121), which give any governorate the right to establish a region. The Prime Minister will continue to be able to ignore these demands by either ignoring them or not referring them to parliament where he controls the majority vote, and being able to suggest that there would be material benefits that may be enjoyed by the governorates that give up on such demands.

In this regard, provinces that persist in calling for regional status will continue to appear as being in a state of rebellion against the powers of the current, and any future, prime minister. In continuing to raise the demand for such status, these governorates will be represented as political opponents of the prime minister's powers who want to force him to make concessions to them and their electoral lists or coalitions. Politicians will remain divided by their whims and attitudes toward the Prime Minister and his ruling coalition, and will insist on this issue even if it leads to severe political crises. The results will either be a weakening of the interior and the strengthening of external influence. Increased foreign influence will threaten Iraq and could lead the country into conflicts with dire consequences. Alternatively it could see interior players resorting to a powerful external party to gain support for its position. Such a situation can be seen by the prime minister's relationship with the US and Iran; whereby the former was granted facilities in the area of exploitation of oil and other mineral wealth, and the latter was allowed a significant security presence inside Iraq. In the meanwhile, the opposition will continue to urge neighbouring countries and other regional powers to support them against what they call Prime Minister Maliki's authoritarianism - similar to the way in which the leaders of the Iraqi List sought the support of Gulf states and Turkey. In both cases, the result will be that Iraq will lose its autonomy in decisions pertaining to its own future.

On a final note, if the principle of federalism in Iraq remains characterised by its open and fluid interpretations, as it is currently, if numerous governorates continue to perceive it as a goal to be achieved; if Prime Minister Maliki continues to fail to rein in those calling for regional status and convincing the people of those governorates that the central authority is best placed to meet their aspirations; and if the Kurdistan region's expansion into the so-called disputed areas is not halted, then the divisive conflicts entrenched in sectarian motives will prevail in Iraq. In such a situation, sectarian strife and warfare will reappear, and possibly lead to the actual dismemberment of the country. This is especially the case considering that certain new phenomena that can accelerate

the descent into crisis have begun to appear, and will in all likelihood further complicate the political setting. These phenomena include the fact that certain areas within some governorates have begun to raise demands for their own regional federations (as is the case in Tall Afar in Mosul where districts with a Christian majority are calling for a regional federation of their own). This can also be seen in the escalation in conflict between the different governorates over administrative boundaries, with claims by these governorates that parts of its territory have been encroached upon by another governorate (as can be seen in the case between the provinces of Anbar and Karbala, and between the Kurdistan Region and the provinces of Diyala and Nineveh, etc.). This will all add endless administrative conflict to existing sectarian and ethnic conflict.

The prospect of amending the constitution is virtually impossible given the fantastical conditions set by its actual drafters. Article 142 paragraph 4 states that 'The referendum on the amended Articles shall be successful if approved by the majority of the voters, and if not rejected by two-thirds of the voters in three or more governorates.' Since the Kurdistan region consists of three provinces, and that the regional government of Kurdistan is extremely unlikely to surrender the massive privileges it has obtained under the constitution, any amendment affecting these powers is virtually impossible. This is especially so given that Article 126 paragraph 4 stipulates that 'Articles of the Constitution may not be amended if such amendment takes away from the powers of the regions that are not within the exclusive powers of the federal authorities, except by the approval of the legislative authority of the concerned region and the approval of the majority of its citizens in a general referendum.'

The last resort remains that of the executive and legislative branches. While these branches are apparently unable to amend the constitution in order to stop the wave of gubernatorial demands for regional federations, they do have the ability to develop legislation that is based on the first article of the constitution and some of the text contained in its preamble. This emphasises the unity of Iraq and its indivisibility in order to contain this phenomenon; a phenomenon that has nothing at all to do with what is universally understood as federalism, but is more like a confederate system produced by a unification of political entities that were divided or separate before entering into the union.

The other alternative is that the central authority works to amend its domestic policies in a way that assures Iraqis that they are all equal. This will necessitate it casting off its narrow sectarian policies that only serve to alienate Iraqi citizens from their state. Since all indicators point to a sectarian quota as the basis of the current political system, the status quo will most likely continue as is, and this will only serve to increase external interference in Iraqi politics and decision-making.

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