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DOI
10.1080/13537113.2023.2208396

Publication date
2024

Document Version
Final published version

Published in
Nationalism & Ethnic Politics

NATIONALISM AND ETHNIC POLITICS
2024, VOL. 30, NO. 1, 103–126
https://doi.org/10.1080/13537113.2023.2208396

The Kurdish Consociational Experiment in Post-Saddam Iraq: A Practice-Theoretical Approach

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ABSTRACT

This paper addresses the application of consociationalism to post-authoritarian Iraq. Traditionally, consociationalism has served as simultaneously an analytical tool and a normative constitutional and institutional ideal; here, I discuss whether it presupposes a functioning liberal democracy or may also, conversely, help to *create* a (liberal) democracy in non-liberal (in particular Leninist) settings. As a case study, I focus on the consociational arrangements between rival Kurdish parties in the post-1991 Kurdistan Region and between Kurds and other parties in post-2003 Iraq. I argue that the latter are in important respects modeled on the former. On a theoretical level, I argue that these consociational arrangements are best analyzed not in institutional terms but in terms of practices and of strategies and tactics in ongoing power struggles. A refocus on practices leads us to rethink the normative assumptions of consociational theory, in particular concerning questions of legitimacy and the distinction between formal and informal consociation. It can better account for the instability of (informal) consociational arrangements and raises the question of how to account for non-liberal (and in particular Marxist–Leninist) state traditions in consociational analyses.

Introduction

This paper addresses a number of empirical, conceptual, and normative aspects of consociationalism in post-Saddam Iraq. Shortly after the 2003 war, consociationalism was first floated in policymaking circles as a desirable realistic normative *de jure* foundation for Iraq's new constitutional order, and hotly debated for a brief period.[1] More recent empirical studies have also argued that post-2005 Iraq *de facto* amounted to an "informal consociation" because of its informal elite pact between Shi'ites and Kurds and because of its unwritten rules for dividing government positions among sectarian lines,[2] or to "consociationalism-light" because it involved flexible temporal measures rather than rigid constitutional principles.[3] As such, post-Saddam Iraq may be, and has been, compared to Lebanon's formal and informal consociational arrangements. In this paper, however, I argue that the local antecedents of this post-2005 consociationalism lie elsewhere, and slightly further in the past, and more specifically in the Kurdish experience in Iraq since the 1990s. Even if consociation was not explicitly appealed to either as an analytical tool or as a normative ideal, an elite cartel that in retrospect may

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be qualified as consociational was imposed on the Kurdistan Region already in the early 1990s; moreover, this informal consociationalism was exported by the Kurdish parties to Iraq as a whole in the negotiations leading to the 2005 constitution.

This claim may seem surprising, given that conditions in the region under Kurdish control were quite different from those in post-2003 Iraq. The Kurdish-held area had been in a constitutional and political limbo between 1991 and 2003: it had not been recognized anywhere as a federal entity, let alone a state; it suffered economically from the international sanctions against Iraq and from an internal blockade imposed by Baghdad; and it was further weakened by intra-party rivalries and by recurring rounds of infighting. Below, however, I argue, first, that despite this seeming political stalemate and economic stagnation, the region did in fact witness the consolidation of the two most powerful regional parties (and longtime rivals), the Kurdistan Democratic Party (KDP) headed by Massoud Barzani and the Patriotic Union of Kurdistan (PUK) led by Jalal Talabani. Second, I argue that precisely during this period, an informal division of territories and resources between the KDP and PUK was established which—in retrospect—may be called consociational. And third, this "informal consociationalism" did in fact figure as a model for post-2003 Kurdish dealings with other Iraqi actors, and for the informal "elite bargain" that has been said to characterize post-Saddam Iraq.[4]

The consociation in the Kurdistan region was informal in that it sidestepped, and in a number of ways bypassed, the region's existing political and juridical institutions; it was also of a dubious legitimacy, in that it was imposed by the parties rather than demanded by the population. As such, it poses substantial descriptive and normative challenges for consociational theory, or so I hope to argue below. A practice approach along the lines of Foucault and Bourdieu, I suggest, may be better qualified to capture these aspects than the generally more institution-oriented forms of consociational theory of earlier authors, as it avoids their tacit assumptions concerning the legitimacy of the structures or "institutions" involved and instead focuses on formal and informal arrangements as tactics in an ongoing intra-elite struggle.

The Kurdistan Region since 1991: rethinking autonomy

As precarious as they were, post-1991 political conditions in the Kurdistan Region allowed for a rethinking of the autonomy imposed unilaterally by Baghdad in 1974.[5] Already in the early 1990s, Iraqi Kurdish leaders were searching for new political ideas and ideals that went beyond the long-standing Kurdish slogan of "democracy for Iraq, autonomy for the Kurds" and for concrete models for a workable decentralization and federalization of a future Iraq. For example, Sami Abdulrahman, at the time the leader of the Kurdistan Popular Democratic Party (*Partî Gel*), bemoaned the Iraqi Kurds' lack of a concrete vision for a future federal status and suggested that post-Franco Spain, presumably because of its relatively successful and peaceful handling of Basque and Catalonian separatist aspirations, might provide a more adequate model for the Kurdistan region than postwar Western Germany as shaped under US occupation, or in fact the US itself.[6]

It may have been no coincidence that Sami would, ten years later, be the most important Iraqi Kurdish politician to be involved in efforts to engage consociational

theorists in the planning, and negotiating, of a new constitutional order in post-Saddam Iraq. Specifically, it was Sami who encouraged and sponsored two international conferences, in 2002 and 2003, in which the idea of consociation, as opposed to federation or autonomy, was first floated as a potential resolution of the Kurdish question in Iraq. By this time, he had (re-)joined the KDP, the most powerful Kurdish party, and had become deputy speaker of the Regional Parliament, as well as a member of the KDP politburo.

The 2002 and 2003 conferences, held in Odense, Denmark, and in Washington, DC, respectively, not only yielded an edited volume concerning the future of the Kurds in Iraq;[7] rather more consequentially, they also led to the formation of a team of foreign advisers to the Kurdistan Regional Government (KRG), specialized in political theory and constitutional law. One of its members was Brendan O'Leary, a political scientist already well known—and influential among policymakers—as an enthusiastic advocate of consociationalism as a means of conflict resolution in Northern Ireland; another was Peter Galbraith, a former US ambassador to Croatia, who had been doing pioneering and courageous work in documenting the Iraqi chemical war against the Kurds of the late 1980s. Both were personal friends of Sami: thus, the O'Leary volume is dedicated to Sami's memory,[8] and Galbraith bemoans the latter's death as the loss of a "dear friend."[9] Both have been heavily criticized for their activities. Thus, Dixon notes that O'Leary has become an "evangelist" for consociationalism, who openly declares that he is not neutral but "a friend of the Kurds" and conflates academic analysis with partisan policymaking recommendations;[10] Galbraith has been castigated for negotiating an oil contract in the Kurdistan Region for a Norwegian company even as he advised the KRG on constitutional arrangement that could affect the legality of such transactions.[11]

Here, however, my point is not to take these or other authors to task for conflating academic analysis with either policymaking advice or private business interests. I am not concerned with questions of method or morality but rather with the *status* of consociational theory in these processes. To what extent were consociational theoretical concepts seen, and used, as practical tools to create a democratic Iraq and to what extent as normative ideals or end results to be achieved by democratic institutions? Are they primarily means to help us understand an independently given political dynamic of Iraq and the Kurdistan Region prior to and after 2003, or may they be said to have contributed to the shaping of this dynamic? Hence, I am primarily pursuing analytical questions concerning political developments in Iraq and the Kurdistan Region and largely leaving aside normative considerations about the legitimacy of party politics and the morality of foreign policy advisers' involvement in local politics.

The Kurdish experience in Iraq also opens further analytical questions concerning consociation and the state; thus, one might argue that the post-1992 Kurdistan region was an example of informal consociationalism in the *absence* of a state. Even after the establishment of a constitutionally recognized Kurdistan Region following the 2003 war, the Kurdish leadership remained ambivalent toward the new Iraqi state it had itself helped to bring about. And even following the referendum accepting the new Iraqi constitution, it kept wavering between participating in the formal elected institutions, profiting from the informal *muhassasa* system, and opting for outright secession.

Formal and informal consociation: conceptual clarifications

First, let us discuss a number of conceptual issues concerning consociational theory. The founding father of consociationalism is, of course, Dutch-born Arend Lijphart, who in a series of papers and books proposed consociational arrangements as an instrument for peaceful conflict resolution in plural societies.[12] Both the notion and the normative ideal of consociation in part derived from Lijphart's own experience of the early twentieth-century Netherlands, in which a policy of "pillarization" (*verzuiling*) had allowed, in particular, the relatively underrepresented Dutch Roman Catholic community to emancipate along its own pillar. Superficially, consociation may look like the federalism that was first articulated and discussed by American revolutionaries in the 1770s, but Lijphart emphasizes that the two notions are and should be kept analytically distinct: "the conceptual opposite of federalism," he writes, "is unitary government, and the opposite of consociational democracy is majoritarian democracy."[13] Consociation, he elaborates, deviates from majority rule on the basis of a "grand coalition," or power sharing; a mutual veto; proportionality (presumably also in the allocation of positions in the bureaucracy); and segmental autonomy, or the delegation of power to minorities.[14]

The precise conceptual relations between federalism and consociationalism need not further detain us here. For our present considerations, the central point is that both primarily involve constitutional, and hence *institutional*, arrangements. This exclusive focus on constitutional and political institutions has been criticized for ignoring questions of political economy, class difference and class structure, and the relation between masses and elites, but I will not pursue such Marxist-inspired lines of criticism here.[15] Rather, as opposed to Lijphart's institutional approach, the present paper explores constitutional arrangements and political institutions not as prerequisites for a functioning democracy but as tactics or instruments in an ongoing struggle. Such an approach prioritizes practices over institutions and de-emphasizes normative questions concerning legitimate and formal institutions as opposed to informal and contested arrangements. Most importantly, it approaches the state, that most elusive institution of all, as one governmental tactic among others, rather than assuming its existence and legitimacy, as Lijphart appears to be doing.[16]

A second significant feature of Lijphart's notion is its tacit normative dimension. Thus, Lijphart freely switches back and forth between talking of *states*, of *governments*, and of *democracies*.[17] This slippage is probably not accidental: with its near-exclusive attention on Western (or Western-style) liberal democracies, Lijphart's early analyses are clearly marked not only by his Dutch origins but also by a Cold War climate. Thus, the first edition of *Patterns of Democracy* (2013 [1992]) hardly if at all discusses any non-liberal democracies or even non-liberal federal or consociational states; and in 1979, Lijphart claiming that the terms "consociation" and "consociational democracy" are synonymous, explicitly excludes the Soviet Union from qualifying as a consociation.[18] This leaves unanswered a number of empirical and analytical questions: for example, both the Soviet Union and postwar Yugoslavia, although clearly non-liberal, were federal states and called themselves "people's democracies," but were they also consociations in any meaningful sense? And if not, why exactly should they be excluded? Is it possible to have non-liberal or even non-democratic federations or consociations, or is the very idea of a non-democratic (or non-liberal) consociationalism a

contradiction in terms, as his 1979 paper appears to state? In his early writings, Lijphart seems to imply the latter, but in 2004, he explicitly argues that a post-Saddam Iraq can benefit from consociational arrangements, clearly shifting from democracy as a *precondition* for successful consociation to the idea that consociation can be used to *establish* a democracy in a non-liberal and, as he calls it, "deeply divided society."[19] In this paper, however, Lijphart does not acknowledge the challenge of accommodating Iraq's authoritarian (and more specifically Leninist–Stalinist) past; instead, he appears to assume the country's ethnic and other cleavages as primordial givens, which in and of themselves presenting "a major obstacle to democratization."[20]

The shifts in this later paper raise a number of interrelated questions. First, is the concept of consociation involved in such analyses a neutral analytical tool, a methodological choice, or a normative ideal? And second, does successful consociation *presuppose* liberal democratic institutions, or can consociational principles conversely contribute to the *creation* of stable liberal democracies? These questions were—and are—particularly pressing in a case like that of post-Saddam Iraq. Under Saddam Hussein's Baathist regime, Iraq was a Leninist one-party state, marked by a Stalinist personality cult, not to mention the systematic use of a pervasive network of intelligence services and of the systematic use of terror as a tactic of governing.[21] Arguably, this Leninist heritage appears to have survived, or to have been reproduced, even after the de facto separation of the Kurdistan Region from Iraq in 1991 and the rapid shift of elites that followed it: apparently, Leninist and Stalinist forms of government provided powerful, and tempting, techniques of government even for Iraq's post-Saddam elites.[22]

Given Lijphart's liberal perspective, one can understand why he would consider "Leninist consociationalism" normatively undesirable, but would he also consider it conceptually or empirically impossible? On the basis of his early writings, one would think so: he virtually identifies consociation with consociational democracy, and by "democracy," he clearly means *liberal* democracy. On this point, then, post-Saddam Iraq and in particular its Kurdish parties would seem to provide an interesting test case for this more recent extension of Lijphart's ideas. His shift away from the presumption of liberal democracy has been criticized by Dixon,[23] who rejects latter-day attempts to impose a consociational model on states like post-Saddam Iraq in the hope of engineering them into Western-style capitalist democracies. This extension, Dixon argues, has rendered consociationalism increasingly vague and ambiguous, if not downright contradictory, and has undesirable normative and policy-oriented implications. The consociational attempt to institutionalize such identities and fault lines, he argues, reinforces communal identities, consolidates ethnic elites, and encourages segregation rather than integration. In short, Dixon objects to the primordialist, segregationist, and elitist assumptions of Lijphart's theoretical framework: "Lijphart's primordial interpretation leads to the advocacy of segregation and rule by elite cartel."[24]

Finally, and perhaps most importantly for our purposes, is Lijphart's later introduction of the notion of "informal consociationalism."[25] Initially, "consociation" referred to formal and written power-sharing agreements, especially as expressed in constitutions. In 2002, however, Lijphart argues that one should distinguish "formal and informal rules and practices" of executive power sharing[26] and claims that informal rules of consociational constitutional design, by which he means unwritten agreements,

actually "work better" than formal and explicit documents like written constitutions, "because they are more flexible—but perhaps also because they reflect a higher level of trust between groups or group leaders."[27] Apart from this brief and rather bold statement, however, Lijphart does not discuss any of the conceptual or theoretical or normative complications that such a substantial move may have, apparently believing that it merely involves an empirically innocuous broadening of the concept of consociationalism.[28]

One may ask, however, to what extent the notion of "informal consociation" clashes with the tacit normative assumptions in Lijphart's original concept as based on institutionalized and hence legitimate arrangements. In particular, the question arises as to what the exact normative status is of informal consociational arrangements that may turn out to contradict constitutional principles and undermine formal institutions. As we will see, this was in fact the case in post-2003 Iraq—and, even more importantly, in the post-1992 Kurdistan Region. It will also emerge that the informal character of Iraq's consociationalism does not exactly reflect a "higher level of trust" between political leaders—on the contrary.

Theoretical considerations: rethinking consociation

There are also substantial theoretical reasons for thinking about consociation in terms of practices rather than institutions. Thus, Lijphart[29] notes that the "grand coalition cabinet" as a major consociational arrangement may also be characterized—in rather less flattering terms—as an "elite cartel"; such cartels, he adds, are intended to avoid political competition, or conflict, among the elites.[30] Accordingly, he defines consociational democracy as a form of government by an "elite cartel" that is designed to stabilize a "democracy with a fragmented political culture."[31] The very term "cartel," however, should put us on alert, in that it suggests practices that may be less legitimate, or normatively desirable, and in fact less institutionalized than consociational theory suggests they are. In fact, as has been observed by several authors, consociational theory displays a persistent tendency to focus on formalized and/or institutionalized arrangements.[32]

It should be noted that Lijphart has a somewhat idiosyncratic formal–informal distinction: by "formal" he appears to mean constitutional arrangements, and by "informal," he means tacit or unwritten agreements of party politics and party organization.[33] Elazar follows this distinction but adds that consociationalism, unlike federalism, involves only processes and no structures of government and is "rarely constitutionalized" and generally at most "embodied in formal structures through the party system."[34] More recent authors have called attention to the informal dimensions of consociation. Thus, Adeney and Swenden[35] have noted the oddity of Lijphart's excluding India, arguably the world's largest democracy, from his discussions of consociationalism until 1996. Perhaps he did so, they suggest, because formally, independent India was based on a solidly majoritarian model that (especially under Nehru) rejected all appeals to ethnic or sectarian cleavages and promoted a purely territorially based notion of civic identity. Over time, they argue, Lijphart became more attentive to the informal features of the Indian system that were consociational rather than

majoritarian, and simultaneously, India's party system has become more fragmented and thus strengthened these consociational traits. Despite the importance of such informal arrangements, they warn against the dangers of political systems leaving power sharing to informal rules and practices alone.

More radically, Zdeb[36] has argued that consociational models have increasingly tended to approach conflict management in purely institutional terms and consistently overlooked what she, following Helmke and Levitsky,[37] calls "informal institutions" that implicitly or indirectly ensure power sharing. To the extent that such informal institutions of neo-patrimonial rule, like corruption, patronage, clientelization, and "big-man presidentialism" are discussed at all, she argues, they are used to explain the *failure* of democratic governance.[38] Against this tendency, she argues that in the Brčko district in Bosnia and Herzegovina, informal corporate consociational institutions complementing if not replacing formal liberal arrangements have, in fact, worked reasonably well. Zdeb's conclusion that actor–institution relations are more complex than Lijphart's institution-oriented analyses takes us closer to a practice approach but appears to retain a tacit assumption of institutions as normally legitimate.

To a sociologically trained mind, however, terms like "informal institutions" sound slightly oxymoronic. Ever since Durkheim defined sociology as "the science of institutions," social institutions have generally been seen as "formal," that is, as based on (either implicit or explicit) rules or norms and as recognized as legitimate. In the sociological literature, it has been argued that phenomena like patronage and clientelization, which Zdeb calls "informal institutions," are precisely *not* institutionalized in that they are not generally perceived as entirely legitimate.[39] This absence of legitimacy is especially relevant in neo-patrimonial polities like post-Saddam Iraq and the Kurdistan Region, where such relations have arguably been strengthened since the establishment of Kurdish *de facto* autonomy.[40]

Given the empirical and conceptual anomalies of the post-1991 Kurdistan Region, I analyze consociation here in terms of practices rather than institutions—an approached inspired by postwar French theoreticians like Foucault and Bourdieu.[41] Institutional analyses risk depicting the volatile situation in Iraq as more stable and peaceful, and as more legitimate and less contested, than it actually is. Practice approaches, by contrast, precisely focus on power struggles and see seemingly agreed-upon institutions as permanently contested tactics within such struggles. They also try to avoid tacitly introducing normative assumptions: rather than implicitly or explicitly assuming the institutional legitima*cy* of consociational arrangements, they explicate tactics and practices of legitimat*ion*—and, by extension, of contestation.

The instability and recurring violence of post-Saddam Iraq, and of the Kurdistan Region since 1991, the relative weakness of formal institutions, and the country's enduring Marxist–Leninist (and, in part, Stalinist) heritage provide major empirical obstacles for an analysis of Iraqi constitutionalism in institutional – and liberal – terms. However, there are also substantial theoretical considerations against doing so. Famously, Michel Foucault[42] has argued that even seemingly stable and peaceful states with generally accepted institutions, like nineteenth-century France, mask underlying struggles and conflicts. Thus, he argues that modern practices of punishment do not simply involve the application of universally accepted laws but amount to a novel, "disciplinary" technique of exercising power over

individuals. Foucault's description of disciplinary power as exercised on the individual body is often mistaken for a *1984*-like vision of quasi-totalitarian institutional powers of the modern state, but in fact, it precisely tries to shift attention *away* from seemingly stable and legitimate institutions to ongoing struggle. Accordingly, he consistently—and quite explicitly—talks of modern punishment and other disciplinary practices as tactics or strategies, rather than of prisons, schools, and hospitals as institutions. Recommending to "regard punishment as a political tactic," he argues that

> the study of this micro-physics presupposes that the power exercised on the body is conceived not as a property but as a strategy, that its effects of domination are attributed … to dispositions, manoeuvres, tactics, techniques, functionings … that one should take as its model a perpetual battle rather than a contract regulating a transaction. This power is exercised rather than possessed; it is not the privilege of the dominant class, but the overall effect of its strategic positions.

Unlike liberal social contract theorists like Hobbes and Locke, Foucault sees societies not in institutional or contractual terms, as marking the end of violent conflict and resting on institutions presumed legitimate or laws universally accepted, but in strategic terms of ever-changing tactics in a never-ending struggle.[43] And unlike Marxists, he talks not of class struggle, consciousness, and distorting ideology, but of unending civil war, bodily practice, and human-scientific truth.

Likewise, Pierre Bourdieu's[44] practice approach to social action, which, for example, talks of politics as a relatively autonomous "field" of action with its own struggle for symbolic resources (or, as he calls it, "symbolic capital"), emphasizes the ongoing struggle masked by seemingly consensual social arrangements and institutions. Both Foucault's and Bourdieu's practice approaches were arguably developed at least in part against Althusser's structural-Marxist account of domination and in particular of the latter's notion of an "ideological state apparatus." Foucault argues that disciplinary power is exercised not by the state but in a diffuse network or archipelago of disciplining spaces, that it works on the body as much as on consciousness and employs scientific truth rather than ideological falsehood.[45] In a clear allusion to Althusser's distinction between a repressive state apparatus that functions by violence and an ideological state apparatus that functions by ideology, he argues that one should abandon the violence–ideology opposition as much as the liberal model of the social contract.[46] Likewise, Bourdieu rejects the Althusserian notion of an apparatus as a "Trojan horse of pessimistic functionalism," which reproduces the fantasy of an evil will as responsible for everything that happens in the social world. "The school system," he continues, "the state, the church, political parties, or unions are not apparatuses but *fields*. In a field, agents and institutions constantly struggle."[47]

Given this emphasis on domination and resistance, on struggle, and on conflict underlying seemingly peaceful social realities, practice approaches seem particularly useful for societies where institutions are weak, precarious, radically contested, or nonexistent—like post-Saddam Iraq.[48] Below, I use this practice-theoretical focus on tactics and strategies and on enduring conflict and struggle as tools to better understand the various consociational arrangements in post-Saddam Iraq, with the restriction that I largely restrict myself to intra-elite struggles within an already constituted political field.

Consociationalism in Iraq's 2005 federal constitution

Given Lijphart's long-standing emphasis on constitutional (and, more generally, institutional) arrangements, the obvious place to start a discussion of post-Saddam Iraq is the process, during 2003 and 2004, of drafting a new constitution.[49] An interim constitution, the so-called "Transitional Administrative Law" (TAL), was adopted by the Iraqi Governing Council (IGC) in collaboration with the Coalition Provisional Authority in March 2004, and came into force in June of that year. In January 2005, a transitional assembly, intended to act as a constitutional convention, was elected; these elections were largely boycotted by Iraq's Sunni Arabs. The assembly then appointed a Constitution Drafting Committee. In September 2005, the new constitution was accepted by the transitional assembly, and it was ratified by referendum in the following month.

The unusual and juridically problematic circumstances in which Iraq's new constitution was drafted have long been known and have often been discussed.[50] The 2005 constitution was largely based on the TAL, but the IGC that had drafted the TAL was hand-picked by the American occupation forces rather than elected or appointed by the Iraqi population. While this undoubtedly weakened the legitimacy of the resulting constitution, it does not imply that the Iraqi actors involved were mere American marionets. The Kurds, in particular, used the Americans for their own purposes as much as they were used by them. The Kurdish parties were at a decisive advantage in the constitutional process not only because, unlike any other opposition group, they had been able to consolidate their rule and their territories for over a decade, but also because, as Arato[51] observes, they had formed a united front in the negotiations despite their long-standing rivalry and persistent differences. They realized they could not hope to push for independence but made it clear that they would not settle for anything less than federation, knowing they were in a position to make such a demand.

Some members of the TAL drafting committee, like Adnan Pachachi's representative Feisal Istrabadi, had vehemently objected to any federal or consociational provisions in the federal constitution;[52] but they were outmaneuvered by the backroom deals between Americans, the Kurdish parties, and Shi'a parties. Kurdish leverage was further increased by the fact that during the TAL negotiations, CPA chief Paul Bremer had opened direct talks with the Kurdish leadership alongside the formal negotiations.[53]

Moreover, the Kurdish parties, unlike their Shi'ite counterparts (let alone the Sunni Arabs), were helped by an international team of experienced international law experts in constitutional and international law. Foremost among these advisers was Brendan O'Leary, who as said was a staunch defender of consociationalism. Thus, in the 2005 volume already mentioned above, O'Leary forcefully argues that there is no workable alternative to "combining federal and consociational principles"[54] and claims that durably democratic multi-national federations have "consociational practices" like power sharing in the executive, proportional representation of groups in the state sector, and minority veto rights.[55] He rejects calls by Arab liberals like Istrabadi for a purely administrative division of Iraq into federal units of a non-ethnic and nonsectarian character, and he summarily dismisses Kanan Makiya's much-debated proposal for a non-ethnic Iraqi federation based on territoriality rather than ethnicity.[56] Such proposals, he rather

rhetorically claims, are "in de facto alliance" with anti-Kurdish and anti-federalist policies of neighboring Turkey. Even more hyperbolically, he claims that it amounts to a proposal "for the reextinction of Kurdistan."[57]

As a matter of fact, however, consociationalism is not the most obvious solution for the status of the Kurds in Iraq. The Kurdish population is concentrated in the north of the country, which would be germane to a territorially based federation or confederacy rather than a consociation. Instead, consociationalism in the classical sense of "pillarization" would have seemed more appropriate to deal with Iraq's sectarian divides rather than with ethnic antagonisms—most importantly, of course, the Sunni–Shi'ite distinction, which at that time was rapidly becoming polarized and politicized, and indeed murderously violent.[58] Whatever consociationalism one may find in the 2005 constitution, however, concerns not primarily the relation between Sunnis and Shi'ites but between Kurds and Arabs; worse, the constitution actually reflects the *exclusion* of, rather than a consociation with, the Sunni Arabs. As is well known, Iraq's Sunni Arabs, following their boycott of the January 2005 elections, were in fact excluded for the negotiations leading up to the new constitution. Initially, they were granted observer status in the negotiations, but they were left out of the subsequent informal barter between American, Kurdish, and Shi'ite representatives, or what Dodge[59] has called the "exclusive elite pact" between the most powerful Kurdish and Shi'ite parties.

Several other elements are notable for their absence from the constitution, even in places where it clearly concerns the status of the Kurds and of the Kurdistan Region: first, the principle of the mutual veto; second, the right to secession; and third, and perhaps most importantly from a consociational perspective, a mechanism or institution for resolving conflicts between central and regional authorities. Although a transitional court was established as part of the TAL, and although the new constitution called for the creation of a supreme court, neither the successive Iraqi PMs nor the successive Kurdistan Region presidents appear to have been particularly interested in appealing to constitutional principles or institutions (most importantly, the new federal supreme court) as a way of resolving outstanding disputes. It was not until February 2022 that the Iraqi federal court, newly headed by judge Faiq Zaydan, starting playing a more active—and, some would say, activist—role in Erbil–Baghdad interactions. Thus, on February 15, the court ruled that the Kurdistan Regional Government (KRG)'s independently negotiated oil contracts were unconstitutional. Predictably, Kurdish leaders, like former KRG president Barzani, condemned the ruling as "politicized," but the Kurds realized they were bound to abide by the court's rulings.[60] All of this suggests that both the new constitution and the federal constitutional court were seen, or used, as tactics or tools in the ongoing power struggles between post-Saddam's new elite factions, rather than consensus-based institutions and mechanisms for peaceful conflict resolution.

The federal and consociational aspects of the 2005 federal constitution, then, are oddly asymmetrical: the federal items are clearly meant to apply to the Kurds only, since—apart from the Islamic Supreme Council of Iraq's August 2005 tactical gambit in calling for a federal Shi'ite region—neither Sunni nor Shi'ite Arabs have ever seriously demanded their own federal regions. Accordingly, Kurdistan is the sole federal region, the other entities being governorates, which (with a number of significant exceptions)

are primarily administrative units with a territorial rather than ethnic or sectarian status. Likewise, the consociational principles in the constitution, like power sharing and proportionality, would seem more appropriate for the accommodation and reconciliation of Sunnis and Shi'ites, but they are in fact *absent* in dealing with sectarian groups and instead appear tailor-made to accommodate Kurdish demands. O'Leary acknowledges this asymmetry and argues that as a result, the Kurdistan Region could evolve into a "federacy," that is, a spatially distinctive semi-sovereign governmental unit, which is culturally different from the other units in the federation.[61] He does not, however, appear to consider the exclusion of the Sunni Arabs a major problem—a decidedly odd position for an avowed consociationalist.

One might conclude, then, that the consociationalism implied in Iraq's new constitution suffered from a number of fatal birth defects, most importantly the exclusion of the Sunni Arabs. But does that make consociationalism inherently flawed, or inherently implausible as a basis for a democratic, peaceful, and pluralist Iraq? The easy answer to that objection is that consociation *presupposes* rather than *creates* democratic institutions; but this answer is not available to O'Leary and the later Lijphart, who precisely argue that consociation may help to bring about a liberal democracy where previously there was none. A more substantial answer would be that consociation *could* have worked, if only the Sunni Arabs had not been excluded and if the other elite segments had abided by constitutional principles; but the country's enduring Leninist heritage—ignored by both O'Leary and Lijphart—should have given little reason for optimism on this point. It may be no coincidence that in later writings, even those preceding the 2011 Arab uprisings, O'Leary is much more cautious in his claims concerning consociationalism for Iraq, and that in a 2019 overview of "consociationalism in the present," he does not mention the Iraqi experience at all. Iraq, in short, has not exactly been a success story of consociational democratization.[62]

More important for our purposes here, however, are the actual status and functioning of the constitution. Whatever its merits or demerits, it remained a dead letter in a number of crucial respects. Thus, the famous—or notorious—Article 140, appealing to Article 58 of the TAL (in itself an odd move for a constitution), calls for the normalization of interethnic relations and for a census in "Kirkuk and other disputed territories," after which a referendum about their final status should be held by 31 December 2007. None of these provisions were implemented.

Thus, the neglect of Article 140 suggests that the 2005 constitution was itself very much part of ongoing negotiations, or a tactic in an ongoing power struggle, rather than the enshrined and agreed-upon foundation of a new democratic Iraqi state. Lack of progress on this article not only lead to a quick deterioration in relations between Kurds, Turkmens, and Arabs in Kirkuk, and between Sunnis, Shi'ites, Christians, and Yezidis in the area around Mosul. It also hindered the completion of post-Saddam Iraq's constitutional process, in particular the establishment and rigorous definition of an upper house of parliament and of a constitutional court. In his postscript to the 2005 volume, however, O'Leary still expresses a robust optimism concerning the prospects of consociationalism in Iraq and concerning the unification (and democratization) of the Kurdistan Region under then-regional prime minister Nechirvan Barzani,

cavalierly brushing off even Gareth Stansfield's[63] cautious, not to say timid, acknowledgment in the same volume that the region was, and for practical reasons should remain, geographically divided between KDP and PUK.

Pace O'Leary, however, even in 2004 the Kurdistan Region could not by any stretch of the imagination be called a functioning or emerging democracy, nor even a potentially unitary territory. No regional elections had been held since 1992, and it was—or should have been—clear to any observer that since the outbreak of infighting in 1994 if not earlier, the regional parliament and the civilian government had been largely sidelined by the KDP and PUK politburos. Even after the effective end of the intermittent infighting in 1997, the region had remained split up into two Leninist one-party statelets under the hegemony of, respectively, KDP and PUK.[64] In proper Leninist tradition, both parties had made sustained and concerted efforts to either co-opt or marginalize other parties in their territories and to monopolize trade unions, women's organizations, and writers and the like. In short, it took a good deal of both optimism and myopia to qualify the post-Saddam Kurdistan Region as an "emerging democracy" or a "quasi-state," as O'Leary and other sympathetic foreign observers did.[65] Analytically, the region's enduring Leninism raises the question of whether (either formal or informal) consociation is feasible in a persistently non-liberal, non-democratic setting.

The regional constitution of Kurdistan-Iraq: the absence of consociationalism

The crucial premise in O'Leary's plea for consociation in Iraq is the internal governance of the Kurdistan Region. As a normative argument for consociational democracy, it requires that the Kurdish parties are in fact the legitimate democratic representatives of the region and its population. On this point, O'Leary has no doubts: he confidently asserts that the KDP and PUK, "having resolved their civil war, are committed to a unified region, national assembly, and government."[66] Further, he recommends that the KDP and PUK form a government of national unity in Kurdistan and form a unitary alliance for the federal elections, adding somewhat disingenuously that this proposal is intended to "consolidate the democratization in Kurdistan."[67] As the developments of later years showed, however, the KDP–PUK alliance precisely *blocked* the further democratization of the region, and even in 2004, one might already have expected this to happen.

O'Leary is curiously silent, however, about consociationalism *within* the Kurdistan Region—and he is not alone in his silence. The federal and/or consociational contents, the questionable aspects of the drafting process, and the foreign-occupied settings of the 2005 Iraqi constitution have rightly attracted detailed critical attention. The new constitution for the Kurdistan Region, by contrast, has gone virtually unnoticed. One reason for this may be the fact that it was not ratified by popular referendum. Its very existence and its actual contents, however, shed a rather different light on Kurdish federal and consociational demands and on their long-term political aspirations.[68]

For our discussion, the most remarkable aspect of the regional constitution of the Kurdistan Region, drafted in 2006 and approved by the regional parliament in 2009 but never ratified, is the complete absence of consociational principles. Instead, even

though it speaks generically on behalf of "the people of Iraqi Kurdistan," it clearly implies that the Kurds are the region's main population group and that other groups are accepted, tolerated, and/or protected as "minorities" rather than recognized as federal or consociational partners. Further, Article 2 of the regional constitution unambiguously identifies Kirkuk as part of the Kurdistan Region, a claim that clearly runs counter to the spirit of Article 140 of the 2005 federal constitution even if it does not strictly speaking contradict it.[69]

The regional constitution's lengthy preamble is especially noteworthy. It opens by asserting the right to self-determination of the region's people, as recognized in the 1920 Treaty of Sèvres; next, it elaborates on the policies of suppression (which include genocide and demographic change) of "the sequential Iraqi governments." In doing so, it clearly implies that the central government's adherence to the 2005 federal constitution is a precondition for a unified Iraq. Accordingly, this document unmistakably suggests that the right to self-determination also includes the right to secession, even if this suggestion remains implicit. Both the federal and the regional constitutions also maintain the fiction that the Kurdistan Region is a unitary territorial entity. In reality, however, the region had split in two during the first rounds of KDP–PUK infighting in 1994–1995 and had effectively remained split up into two one-party statelets ever since, with Duhok and Erbil provinces under KDP rule and (part of) Kirkuk and Sulaymaniyah under PUK hegemony. Moreover, it did not have a unified regional army but two separate party militias.[70]

The question of the legitimacy of Kurdish claims, aspirations, and suggestions is not at issue here. Rather, their presence in the draft of the regional constitution suggests that the consociational and federal principles so eagerly sought by the Kurds at the national or federal level are not matched by any strongly consociational ideals at the regional level. This clearly emerges from Kelly's study. Kelly concludes that in important respects, the regional constitution "is designed to fit hand-in-glove with Iraq's federal constitution." This congruence, however, almost exclusively concerns matters of oil extraction and concession rights rather than consociational principles. Kelly notes that the regional constitution clearly paves the way for an ever-greater economic independence of the region, but he warns the Kurds against overplaying their hand in this respect.[71] Up until at least 2014, however, the region's political and constitutional history in fact shows a clear pattern of precisely such efforts to increase the region's economic independence and thereby to pave the way for political independence. Consequently, it amounts to a virtually uninterrupted series of conflicts with the federal government, at first concerning oil extraction, sale, and concessions, and in 2017 concerning the independence referendum. Neither the federal nor the regional constitution, however, nor the consociational principles and institutions found in the former, appear to have played any role of importance in these developments, suggesting that not only written constitutions but also consociational ideals themselves primarily served as tools or tactics in the power struggle at the federal level.

As noted above, the TAL set the conditions for a substantial degree of Kurdish self-rule (in particular, by paving the way for Kurdish control over new oil exploitation in the region); these were further consolidated and expanded in the 2005 constitution and were to have been finalized and consecrated in the regional constitution. The latter, however, was never ratified, despite having been approved by parliament in 2009.

Reportedly, the then American vice president Biden had persuaded the Kurdish leadership not to hold a referendum about the regional constitutions, as negotiations with Baghdad were then at a particularly delicate stage.[72]

All this suggests that, as far as the Kurdish parties were concerned, Iraq's constitutional process was indeed a tactic in a struggle for greater political autonomy and greater economic control over oil resources, with an eye on eventual independence, rather than a foundation for an enduring federal polity for a culturally and religiously diverse or divided population. As said, the legitimacy of the Kurdish desire for independence is not at issue; prima facie, according to international law the population of the Kurdistan Region would seem to be entitled to assert its right to self-determination, in view both of juridical precedents and of the region's genocidal past. What *is* at issue here, however, is the role and status of consociationalism in the constitutional negotiations and in the resulting constitutions. Everything suggests that for the Kurdish elites, consociation was not a constitutional aim, let alone a normative ideal, but rather a strategy, a stage, or a stepping stone in Kurdish efforts to achieve the ultimate goal of a fully independent state.[73] Thus, it appears that consociational principles have served as strategies in the long-standing and still ongoing power struggles among Iraq's elites rather than as shared foundations or guidelines for creating a democratic and pluralistic Iraq.

Consociation and the Kurds in Iraq: a long-term view

There is one final theoretical point to be dealt with: the country's enduring Leninist–Stalinist legacy, which provides a major analytical and normative challenge for any consociational approach to Iraq. Under Baathist rule, institutions like the Iraqi national and the Kurdish regional parliaments, the judiciary, and the constitution had at best been rubber stamps and at worst smokescreens for the regime's authoritarian and increasingly murderous Arab-nationalist policies. Likewise, in post-Saddam Iraq, institutional and constitutional arrangements were less the foundations of a functioning state than tactics or instruments in an ongoing power struggle. It now remains to explore to what extent consociational tactics, too, were part of such Leninist–Stalinist survivals.

In this context, the early 1990s experience of the Kurdistan Region gains in significance. On 19 May 1992, regional elections were held, but its results were not immediately announced. Instead, the politburos of PUK and KDP negotiated for days, not just in order to adjust the election results, but reportedly to accept the outcome in the first place.[74] The resulting power-sharing arrangement was informal in the sense discussed above, but it also went against the region's electoral process. I am not aware of any detailed discussions that analyze the Kurdistan Region's 1992 arrangements as consociational, but it could be argued that the region was in fact marked by an informal—and, indeed, implicit—consociational power-sharing agreement ever since the two most powerful parties negotiated a "fifty–fifty" division of parliamentary seats and cabinet positions in the wake of the 1992 elections.[75] This elite bargain not only overruled the actual election results but also sidelined both the regional parliament and the regional civilian government yet to be formed. Moreover, for every minister of the one party, a deputy of the other was appointed; each deputy minister reportedly had veto powers, which further weakened the cabinet vis-à-vis the KDP and PUK party politburos. In

other words, whatever consociational practices or elite bargains one finds in the post-Saddam Kurdistan Region sidelined the election results and clearly acted *against* the establishment of a functioning liberal democracy and in favor of the subsequent creation and consolidation of two Leninist one-party statelets and of the informal division of resources and, later, territory between them.[76] In fact, in August 1994, amid the KDP–PUK infighting, the leaders of both parties were heavily criticized even by members of their own parties in the regional parliament, but it was increasingly clear that the elected bodies had little leverage over the party leaders and politburos.[77]

Thus, the KDP–PUK agreement included an informal—and never published—division of cross-border trade levies, primarily of petrol products smuggled from government-held territory through the Kurdistan Region into Turkey, but also including consumption goods like cigarettes and alcohol and even duties levied on refugees leaving the region.[78] These informal arrangements between the politburos of KDP and PUK not only created an enduring culture of bypassing elected institutions and avoiding governmental accountability; it arguably also provided a model for what has been called the "informal elite pact" in post-Saddam Iraq.[79] In fact, at one point, the then president Fuad Masum openly stated that the Kurdish parties "had brought the Kurdish division of power to Baghdad."[80]

It is debatable whether one may usefully call the "fifty–fifty" arrangement consociational; in any case, even this negotiated settlement did not prove very stable. It wound up paralyzing the elected and civilian political institutions and strengthening the politburos. In April 1993, the ineffective prime minister Fuad Masum was replaced by PUK hardliner and Peshmerga commander Kosrat Rasul in a major cabinet reshuffle. The 1992 consociational arrangement did not create a more peaceful polity either: in May 1994, barely two years after the regional elections, major infighting erupted between KDP and PUK, also involving other parties like, most importantly, the Salafi-jihadist Islamic Movement of Iraqi Kurdistan (IMIK). The infighting came to an end in 1997, with a propaganda war between the two continuing for even longer; a measure of stability was only achieved under considerable American pressure, in the so-called Washington Agreement of September 1998. Superficially, this agreement may be seen as an attempt to formalize, or institutionalize, the 1992 informal consociation and thereby to end armed conflict, but such a reading does not stand up to closer scrutiny. The agreement may be called consociational to the extent that it calls for a redistribution of revenues between the two parties, but it led to the further marginalization of civilian politics. Although it called for new regional elections by July 1, 1999, no such elections would be held until after the 2003 war and the establishment of a new constitutional order. Subsequent KDP–PUK agreements, like the 2003 Sari Rash Agreement, the 2006 KRG Unification Agreement, and the 2007 Strategic Agreement, were signed after this sea change; clearly, they reflect the two parties' desire to act as a unified force both on the regional and on the national stage. In many respects, however, these agreements remained a dead letter. They were implemented at best partially and were soon rendered outdated by subsequent developments, like the breaking off of the Gorran movement from the PUK in 2009 and the subsequent PUK–Gorran reunification in 2016. One might be tempted to call these agreements attempts at formalizing or institutionalizing existing informal consociational arrangements, but there is nothing to indicate that its signatories saw them as more than temporary expedients. Instead, they appear to be

but a subordinate part of the ongoing strategic maneuvering, with the added effect of further sidelining, if not entirely overruling, any democratic electoral processes.[81] The regional parliament did not reconvene, and no new elections would be held until 2005. Instead, both parties turned the territories under their control into one-party statelets, undermining an independent judiciary and hindering any independent press.

One might be tempted to argue that the KDP–PUK consociation might have proved more stable if it had been backed by more solid liberal democratic institutions, but the point of the above is precisely that their fifty–fifty bargain actually *undermined* the emergence of any civilian democratic polity and weakened institutions like the regional parliament and government. Concerning the main analytical (and policymaking) point to be discussed here, namely the question whether (formal or informal) consociational arrangements *presuppose* stable and legitimate institutions or, conversely, may *create* or consolidate such formal institutions, then, it should be clear that the Kurdish experience in Iraq does not in any way confirm the latter hypothesis.

More generally, consociational arrangements in post-Saddam Iraq, whether between Kurds and Shi'ites or between KDP and PUK, have hardly contributed to any stable or peaceful polity. In fact, they generally had the opposite effect: both Iraq at large and the Kurdistan Region are marked by pervasive corruption, by the stagnation and inefficiency of civilian politics, by recurrent waves of politically motivated violence and of propaganda wars between the various actors—and by an apparent inability or unwillingness to resolve conflicts by peaceful means.[82] The major moments in these conflicts are the 2011 protests against both the Baghdad government and the KRG, set against the background of the Arab uprisings; the complete breakdown of Baghdad–Erbil relations in 2014 and the Islamic State (IS)'s meteoric rise to power, not by coincidence occurring in the same year; and the 2017 referendum for independence of the Kurdistan Region. All three, it would appear, have turned out to strengthen existing informal consociational arrangements rather than radically challenging them.

In the wake of the chain reaction of revolts that spread throughout the Arab world in the spring of 2011, protests also erupted in Iraq, both against the al-Maliki's government and against the KRG. In the Kurdistan Region, protests were especially vocal in the city of Sulaimaniyah. When protestors gathered in front of the KDP headquarters there, shots were fired from inside the building, leaving several dead.[83] The KDP was quick to blame the protests on machinations of Gorran party, which it subsequently ousted not only from the regional government but also from the parliament in Erbil. Likewise, al-Maliki systematically misrepresented—and delegitimized—the protests as mere expressions of Sunni sectarianism, if not jihadist violence.

These tactics appear to have been largely successful, both in the Kurdish North and in Iraq at large—but they only led to further instability. In May 2014, the al-Maliki government froze payments of the 17% share of the federal budget earmarked for the Kurdistan Region, in protest of the KRG's concluding an oil deal with Turkish company General Energy that completely bypassed Baghdad. The intensifying conflict between Barzani and al-Maliki to some extent obscured the real character of not only the "Arab uprising" (which, in fact, also reached the Kurdish-populated and Kurdish-dominated parts of Iraq) but also exacerbated the sectarianization of local conflicts, culminating in the meteoric rise of, and subsequent military campaign against, the so-called IS.

IS provided a convenient shift away from any attention for the elites' failings. Even the violent jihadism that IS espoused, however, may be read anew in the light of the elite pact created between the dominant Shi'a and Kurdish parties. Remarkably, despite its rhetoric of being a properly Islamic state (*dawla*) and of reinstating the caliphate (*khilâfa*), IS never actually sought recognition by any other state, let alone trying to become a UN member, nor, it should be added, did it ever make any serious or sustained effort to conquer the Kurdistan Region or the Shi'ite-dominated parts of Iraq, let alone directly confronting either the Syrian regime or the Turkish state bordering on its territory. Instead, the IS offensive may be seen as a violent attempt to break into the Kurdish–Shi'ite elite bargain, to carve out a separate autonomous territory under Sunni Arab hegemony, and to appropriate a share of power and revenues. Put differently, and somewhat provocatively, the rise and fall of IS may also be interpreted as the hitherto most violent tactic, or episode, in the ongoing intra-elite power struggle that is reflected in Iraq's informal consociation.

Finally, the 2017 referendum on Kurdish independence expressed an intention to break away from post-Saddam Iraq's consociational arrangement, but ironically, it wound up having precisely the opposite effect of strengthening this arrangement and of considerably weakening the Kurdish position in the process.[84] Over the years, Kurdish behavior toward Baghdad had consistently displayed a profound ambivalence toward the Iraqi state and its legitimacy, even though its constitutional arrangements in no small measure reflect Kurdish demands and negotiating tactics. The 2017 referendum, however, undid much of the diplomatic and political gains the Kurds had made since 2005, if not 1992. Constitutionally, there was much to object against in the referendum. For one thing, it was called for by a regional president whose mandate had already run out four years earlier and had been extended by KDP–PUK backroom dealing rather than constitutional means; for another, it was not preceded by referenda on either the disputed territories or the regional constitution. As skilled as the KRG's negotiating tactics in 2004 and 2005 had been, then, as poorly timed and executed was its handling of the 2017 referendum. Most importantly, and perhaps fatally for the entire undertaking, the referendum was also held in the contested territories—as if the referenda called for by the 2005 constitution had already been held and decided in the KRG's favor. Here, once again, constitutional principles and arrangements appear to have been seen, and used, as negotiating tactics rather than normative principles.[85]

In this respect, it may also be significant that neither IS in 2014 nor the Iraq army in the wake of the 2017 referendum made any serious or sustained effort to attack the Kurdistan Region proper; instead, both focused their military efforts on frontier areas and disputed territories like Sinjar, Ninawa plain, and Kirkuk—as if IS warriors, the government-led army, and the Popular Mobilization Forces militias were concerned with readjusting the existing elite bargain and claiming a part of the spoils for themselves rather than radically altering or completely overturning it. With only slight exaggeration, then, one might argue that the short-lived territorial existence of IS constitutes Iraq's most radical consociational experiment to date. In the longer run, however, Kurdish consociational tactics since 1992 (in part informal, and originally implicit) appear more momentous as a model for consociationalism in Iraq as a whole.

Conclusion

Thus, the defeat of IS did not quite mark a return to a peaceful and inclusive, let alone more democratic, Iraq. Instead, among the main actors one notes a shift toward new strategies in the existing intra-elite conflicts—most importantly, court battles (witness, in particular, the newly activist constitutional court) and mob politics (witness, for example, the repeated attempts by Moqtada al-Sadr supporters to occupy the Green Zone and the parliament building). As noted above, the federal constitutional court emerged as a major player in the volatile interactions between Baghdad and Erbil in early 2022. The very fact that it did so only seventeen year after the drafting and approving of the federal constitution speaks volumes about the weakness and precariousness of Iraq's institutions. Perhaps, then, we are simply misguided in thinking about contemporary Iraq in primarily institutional and/or (liberal) constitutional terms. Both the 2005 Iraqi constitution and the informal *muhassasa* system that crystallized in later years were less the expression of the will of the sovereign Iraqi people than strategies in the power struggle between segments of the new Iraqi elite. Thus, regardless of whether we could or should qualify it as "consociational," Iraq's constitution is still visibly predicated on the political exclusion or marginalization of Sunni Arabs even as of the spring of 2022. Neither the (partly) Sunni Arab insurgence of 2004–2007 and its suppression in the "Surge" nor the popular protests of 2011 and after, nor even the meteoric rise and violent fall of IS, have ever led to any substantial constitutional reform with the aim of politically incorporating and integrating the Sunni Arab population into the existing informal consociational arrangements, let alone into the formal democratic institutions.

Toby Dodge[86] has argued that neither al-Maliki's increasing authoritarianism nor failed American policy explains the instability and the recurring waves of insurgent violence in Iraq. Rather, he argues, it was the *muhassasa ta'ifiyya*, or ethnic and sectarian apportionment agreed upon by the Shi'ite and Kurdish members of the IGC, that has yielded an inherently unstable system and hence a permanent potential for violence. He qualifies this elite bargain as an "informal consociationalism." The argument that this "exclusive elite pact" is the main structural cause of Iraq's violence and instability goes a long way in accounting for the repeated waves of jihadist insurgency, as primarily driven by Sunni Arabs excluded from the pact. It has more difficulty, however, in explaining the recurring tensions at the regional level between KDP and PUK and at the national level between the KRG and al-Maliki's Shi'ite-dominated government in Baghdad that have emerged from around 2010 on, given that both the Kurdish and the Shi'ite parties were the elite factions who most profited from this arrangement and who had most to lose from its failure. In fact, though, it was precisely this renewed confrontation which created the instability, and indeed the power vacuum, in Northern Iraq into which IS so adroitly stepped, first conquering the city of Mosul in June 2014 and subsequently overrunning Sinjar and the Ninawa plain in its August 2014 offensive against the disputed territories.[87]

Thus, the empirical question remains whether the informal consociation between Kurds and Shi'ites can explain the recurring tensions between Erbil and Baghdad, and the theoretical question remains whether "informal consociation" as identified by Dodge and others is not, or should not be, a contradiction in terms for Lijphart's highly

institutionalist and formalist view of consociationalism. Lijphart's later writings[88] allow for informal consociational arrangements even in the absence of liberal democratic institutions or constitutional arrangements, but one may ask—and it has been asked—whether such modifications do not transform the notion of consociationalism beyond recognition and/or empty it of all empirical content, let alone explanatory value. In the case of post-Saddam Iraq, informal consociation has arguably been a source of conflict at least as much as a force toward stability and integration. On a practice account, the very distinction between formal (or institutionalized) and informal consociation loses in importance. As I have argued above, formal institutions like the regional and national parliaments and cabinets and the federal constitutional court and constitutional arrangements at both the regional and the national level may themselves be seen as tactics or strategies in intra-elite struggles.

But even apart from questions concerning the analytical usefulness of the notion of consociationalism, one may also ask whether this terminology does not tacitly introduce unwanted or distorting normative assumptions. Analytically, calling informal elite bargains a form of consociation may or may not be insightful, but normatively, it appears to bestow upon such informal arrangements a greater legitimacy than they have or deserve. Since 1992 at the latest, one might say, the Kurdistan Region has been marked by consociational *practices* of power sharing, proportionality in jobs, and segmental autonomy, but hardly by consociational *ideals* of democracy and peaceful conflict resolution either at the regional or at the federal level. The label "consociationalism" also obscures or whitewashes the profoundly undemocratic Leninist aspects of the current arrangement. The de facto division of the Kurdistan Region into KDP and PUK spheres of influence, which was never really changed either by electoral processes or by external mediation, and which at the time of writing is still very much a reality, is itself an "informal consociational arrangement." One might even argue that the region's political landscape has *always* known such an informal consociation ever since the 1992 regional elections—and, in fact, at the expense of electoral processes and civilian politics. Thus, analyzing consociation in practice-theoretical terms as a strategy in intra-elite struggles does more justice to the Kurdish experience in Iraq than viewing it in institutional or constitutional terms.

Despite its abstracting away from normative assumptions, an analysis of consociational arrangements in terms of practices may also point to a normative limitation of consociational power sharing: do such arrangements aim at the inclusion or emancipation of hitherto marginalized groups or rather continue to exclude them? In the case of post-2003 Iraq, the latter clearly is the case, and this exclusion, as noted, has been a major underlying cause for the recurring, and increasingly violent, waves of Sunni Arab insurgency.

The ultimate theoretical challenge for consociational models, then, is Iraq's enduring Leninist (and, in part, Stalinist) heritage. In such top-down settings, one may well ask whether "consociation" is more than a euphemism for informal elite pacts that sideline electoral politics and instrumentalize, consolidate, and exacerbate ethnic and/or sectarian differences for their own gain. Just as the Kurdish–Shi'ite elite pact has contributed to the sectarianization of Iraqi politics and the violent insurgency among Sunni Arabs, one may argue, the KDP–PUK elite pact and the policies implemented in its wake have

contributed to the strengthening of cleavages between speakers of the Badini and Sorani dialects within the region; between Kurds and "minorities" in the contested regions; and between Kurds and Arabs in the country at large. Conversely, it should be added, protests against these elite bargains, and against the resulting corruption and nepotism, have generally been non-regionalist, non-separatist, and nonsectarian. Political analyses of elite politics in the region, then, could benefit not only by treating consociation in terms of practices and tactics rather than rules, laws, institutions, and constitutional arrangements but also by more systematically exploring the different forms and strategies of protest against Iraq's new elites—whether by Iraq's demonstrators in the streets of Baghdad or by Iraqi refugees in the seas and forests on the borders of the European Union.

Notes

1. See especially Brendan O'Leary, John McGarry, and Khaled Salih, eds., *The Future of Kurdistan in Iraq* (Philadelphia, PA: University of Pennsylvania Press, 2005).
2. Toby Dodge, "Iraq's Informal Consociationalism and Its Problems," *Studies in Ethnicity and Nationalism* 20, no. 2 (2020): 145–52; See also Ibrahim Aziz, "Consociationalism in Iraq since 2003" (PhD dissertation, University of Reading, 2018).
3. Matthijs Bogaards, "Iraq's Constitution of 2005: The Case Against Consociationalism 'Light'," *Ethnopolitics* 20, no. 2 (2021): 186–202.
4. Cf. Dodge, "Iraq's Informal Consociationalism."
5. In late 1992, the regional parliament adopted a resolution that in future negotiations with the Iraqi regime, it would not accept anything less than federation; but this appears to have been a move in the rivalry with the PKK rather than a concrete step toward a settlement with Baghdad (interview, senior PUK representative, Shaqlawa, November 1992).
6. Interviews, Salahuddin, October–November 1992.
7. O'Leary et al., *The Future of Kurdistan.*
8. Ibid., vii.
9. Peter Galbraith, *The End of Iraq: How American Incompetence Created a War Without End* (London: Simon & Schuster, 2006), 262.
10. Paul Dixon, "Is Consociational Theory the Answer to Global Conflict? From The Netherlands to Northern Ireland and Iraq," *Political Studies Review* 9, no. 3 (2011): 309–22, 313–5.
11. In reaction, former constitutional negotiator Feisal Amin al-Istrabadi said that "the idea that an oil company was participating in the drafting of the Iraqi Constitution leaves me speechless" (quoted in James Glanz and Walter Gibbs, "U.S. adviser to Kurds stands to reap oil benefits," *New York Times*, 11 November 2009; available at https://www.nytimes.com/2009/11/12/world/middleeast/12galbraith.html; accessed 24 February 2023). In a statement published in the *New York Review of Books*, Galbraith denied any wrongdoing while apologizing for not disclosing his business interests in the region (https://www.nybooks.com/articles/2010/01/14/a-statement-by-peter-w-galbraith/; accessed 24 February 2023).
12. See, among others, Arend Lijphart, "Consociational Democracy," *World Politics* 21, no. 2 (1969): 207–25; Arend Lijphart, "Consociation and Federation: Conceptual and Empirical Links," *Canadian Journal of Political Science* 12, no. 3 (1979): 499–516; Arend Lijphart, "Constitutional Design for Divided Societies," *Journal of Democracy* 15, no. 2 (2004): 96–109; Arend Lijphart, *Patterns of Democracy*, 2nd ed (New Haven, CT: Yale University Press, 2013).
13. Lijphart, "Consociation and Federation," 500.
14. Ibid.
15. See e.g. Ibrahim Halawi, "Consociational Power-Sharing in the Arab World as Counter-Revolution," *Studies in Ethnicity and Nationalism* 20, no. 2 (2020): 128–36.

16. Cf., for example, Lijphart, "Consociational Democracy," 211, 219; Lijphart, "Consociation and Federation," 503.
17. See, for example, Lijphart, "Consociational Democracy," 216; Lijphart, "Consociation and Federation," 500, 509 *passim*.
18. Lijphart, "Consociation and Federation," 509.
19. Lijphart, "Constitutional Design for Divided Societies," 94.
20. Ibid., 97; Cf. Dixon, who castigates Lijphart's primordialist view of national identity and communal difference as "consociationalism's original sin" (Dixon, "Is Consociational Theory," 312); See also Paul Dixon, "Power-Sharing in Deeply Divided Societies: Consociationalism and Sectarian Authoritarianism," *Studies in Ethnicity and Nationalism* 20, no. 2 (2020): 117–27.
21. On the Leninist tradition of Baathist Iraq as a one-party state, see Peter Sluglett and Marion Farouk-Sluglett, *Iraq Since 1958: From Revolution to Dictatorship* (London: I.B. Tauris, 1990), Ch. 4–5; on the Stalinist personality cult surrounding Saddam and the systematic use of terror as a tool of government see, most famously if somewhat controversially, Samir al-Khalil [Kanan Makiya] *Republic of Fear: The Politics of Modern Iraq* (Berkeley: University of California Press, 1989).
22. Cf. Michiel Leezenberg, "Politics, Economy and Ideology in Iraqi Kurdistan since 2003: Enduring Trends and Novel Challenges," *Arab Studies Journal* 23, (2015): 154–83.
23. Dixon, "Is Consociational Theory."
24. Ibid., 312.
25. Arend Lijphart, "The Wave of Power-Sharing Democracy," In *The Architecture of Democracy; Constitutional Design, Conflict Management, and Democracy*, edited by Andrew Reynolds (Oxford: Oxford University Press, 2002), 37–54.
26. Ibid., 47.
27. Ibid., 53–4.
28. Ibid., 46.
29. Lijphart, "Consociational Democracy."
30. Ibid., 214.
31. Ibid., 216.
32. See, among others, Katharine Adeney and Wilfried Swenden, "Power-Sharing in the World's Largest Democracy: Informal Consociationalism in India (and Its Decline?)," *Swiss Political Science Review* 25, no. 4 (2019): 450–75; Aleksandra Zdeb, "Accommodating Liberal Consociations: The District Brčko Case and the Role of Informal Institutions in the Consociational Model," *Ethnopolitics* 21, no. 5 (2022): 517–37.
33. Lijphart, "Consociation and Federation," 506.
34. Daniel J. Elazar, "Federalism and Consociational Regimes," *CrossRef Listing of Deleted DOIs* 15, no. 2 (1985): 17–34, 19, 23.
35. Adeney and Wilfried Swenden, "Power-Sharing."
36. Zdeb, "Accommodating Liberal Consociations."
37. Gretchen Helmke and Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda," *Perspectives on Politics* 2, no. 04 (2004): 725–40.
38. As an example of this, Bogaards has argued that "consociationalism-light," i.e., a combination of temporal and transitional and liberal (as opposed to corporate) consociationalism, has been seen as preferable to the permanent and corporate consociation that has widely been seen as a failure in, for example, Bosnia and Herzegovina (Bogaards, "Iraq's Constitution of 2005"). In Iraq, however, it has promoted self-rule at the expense of shared rule, and consociation has in fact been weakened by the actions of politicians like al-Maliki. Yet, he ends on an optimistic note by stating his belief that the existing constitutional (i.e., formal) framework can be changed for the better (2019, 195).
39. Cf., for example, Michael Gilsenan, "Against Patron-Client Relations," in *Patrons and Clients in Mediterranean Societies*, edited by E. Gellner and J. Waterbury (London: Duckworth, 1977).

40. Cf. Michiel Leezenberg, "Urbanization, Privatization, and Patronage: The Political Economy of Iraqi Kurdistan," in *The Kurds: Nationalism and Politics*, edited by Faleh Abdul-Jabar and Hocham Dawod (London: Saqi Books, 2007), 151–79.
41. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1978); Pierre Bourdieu, *The Logic of Practice* (Cambridge: Polity, 1990); Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Oxford: Polity Press, 1992). For an introductory discussion of practice approaches focusing on religious practices, see Michiel Leezenberg, "Introduction: Practice Turns in the Study of Religion," in *Gestures: The Study of Religion as Practice*, edited by Michiel Leezenberg, Anne-Marie Korte and Martin van Bruinessen (New York: Fordham University Press, 2022), 1–38.
42. Foucault, *Discipline and Punish*.
43. Michel Foucault, *"Society Must Be Defended": Lectures at the Collège de France, 1975-76* (London: Penguin, 2004), 87–114; cf. Foucault, *Discipline and Punish*, 26–8.
44. Bourdieu, *The Logic of Practice*.
45. Foucault, *Discipline and Punish*, 26–8.
46. Ibid.; cf. Louis Althusser, *On Ideology* (London: Verso Books, 2004), 19.
47. Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology*, 102; emphasis added.
48. A note on sources: much of the descriptive material presented here is based on personal observations and interviews, in particular surrounding the May 1992 regional elections and the inter-party negotiations that followed in its aftermath, and on interviews with major and minor actors over the years. Where necessary, I refer to interviews with local informants conducted during this period. I also participated in the 2002 Odense conference, but received no payment for this activity.
49. Apart from Dodge's more recent writings, earlier discussions of consociation in Iraq have in fact tended to focus on the constitutional process rather than on any informal agreements.
50. See in particular Andrew Arato, *Constitution Making Under Occupation: The Politics of Imposed Revolution in Iraq* (New York: Columbia University Press, 2009).
51. Ibid., 141.
52. Cf. Ibid.
53. Ibid., 135–45; Paul Bremer, *My Year in Iraq* (New York: Simon & Schuster, 2006, Ch. 11; Michael J. Kelly, "The Kurdish Regional Constitution within the Framework of the Iraqi Federal Constitution: A Struggle for Sovereignty, Oil, Ethnic Identity, and the Prospects for a Reverse Supremacy Clause," *Penn State Law Review* 114, no. 3 (2010): 707–808, 726).
54. Brendan O'Leary, "Power-Sharing, Pluralist Federation, and Federacy," in *The Future of Kurdistan in Iraq*, edited by Brendan O'Leary, John McGarry, and Khaled Salih (Philadelphia, PA: University of Pennsylvania Press, 2005), 47–91.
55. Ibid., 73.
56. Kanan Makiya, "A Model for Post-Saddam Iraq," *Journal of Democracy* 14, no. 3 (2003): 5–12.
57. Much like Lijphart, O'Leary also appears to identify the political conflict between the successive Arab governments and the Kurdish movement and between, in particular, the Baathist regime and the Shi'ite Da'wa Party during the late 1970s, as based on primeval social cleavages between, respectively, the Arab and Kurdish population groups at large and between Sunni and Shi'ite Arabs.
58. Cf. Toby Dodge and Renad Mansour, "Sectarianization and De-Sectarianization in the Struggle for Iraq's Political Field," *The Review of Faith & International Affairs* 18, no. 1 (2020): 58–69. In fact, Elazar already argues that consociation, unlike federalism, does not typically involve the territorial organization of constituent units (Elazar, "Federalism and Consociational Regimes").
59. Dodge, "Iraq's Informal Consociationalism," 149.
60. For an extended English-language summary of the court's ruling, see "Kurdish Regional Government's Production Sharing Contracts have been ruled unconstitutional by Iraq's highest court," *DWF*, 17 February 2022, available at https://dwfgroup.com/en/news-and-insights/insights/2022/2/krgs-production-sharing-contracts-have-been-ruled-unconstitutional-

by-iraqs-highest-court#:~:text=KRG's%20oil%20and%20gas%20contracts,Unified%20110%2FFederal%2F2019. (accessed June 1, 2022); for Barzani's reaction, see "Iraq federal court accused of politicization," *al-Monitor*, March 3, 2022, available at https://www.al-monitor.com/originals/2022/03/iraqi-federal-court-accused-politicization (accessed June 1, 2022).

61. O'Leary, "Power-Sharing, Pluralist Federation, and Federacy," in *The Future*, 79.
62. Brendan O'Leary, *How to Get Out of Iraq with Integrity* (Philadelphia, PA: University of Pennsylvania Press, 2009); Brendan O'Leary, "Iraq as a New Multinational State: A Cautious Defence," in *After the Nation?*, edited by edited by K. Breen and S. O'Neill (New York: Palgrave MacMillan, 2010), 60–83; Brendan O'Leary, "Consociationalism in the Present," *Swiss Political Science Review* 25, no. 4 (2019): 556–74.
63. Gareth Stansfield, "Governing Kurdistan: The Strength of Division," in *The Future of Kurdistan in Iraq*, edited by Brendan O'Leary, John McGarry, and Khaled Salih (Philadelphia, PA: University of Pennsylvania Press, 2005), 195–218; Brendan O'Leary, "Postscript: Vistas of Exits from Baghdad," ibid., 282–307.
64. Leezenberg, "Politics, Economy and Ideology," 166.
65. Cf., for example, Gareth Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy* (London: Routledge, 2003); Denise Natali, *The Kurdish Quasi-State: Development and Dependency in Post-Gulf-War Iraq* (Syracuse NY: Syracuse University Press, 2010).
66. O'Leary, "Power-Sharing, Pluralist Federation, and Federacy," in *The Future*, 80.
67. Ibid.
68. The only substantial study of the regional constitution in a Western language is Kelly, "The Kurdish Regional Constitution"; in the appendix, it includes the draft text in English translation.
69. Cf., Ibid., 746.
70. Cf. Leezenberg, "Politics, Economy and Ideology," 163–7.
71. Kelly, "The Kurdish Regional Constitution," 769–70.
72. Ibid., 709; At the time of writing, the regional parliament is reportedly engaged in drafting a new constitution for the Kurdistan Region.
73. The Kurdistan Region did not even have independent juridical institutions. Kelly, basing himself on earlier HRW reports, bemoans the region's "complete lack of judicial independence," interpreting it as the result of enduring tribal patronage and nepotism (Kelly, "The Kurdish Regional Constitution," 741), but one may also read it as resulting from a persistent Leninist tradition.
74. Personal observations and interviews, Duhok, Salahuddin, Erbil, May–June 1992
75. For more details cf. Ruud Hoff, Michiel Leezenberg, and Piet Müller, *Elections in Iraqi Kurdistan: An Experiment in Democracy* (Amsterdam: SNK/Pax Christi, 1992), 31–2.
76. Michiel Leezenberg, "Irakisch-Kurdistan seit dem zweiten Golfkrieg," in *Ethnizität, Nationalismus, Religion und Politik in Kurdistan*, edited by C. Borck (Münster: LIT Verlag, 1997), 45–78, 57–60.
77. Personal observations, Kurdistan Regional Parliament, Erbil, August 1994.
78. Cf. Leezenberg, "Irakisch-Kurdistan seit dem zweiten Golfkrieg," in *Ethnizität*.
79. Dodge, "Iraq's Informal Consociationalism."
80. As quoted by Toby Dodge from an interview with the former President of Iraq and senior Kurdish politician, Fuad Masum, Baghdad, 30 May 2021.
81. For the English-language text of the Washington Agreement, see Stansfield, *Iraqi Kurdistan*, 193–7; the text of the 2007 Unification Agreement is available from https://www.peaceagreements.org/view/1894?fbclid=IwAR0eXPY7aZIHUdp0XBLjrlUuTfquJz0W0EU99kf72VN_LfiNqDhcCVKwpN8 (accessed 30 December 2022). For a discussion of the subsequent strategic maneuvering, see Mohammad Salih, "The New Politics of Iraqi Kurdistan," https://www.washingtoninstitute.org/policy-analysis/new-politics-iraqi-kurdistan (accessed 30 December 2022).
82. Thus, Iraq ranks #157 out of 180 on Transparency International's 2022 Corruption Perception Index; the Kurdistan Region is not listed separately but can hardly be expected

to rank much higher, given the structural similarities with the Baghdad-controlled region (https://www.transparency.org/en/cpi/2022; accessed 24 February 2023).

83. Interviews, eyewitnesses, Sulaymaniyah, May 2011.
84. There is already a substantial literature on the referendum, much of it rather partisan and/or apologetic, but few if any of these studies address the underlying rivalries and tactical maneuvering between, and within, the various parties in any detail. For some critical sidelights, see Michiel Leezenberg, "The Future of Northern Iraq's Minorities," in *The Future of the Kurds/Dahatewey Kurd*, edited by Ferdinand Hennerbichler (Sulaimaniya: Sulaimaniya University Press, 2021), 261–73, esp. 264–8.
85. In the run-up to the referendum, various Kurdish and pro-Kurdish interlocutors dismissed post-Saddam Iraq as a "failed state," suggesting that the Kurds would be better off without it. It should be noted, however, that by 2017, the Kurdistan Region had fared little better as a state-like institution than federal Iraq: its parliament had basically been sidelined between 1994 and 2005 and had once again largely ceased functioning since at least 2015. The regional government also appeared unable to protect either the livelihood or even the lives of the peoples under its control, witnessed by its failure to pay salaries and its inability, or unwillingness, to protect the inhabitants of Sinjar and Ninawa plain against the IS onslaught.
86. Dodge, "Iraq's Informal Consociationalism;" See also Dodge, *Iraq: From War to a New Authoritarianism* (London: The International Institute for Strategic Studies, 2012).
87. It remains an open question whether the struggles between the different members and segments of Iraq's political elites are best analyzed in more structural or rather in more personal terms. As noted above, because of its enduring Leninist–Stalinist heritage, Iraqi, and Iraqi Kurdish, politics remains highly personalised and highly top-down and is often as volatile as it is violent. For example, one may ask whether the steady decline in Baghdad–Erbil relations after 2011 may not be due in part to relatively accidental personal factors, notably the sudden disappearance from the stage in 2012 of Iraqi president Talabani. Until that time, relations between federal prime minister al-Maliki and regional president Barzani were mediated, and moderated, both by the presence of American military forces in Iraq and of Talabani, who had good contacts with virtually all parties and a power base of his own. His successors, Fuad Masum (in office from 2014 to 2018) and Barham Salih (in office from 2018 on), were far less able to balance the rival leaders.
88. Lijphart, "The Wave of Power-Sharing Democracy," In *The Architecture;* Lijphart, "Constitutional Design for Divided Societies."

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