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Federalism and Iraq's constitutional stalemate

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Summary

- The implementation of federalism in Iraq is a divisive political issue that has coloured relations between the central government and both the Kurdistan Regional Government (KRG) and Iraq's individual provinces. The form and substance of power-sharing arrangements, and the extent to which sovereign authority should be devolved, have been in constant dispute since the establishment of the post-2003 state.
- Efforts to implement decentralization measures mandated in the 2005 constitution have been stymied by ambiguities in the document, the need for enabling legislation, and the reluctance of successive federal governments to dilute their power at the expense of the Kurdistan region and the provinces. Attempts to reach a formal agreement on power-sharing between the federal government and the KRG have been further undermined by Erbil's insistence on a maximalist interpretation of the constitution, which Baghdad regards as an existential threat to its authority and to the territorial integrity of the Iraqi state.
- Kurdish resolve to preserve the exceptionalism that the KRG has carved out since 2003 is matched on the federal government side by a determination not to surrender the sovereign authority that it presently enjoys, and – by extension – not to implement the constitution as it is written in any part of Iraq. As the balance of power has shifted over time in favour of the federal government, it has become less willing to compromise or to permit decentralization to the Iraqi provinces under its control. This ensuing impasse has undermined governance nationally, and it has imposed punitive financial and administrative costs at all levels of government.
- The key to a long-term resolution of the federalism question lies in finding a compromise formula that would satisfy the minimum requirements of both the federal government and the KRG, and open the door to decentralization in the rest of Iraq.
- One option is Kurdish independence, but this faces domestic and regional obstacles, including the KRG's fiscal fragility.
- A second, more propitious option, would be to codify the ad hoc – but at this point, durable – status-quo arrangements that have emerged as a result of the impasse over power-sharing, and using them as the foundations for a robust power-sharing system. This solution would involve moving away from a zero-sum mindset on both sides, and instead identifying areas of mutual interest and the mechanisms that have facilitated co-existence over the past 17 years. These elements could then be used as the building blocks for a lasting power-sharing formula that would also encourage greater decentralization of authority to Iraqi provinces as well.

Introduction

Few issues have been as disruptive to Iraqi politics since the establishment of the post-2003 state as the question of federalism. The subject of power-sharing and the relative balance of authority between the federal government and its regional and provincial counterparts has been a source of constant dispute. It has particularly coloured relations between the federal government in Baghdad and the Erbil-based Kurdistan Regional Government (KRG), with both contesting the independent authority claimed by the other. But, in recent years, the question has also affected federal–provincial ties, as the two sides have disagreed over the extent to which administrative, financial and security power should be devolved.

In many ways, the issue is a legacy of history. Federalism was introduced as a model for Iraq by opponents of Saddam Hussein as they organized against his regime after the 1991 Gulf War. Decentralization was regarded by the majority of these groups as a way to avoid a repeat of the tyranny of his government, with its heavily centralized system. But federalism also represented an acknowledgment that Kurdish moves to self-rule after 1991, and the Kurds' historical sense of injustice and insecurity in a Baghdad-run entity, would have to be taken into account in a new Iraqi state.

The main challenge throughout – and the main focus of this paper – has been how to reconcile Kurdish demands for a loose, confederal system where competent authority would largely reside at a sub-national level, with the more limited decentralization envisioned by many non-Kurdish parties, where a government in Baghdad would retain a significant amount of independent sovereign authority. Although the 2005 constitution backed a devolution of powers to regions and provinces along the lines that Kurdish leaders envisaged, flaws in the document and the need for supporting legislation have allowed successive governments in Baghdad to resist limits on the power of the federal government. Meanwhile, efforts to reach a formal compromise between Baghdad and Erbil have failed.

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This research paper is primarily based on almost two decades of the author's personal engagement and interviews with senior stakeholders as well as a Chatham House nationwide survey. As the paper shows, Kurdish insistence on a maximalist interpretation of the constitution and the federal government's determination to preserve its broad authority in the rest of Iraq has produced an enduring stalemate. This has been characterized by legal uncertainty and repeated political confrontations between Baghdad and Erbil, with the latter veering between efforts to establish the basis for eventual independence and moves to consolidate its

position within the Iraqi state. Although circumstances have forced temporary compromises on financial and revenue-sharing mechanisms, both sides – and especially the KRG – have stuck to maximalist demands, even though the lack of political will to agree on a mutually acceptable federalism formula has cost both sides materially.

This paper argues, however, that the status quo that has emerged as a result of this ongoing dispute may offer a long-term solution. The current state of affairs may not be regarded as ideal by any party, and it certainly does not meet the maximalist aspirations of the KRG, but it has also been an enduring compromise. If the de facto arrangements that have evolved over the past 17 years can be codified, institutionalized, and agreed on they may provide a suitable basis for a lasting solution. The financial and political frameworks are not considered ideal by either side. But the blueprint that has been established grants both Erbil and Baghdad their bottom lines: the preservation and reinforcement of KRG self-rule through lasting fiscal arrangements with the federal government; and, the guarantee of Baghdad's uncontested sovereign authority over the rest of Iraq, leaving it to negotiate its own decentralization measures with the provinces, unfettered by KRG concerns.

Ambiguity over federalism since its inception

Among the many issues that continue to dog Iraqi politics, the question of federalism has perhaps been the most persistent. Even before Saddam Hussein's regime fell in 2003, Iraq's then opposition had laid out the broad contours of decentralized government. Largely at the behest of the two main Kurdish parties, federalism was included as a core tenet of the opposition vision for a new Iraq, beginning with the Salahudin conference in 1992.¹ Indeed, as other Iraqi opposition groups understood it, proposing a federal structure for any post-war order was an essential condition for ensuring that the Kurds – who now enjoyed virtual autonomy as a result of post-Gulf War security and financial arrangements – remained committed to the territorial integrity of the country.²

However, the precise terms of power-sharing and the balance of power between the central and regional governments – and more specifically, between Arab and Kurdish areas of Iraq – were never fully delineated or agreed prior to 2003. That Kurdish autonomy would be preserved was generally accepted. But there were clear differences of opinion within the Iraqi opposition at the time over the form that federalism would take. Proposals ranged from a simple two-way Kurdish–Arab division to the creation of several federal units reflecting either ethno-sectarian

¹ See, for example, US Department of State (2002), *The Future of Iraq Project Democratic Principles and Procedures Working Group: Final Report on the Transition to Democracy in Iraq*, Washington DC: Department of State, <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB198/FOI%20Democratic%20Principles.pdf>; No author (2002), 'Declaration of the Shia of Iraq', <https://al-bab.com/documents-section/declaration-shia-iraq>.

² US Department of State (2002), *The Future of Iraq Project Democratic Principles and Procedures Working Group*, p. 91.

divisions or geographic areas. More importantly still, the precise powers that the proposed federal government would enjoy relative to regional ones, and what role Baghdad – the acknowledged federal capital – would play, were never clarified.³

This ambiguity continued into the immediate period after Saddam Hussein was ousted in March 2003. Federalism and decentralization were articles of faith for the US-led Coalition Provisional Authority that governed Iraq in the post-war period, and for the most powerful Iraqi parties that were elevated to governing roles. All of them foresaw long-term threats from restoring a strong central government.⁴ However, this common purpose masked a continued lack of broad agreement, let alone any consensus, between these groups over the purpose and design of federalism – a situation that set the contours for the dispute over the relative powers of the federal government and the KRG that continues to this day.

The Kurds, despite the significant internal divisions between their two main factions (the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK)), presented a powerful and unified front. For them, federalism was not about preserving the cohesion of the Iraqi state, which they considered anachronistic and, at worst, a failed relic of a bygone age of empires.⁵ They saw federalism as preserving the autonomy and gains of almost a decade and a half of self-rule since autonomy was seized after the 1991 Gulf War, and as creating the basis for eventually achieving the long-cherished goal of independence when political circumstances permitted. From a Kurdish perspective, they were making significant concessions to be part of a unified state that they would rather not belong to, but of which they had to remain part. That necessity was to some degree due to the absence of any immediate external support for Kurdistan's independence (especially from the US), and to the lack of finances to support independence as meaningful autonomous revenue streams were not available. Federalism for the Kurds was a means to disentangle themselves from Baghdad's control, and to ensure that an Arab majority could never again impose its direct rule on Kurdish areas. As one very senior Kurdish leader put it, 'Iraq is an 80-year failed experiment that should not be repeated'.⁶ Consequently, the Kurds sought a formula that linked the Kurdistan region with other parts of Iraq while giving up as little of their hard-won autonomy as possible.

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By contrast, the Arab factions and parties were much more divided on the form of (and, in some cases the need for) federalism once Saddam Hussein was removed and the opposition was installed in power. The Islamist Shia factions that were

³ Ibid., pp. 92–94.

⁴ See, for example, Center for Studies of New Religions (CESNUR) (2004), 'Law of Administration for the State of Iraq for the Transitional Period', Article 4, Turin: CESNUR, www.cesnur.org/2004/iraq_tal.htm; Alkadiri, R. (2010), 'Oil and the Question of Federalism in Iraq', *International Affairs*, 86(6): pp. 1316–17.

⁵ Author interviews with senior KRG leaders in Baghdad in 2004 and 2006, and in Erbil in 2009.

⁶ Author interview with senior Kurdish leader, Baghdad 2006.

most influential in the opposition, and which enjoyed the most influence on the US in the early days of the new state saw federalism as a way to acknowledge Kurdish exceptionalism while preserving a unified state (in which Islamist Shia parties would be ascendant in non-Kurdish areas). The Supreme Council for the Islamic Revolution in Iraq (SCIRI – later named the Islamic Supreme Council of Iraq, ISCI) was the only party that called for the establishment of an ethnic Shia region modelled on the Kurdistan region, which would allow the interests of the Shia umma (community), as one senior leader described it privately, to be protected.⁷ Other factions were more ambiguous in their views.⁸ The idea of a non-ethno-sectarian, multi-regional structure was briefly revived by a small number of groups. Yet for most, including the Shia clerical establishment in Najaf, federalism – at least the version proposed by the Kurds and SCIRI – was regarded as extreme and a potential threat to Iraq's territorial integrity.⁹ While the need for special arrangements for the Kurdish region was accepted, most factions outside the Kurdish–SCIRI nexus supported the type of bi-regional federal system envisaged in the 2002 Declaration of the Shia of Iraq. While this plan supported administrative decentralization throughout the country, it promoted a unitary state in which the government in Baghdad retained authority to govern non-Kurdish provinces that were at least equal in scope to the Kurds' authority over the territory that they controlled.¹⁰ This view aligned more closely with Sunni and nationalist parties, which advocated for a centralized state that granted the Kurds autonomy along the lines of the never-implemented 1970 agreement. It was also closer to the opinions of many indigenous Iraqis, who were not part of the former opposition, and therefore, for the most part, not part of the debate.

Problems of a flawed constitutional process

The balance of power in the early years after Saddam Hussein's fall was heavily weighted in favour of the two main Kurdish parties and SCIRI, and, as such, their view of federalism carried the day. By virtue of their extremely close ties to Washington (which itself strongly backed federalism), both Kurdish parties and SCIRI enjoyed unrivalled influence on US decision-making and, therefore, on the process of reinventing the Iraqi state that US officials were leading. Nowhere was this clearer or more consequential than in the drafting of the 2005 constitution, which in many ways amounted to a trilateral negotiation between the US, the two Kurdish parties and SCIRI. (As the nominal leader of the Islamist-Shia United Iraqi Alliance, SCIRI was effectively accepted by Washington as the legitimate representative of Iraq's Shia majority.)¹¹ The views and concerns of other powerful constituencies, including the then prime minister

⁷ Author interview with senior SCIRI leader, Baghdad, April 2005. While the idea of a multi-province Shia region did not garner significant popular support, SCIRI leaders in Baghdad continued to promote the notion until 2008–09.

⁸ Allawi, A. (2007), *The Occupation of Iraq: Winning the War, Losing the Peace*, Yale: Yale University Press, pp. 397 and 408–10; Morrow, J. (2006), *Weak Viability: The Iraqi Federal State and the Constitutional Amendment Process*, US Institute for Peace Special Report, p. 8; Alkadiri (2010), 'Oil and the Question of Federalism', pp. 1317–19.

⁹ Author interview with Grand Ayatollah Ali al-Sistani representative, Basra, April 2005; interview with senior Dawa official, Baghdad, April 2005.

¹⁰ No author (2002), 'Declaration of the Shia of Iraq'.

¹¹ Kane, S., Hiltermann, J. and Alkadiri, R. (2012), 'Iraq's Federalism Quandary', *The National Interest* 118, pp. 23–24; Alkadiri (2010), 'Oil and the Question of Federalism', p. 1318.

and the Shia clerical establishment in Najaf, not to mention other factions and local groups, were often disregarded as the three main parties to the talks crafted a document that leaned heavily towards establishing a state with a federal government that was weak and enjoyed very specific, limited authorities.¹² In other words, the eventual text of the constitution provided the legal basis for an almost confederal arrangement that the Kurds and SCIRI advocated.¹³

However, two major political flaws in the 2005 constitution ensured that it did not settle the debate over federalism at the time. First, divisions over hydrocarbon-resource ownership (one of the most contentious issues) were papered over, leaving unresolved the critical question of competent authority to develop oil and gas deposits and, more importantly, to collect the revenue from their sale. All Iraqi factions recognized that oil equalled money and that money equalled power. That fact perpetuated the dispute as no side was willing to make a compromise that would weaken their own authority.¹⁴

Second, the constitution left the implementation of federal powers dependent on the passage of additional legislation in the Council of Representatives (CoR) after the text was ratified by a national referendum in 2005. Although Washington and its Iraqi allies tried to adopt the same approach to drafting the laws as they did when writing the constitution, the need to legislate through the CoR allowed some of the most contentious disputes about the role of the federal government (including revenue-sharing and oil sector management) to be revisited. It also facilitated intervention by other mainstream parties – including key Islamist Shia ones – that opposed the loose and expansive federal formula that the constitution articulated. True, the constitutional text was approved by a majority in the referendum, but this backing had as much to do with the determination of the main Islamist Shia political parties, and significant parts of Iraq's Shia community at large, to consolidate their post-war political ascendancy in the areas of Iraq not controlled by the KRG. They believed that some form of federalism served their purpose, but not necessarily the loose federalism articulated in the constitution.¹⁵ As the balance of power among the different factions that made up the Islamist Shia political bloc shifted increasingly away from SCIRI, other interpretations of federalism gained political ascendancy (a factor that led to SCIRI's drubbing in the 2009 provincial council elections, and its subsequent disavowal of loose federalism).¹⁶

¹² See comments by Laith Kubba, in the proceedings of the discussion 'Countdown to a Constitution: Iraqis Debate their Country's Future', Center for American Progress, 21 March 2005, www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwifjsTOPkPsAhVIZTUKHeHVCSEQFjACegQIBBAC&url=https%3A%2F%2Fwww.americanprogress.org%2Fevents%2F2005%2F03%2F22%2F16280%2Fcountdown-to-constitution%2F&usq=AOvVaw2fPos4SyrZgZgLNVO_oTXU. In an interview with one of Grand Ayatollah Ali al-Sistani's representatives prior to passage of the constitution, he said that the threat that the federalism formula being negotiated represented to the territorial integrity of the Iraqi state outweighed its benefits to Iraq's Shia (author interview Basra, April 2005).

¹³ Morrow (2006), *Weak Viability*, pp. 3–4. For the text of the 2005 Iraqi constitution, see Republic of Iraq government (2005), *Iraqi Constitution*, <http://aceproject.org/ero-en/regions/mideast/IQ/Full%20Text%20of%20Iraqi%20Constitution.pdf/view>.

¹⁴ See, for example, Allawi (2007), *The Occupation of Iraq*, pp. 414–15; Alkadiri, R. (2016), 'Analyzing the hydrocarbon dispute between the Federal Government and the KRG', Al-Bayan Center Paper, Baghdad: Al-Bayan Center, www.bayancenter.org/en/wp-content/uploads/2016/10/e6543523..pdf.

¹⁵ Interview with Grand Ayatollah Ali al-Sistani representative, Basra, April 2005.

¹⁶ Author interview with senior SCIRI official, Washington DC, February 2010.

As a result, the issue of Baghdad's powers quickly became a partisan one between the KRG, which demanded devolution according to the constitution, and political leaders in the capital – particularly the dominant Dawa faction that wanted to consolidate their newly acquired power at the helm of the federal government. That faction also saw any effort to eviscerate Baghdad's authority (as the Kurdish/ SCIRI-supported draft laws did) as an existential threat to their interests and to the territorial integrity of the Iraqi state.¹⁷ While the constitution mandated that power be decentralized to the provinces, where regions did not exist, except in the narrow areas specified in the document, national leaders – Shia in particular – fought to preserve Baghdad's competent authority instead. As a result, almost from the outset, Kurdish efforts to protect their long-term security and interests, by insisting on the full implementation of the constitution and passage of associated legislation, clashed directly with attempts by national leaders, particularly Islamist Shia ones, to consolidate their power by blocking change.

Conflict and overreach

The period 2003–08 represented the zenith of Kurdish power in Baghdad.¹⁸ With the rest of Iraq mired in civil war and institutional confusion, non-Kurdish leaders, Islamist Shia ones included, had little capacity to present a coherent alternative vision or to find a counterbalance to Kurdish demands.¹⁹ At the same time, US power in the country was at its apex, and Erbil benefited from a benevolent US that was willing to pressure Baghdad to acquiesce to legislation that would reinforce a Kurdish vision of federalism.

However, this imbalance led to Kurdish overreach as Erbil pursued a maximalist agenda designed to enhance their autonomy, expand their control in disputed territories, and create the foundations for eventual independence if the opportunity presented itself. Faced with Arab-Iraqi partners who for the most part rejected the establishment of an ethno-sectarian-based confederal system in Iraq with a weak federal capital, Kurdish leaders refused to budge. They rejected any proposed amendments to the constitution or legislation that would alter the federalism formula, insisting instead on its literal interpretation and legislative proposals designed to reduce significantly Baghdad's fiscal and legal powers. Erbil also pushed ahead with controversial efforts to develop independently Kurdistan's oil and gas sector despite vociferous objections from Baghdad. But in doing so, Kurdish leaders fuelled antagonism and fear among the Islamist Shia parties, especially the Dawa party, which came to dominate the government in Baghdad and which increasingly supported a pre-eminent federal government role. With SCIRI's power in demise as a result of opposition to its political vision

¹⁷ Kane et al. (2012), 'Iraq's Federalism Quandary', pp. 21–24.

¹⁸ Bartu, P. (2010), 'Wrestling with the Integrity of a Nation: The Disputed Internal Boundaries in Iraq', *International Affairs*, 86(6): p. 1333.

¹⁹ One of the very few exceptions was the 'Perspective and Principles of Governance in Iraq', allegedly written by the SCIRI senior official Adel Abd al-Madhi in September 2005, which aligned closely with the Kurdish vision for Iraq. Cited in Allawi (2007), *The Occupation of Iraq*, pp. 437–38.

and Washington's waning ability to dictate policy in Iraq, the prospects of federal-related legislation being passed in the CoR were effectively scuppered as no broad consensus could be reached in support of it.²⁰

The result has been essentially a stalemate since 2008, as the Kurds have gradually lost their upper hand in the face of a more effective and coherent Shia-dominated federal government, which is determined to preserve its power and authority. With the exception of a brief period just after the offensive by Islamic State of Iraq and Syria (ISIS) into northwest Iraq in 2014, Baghdad has been able to resist repeated Kurdish efforts to force it to cede competent authority in line with the constitution. The KRG has managed to protect the additional autonomy that it gained in the years immediately after the fall of Saddam Hussein, allowing it to govern the Kurdistan region independently and to build on earlier momentum to expand its autonomous authority over areas such as the local oil and gas sector. But Erbil has not been able to force Baghdad to make meaningful concessions on federalism, such as allowing the creation of new regions, or to pass federalism-related legislation on revenue-sharing and hydrocarbon management through the CoR.²¹

The shifting balance of power in Baghdad's favour has meant that, over time, the prospects of constraining the federal government's authority in line with constitutional strictures have faded. This fact has not stopped the KRG from insisting that the constitution remains the only basis for resolving the myriad of disputes that it has with Baghdad. But this intransigence, combined with Erbil's proclivity to enhance its autonomy at the federal government's expense at every opportunity, has had significant political repercussions for Iraqi stability and the Kurdistan region's long-term interests.

These have been particularly evident in three key areas: national power-sharing; national revenue-sharing; and territorial control. Over the years since Saddam Hussein's ouster, the KRG has established a state within a state in Iraq that denies Baghdad's authority, and which claims a degree of autonomy in some areas, such as financial management and foreign relations, that exceeds the mandate of the constitution. In the process, the KRG has made the debate over federalism less about the best form of governance in Iraq and more about its own attempts to enhance its autonomy at Baghdad's expense, and to create the foundations for eventual independence if the opportunity arises. But in doing so, the Kurdish parties, individually and collectively, have gradually sacrificed their influence at a federal government level. Growing divisions between the main Kurdish factions have undermined their collective influence. They have gone from being perennial kingmakers to more marginal players in federal affairs, with their political and legislative preferences – including on issues as vital as the federal budget – being increasingly ignored by other factions.²² As was demonstrated during the efforts to form a government in the spring of 2020, Erbil can still influence the political process when it is given an opportunity to do so. However, the effective veto once

²⁰ Alkadiri (2016), 'Analyzing the hydrocarbon dispute between the Federal Government and the KRG', p. 8.
²¹ International Crisis Group (ICG) (2009), *Iraq and the Kurds: Trouble Along the Trigger Line*, New York: ICG, pp. 1–3, www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/iraq-and-kurds-trouble-along-trigger-line; Romano, D. (2010), 'Iraqi Kurdistan: Challenges of Autonomy in the Wake of the US Withdrawal', *International Affairs* 86(6): p. 1346.

²² Hameed, S. and Rasheed, A. (2016), 'Iraqi finance minister sacked, risking economic fallout', Reuters, 21 September, <https://uk.reuters.com/article/uk-mideast-crisis-iraq-politics-idUKKCN11R1DP>.

enjoyed by Kurdish factions in Baghdad no longer applies. Meanwhile, staunch Kurdish support for the ethno-sectarian system that has shaped post-war Iraqi politics has put the Kurdish parties and the KRG at odds with much popular sentiment outside Kurdistan, and with the more issue-based alliances and concerns that have characterized the CoR and the politics outside the Kurdistan region over the past few years. A recent 2020 Chatham House opinion poll of more than 1,200 Iraqis in 10 provinces found that a significant majority of Iraqis outside of the KRG support federal control over hydrocarbons, budgets, security and foreign affairs.²³

The erosion of Kurdish influence at the federal level has had material consequences – seen not least in the struggle that Erbil has faced since 2013 to secure the disbursement of federal revenue to the region. The KRG's repeated insistence on a long-term revenue-sharing formula that deprives Baghdad of any effective fiscal and monetary authority, and instead makes the federal government little more than a distributive node, has effectively stymied any meaningful progress towards a revenue-sharing deal or passage of revenue-sharing legislation.²⁴ For a majority of the other factions in the federal government, including the Islamist Shia parties that dominate it, this formula is a non-starter. The KRG's determination to develop the region's hydrocarbon resources as an independent source of revenue has further reduced the appetite at a federal level for a compromise. To leaders in Baghdad, Erbil's persistent unwillingness to honour the terms of oil-for-revenue deals in successive budgets since 2015 by instead prioritizing Kurdistan's own revenue needs and autonomy concerns points to a 'what's mine is mine; what's yours is mine' mentality, and betrays a wilful ignorance on the part of the Kurds to the political implications of any revenue deal that appears to reward one part of Iraq more than others.

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But the failure to find a workable compromise has come at a heavy financial price for Kurdistan. It is not simply that Baghdad has, due to ongoing disputes over oil sector management and export mandates, refused to disburse revenue on repeated occasions, even when federal coffers have benefited from higher oil prices. (This was the case in 2014, when no budget was passed and no transfers

²³ Chatham House poll, July 2020. The provinces polled were Anbar, Basra, Baghdad, Diyala, Erbil, Hilla, Kirkuk, Mosul, Najaf, and Sulaimaniyah. Asked where decision-making authority should lie, 84.8 per cent believed that foreign affairs should be at the federal level, 82.7 per cent thought this for budget allocation, 74.3 per cent for oil and gas, and 65.2 per cent for security. Of the provinces polled, only Erbil diverged from this pattern of public support for federal government authority.

²⁴ Alkadiri (2010), 'Oil and the Question of Federalism', p. 1321; author interviews with US State Department officials, June 2007. The draft of the revenue-sharing law was never formally published, and a copy that was posted on the KRG's official website has since been removed.

were made to the KRG,²⁵ and there have been repeated disruptions subsequently due to political disputes.)²⁶ The Kurds have also been forced to offer more onerous contractual terms than the rest of Iraq to entice investors, and the oil that the Kurdistan region has exported has often been sold at a discount, due to buyer reservations over sovereign title and the need to pay intermediary parties, including Turkey.²⁷ The lack of a long-term revenue-sharing deal has also prevented the KRG from accessing international credit markets through Baghdad, forcing it to assume much higher borrowing costs for an ever-increasing debt stock.²⁸ All of these factors have arguably bolstered the KRG's fiscal independence, but they have also meant billions of dollars in lost revenue over the years, which has restricted the KRG's ability to pay public sector salaries, and, as a result, undermined its domestic legitimacy.

Less directly related to federalism, but nonetheless illustrative of the problems associated with taking maximalist approaches to resolving disputes, is the issue of rival territorial claims between Baghdad and Erbil, including over Kirkuk. The legacies of land and property seizures, enforced migration and genocide during Saddam Hussein's regime have understandably made the issue an emotive one for the Kurds. Nonetheless, Kurdish leaders' insistence on maximalist territorial demands founded on the notion that all disputed territory was de facto Kurdish, and that areas with Kurdish majorities must be governed by the KRG,²⁹ has severely limited the room for negotiations with a Baghdad government that itself has not been shy about pushing back KRG control whenever and wherever possible. By using a very fluid and expansive concept of ethnicity as the basis for borders, Erbil has eschewed compromise arrangements that could have offered innovative solutions to the territorial dispute (such as the UN recommendations in 2009). The federal government might have accepted these, and, at the very least, this may have de-escalated local tensions in the disputed territories.³⁰ Instead, both Baghdad and the KRG have taken every opportunity to extend their territorial control at the expense of the other. The starkest illustration of this was the initial expansion by the KRG at the onset of the ISIS offensive in 2014 (when the Kurdistan government increased the area under its direct control by 40 per cent), and the subsequent loss of various places, including Kirkuk, to Iraqi federal forces in 2017.

²⁵ Burgess, J. (2014), 'Iraq 2014 budget will collapse without Kurdish oil income', Oilprice.com, 20 January, <https://oilprice.com/Latest-Energy-News/World-News/Iraq-2014-Budget-will-Collapse-without-Kurdish-Oil-Income.html>.

²⁶ See, for example, Butler, E. (2015), 'Iraqi Kurdistan's battle with Baghdad over oil revenues', BBC Online, 10 April, www.bbc.com/news/business-32220764; Snow, A. (2018), 'Kurdistan and Baghdad: A Tangled Web Over Oil and Budgets', United States Institute for Peace Comment, 30 January, www.usip.org/publications/2018/01/kurdistan-and-baghdad-tangled-web-over-oil-and-budgets; Menmy, D. T. (2020), 'Iraq cuts federal budget from KRG, Kurds defy it as political', al-Monitor, 5 May, www.al-monitor.com/pulse/originals/2020/05/iraq-kurdistan-budget-economy.html#ixzz6SwWZMsa2.

²⁷ See, for example, Carlisle, T. (2017), 'Iraqi KRG faces obstacles to maintain crude oil export quality', S&P Global, 16 March, www.spglobal.com/platts/en/market-insights/latest-news/oil/031617-analysis-iraqi-kr-faces-obstacles-to-maintain-crude-oil-export-quality.

²⁸ Prior to the 2020 economic downturn, KRG debt was estimated at \$20 billion to \$25 billion. See Petkova, M. (2019), 'What did Russia get from its KRG gamble?', Al Jazeera, 15 April www.aljazeera.com/indepth/features/russia-kr-gamble-rosneft-iraq-kurdistan-190409123038460.html.

²⁹ This point was made repeatedly to the author during conversations with KDP leaders in Erbil and Baghdad in March 2009.

³⁰ Bartu (2010), 'Wrestling with the Integrity of a Nation', p. 1342.

Formulas for resolution

These three factors – power-sharing, revenue-sharing and territorial control – lie at the heart of any resolution to the federalism question between Baghdad and Erbil. The dispute between the KRG and the federal government is primarily a political one that has been linked from the very beginning to Kurdish claims to exceptionalism and to the Kurds' desire to preserve their self-governance and ultimately the option for eventual independence. (Kurdish leaders sought unsuccessfully to include an article in the constitution that would have sanctioned a referendum on independence within seven years of its ratification.)³¹ These views have established the context of the debate over federalism since it began. Moreover, as their rhetoric in the run-up to the 2017 independence referendum made clear, many Kurdish leaders – especially within the KDP that dominates the KRG – are ambiguous at best about remaining part of Iraq, with many rejecting the notion of the state as it stands.³²

Kurdish resolve to preserve the exceptionalism that the KRG has carved out is matched on the federal government side by a determination not to surrender the sovereign authority that it presently enjoys, and – by extension – not to implement the constitution as it is written. Political leaders in Baghdad are, for the most part, willing to accept the KRG as a state within a state, even as the Kurdish parties simultaneously demand to be full partners in the federal government. However, these leaders are not willing to accommodate the KRG at the expense of eroding the federal government's power.

Nor has any federal government so far been willing to countenance constitutionally mandated moves by non-Kurdish provinces to establish autonomous regions elsewhere in Iraq. While Wasit, Diyala, Salahudin and Anbar have all proposed moves to autonomous status, the most concerted efforts towards creating an autonomous region have been witnessed in Basra, where local leaders have on several occasions since 2008 sought to hold a referendum on autonomy.³³ Each time, however, the federal government has quashed these initiatives, through a combination of bureaucratic procedure, political pressure, and – if necessary – outright rejection. The legality of autonomy moves has been questioned, and the constitutional process has on occasion been simply ignored.³⁴

Instead, the federal government has countered over the past few years with limited decentralization measures designed to transfer greater technical, fiscal and administrative power to provincial authorities, especially in the areas of services and municipalities' affairs, along with nominal authority to generate revenue

³¹ Interviews with senior US and UK officials, Baghdad and Washington DC, summer 2005.

³² See, for example, MacDiarmid, C. (2017), 'Masoud Barzani: Why It's Time for Kurdish Independence', *Foreign Policy*, 15 June, <https://foreignpolicy.com/2017/06/15/masoud-barzani-why-its-time-for-kurdish-independence>; Barzani, M. (2017), 'The Time has Come for Iraqi Kurdistan to Make its Choice on Independence', *Washington Post*, 28 June, www.washingtonpost.com/news/democracy-post/wp/2017/06/28/the-time-has-come-for-iraqi-kurdistan-to-make-its-choice-on-independence.

³³ In the July 2020 Chatham House poll, recipients in both Basra and Anbar showed significant support for greater provincial control, in contrast to the other non-KRG provinces polled.

³⁴ See Isakhan, B. and Mulherin, P. E. (2018), 'Basra's Bid for Autonomy: Peaceful Progress toward a Decentralized Iraq', *Middle East Journal* 72(2): pp. 267–85.

locally.³⁵ In the case of oil- and gas-producing governorates, budgetary mechanisms to transfer a small proportion of export receipts directly to provincial coffers have also been introduced in recent budgets (although local authorities have complained that funds have not been disbursed fully).³⁶ Efforts have meanwhile been made to appease provincial demands for local officials to fill specific federal government positions, such as the Kadhimi government's willingness in May 2020 to appoint an oil minister from Basra after requests from the province's representatives in the CoR.³⁷ Recent prime ministers and other senior officials have also lauded the economic role that Basra plays in the Iraqi economy (President Barham Salih called it the 'economic capital of Iraq'), and have made regular visits to appease local sentiment.³⁸

But in all of these cases, decentralization of power has been used as an alternative to the type of federal measures outlined in the constitution or demanded by the KRG. In other words, the federal government has seen decentralization – which it views as a governance issue – as fundamentally different in political intent from the Kurdish view of federalism. Baghdad has regarded decentralization as an administrative issue, while Erbil has seen federalism as political and, ultimately, existential.³⁹ Moreover, as it has become stronger, the federal government and the national leaderships of the main Islamist Shia parties have sought to taper the bounds of decentralization authorized through CoR legislation, even as local party leaders have lobbied for devolution. Such was the case in Basra's moves towards regional status in 2018 and 2019, which was in both cases led by local representatives of national parties that did not support the initiatives.⁴⁰

Baghdad has regarded decentralization as an administrative issue, while Erbil has seen federalism as political and, ultimately, existential.

³⁵ Al-Mawlawi, A. (2019), *Exploring the Rationale for Decentralization in Iraq and its Constraints*, Arab Reform Initiative Paper, Paris: Arab Reform Initiative, www.arab-reform.net/wp-content/uploads/pdf/Arab_Reform_Initiative_en_exploring-the-rationale-for-decentralization-in-iraq-and-its-constraints_5939.pdf?ver=0aa29d44bcdbaaca351dc5a2b677150d; Al-Mawlawi, A. (2018), 'Functioning Federalism in Iraq: A Critical Perspective', LSE Blog, 11 March, <https://blogs.lse.ac.uk/mec/2018/03/11/functioning-federalism-in-iraq-a-critical-perspective>.

³⁶ Aresti, M. L. (2016), 'Oil and Gas Revenue Sharing in Iraq', Revenue Sharing Case Study, New York: Natural Resource Governance Institute, <https://resourcegovernance.org/sites/default/files/documents/oil-gas-revenue-sharing-iraq.pdf>.

³⁷ Iraq Oil Report (2020), 'No oil minister yet in Mustafa Kadhimi's new government', 6 May, www.iraqoilreport.com/news/no-oil-minister-yet-in-mustafa-kadhimi-new-government-42720.

³⁸ Baghdad Post (2018), 'Salih stresses Basra "the economic capital of Iraq"', 10 October, www.thebaghdadpost.com/en/Story/32094/Salih-stresses-Basra-the-economic-capital-of-Iraq. See also, Macdonald, A. (2018), 'Iraq's Abadi visits Basra as calls grow for him to resign over crisis', *Middle East Eye*, 10 September, www.middleeasteye.net/news/iraqs-abadi-visits-basra-calls-grow-him-resign-over-crisis; MENAFN (2020), 'Cabinet Expedites Strategic Projects in Basra', 15 July, <https://menafn.com/1100491627/Cabinet-Expedites-Strategic-Projects-in-Basra>.

³⁹ This point was reinforced in an author interview with a senior government minister in Baghdad in November 2011.

⁴⁰ A majority of the Basra provincial council, which was dominated by the main Islamist Shia parties, voted for establishing a region in 2019: Middle East Monitor (2019), 'Basra votes in favour of being autonomous region in Iraq', 3 April, www.middleeastmonitor.com/20190403-basra-votes-in-favour-of-being-autonomous-region-in-iraq. The autonomy initiative in 2018 was led by Basra Governor Asaad al-Eidani, a senior member of the Iraqi National Congress, a party that, at a national level, did not support provincial autonomy. See also Goran, B. (2018), 'Basra Governor invokes constitutional rights, demands establishment of federal region', *Kurdistan 24*, 9 January, www.kurdistan24.net/en/news/a13ee128-d55a-4de7-a647-ee6222c39f26. National-provincial differences over decentralization have been evident since 2003, see Alkadiri (2010), 'Oil and the Question of Federalism', p. 1319.

Baghdad's reluctance to cede power has been particularly evident in successive federal governments' partial implementation (and repeated amendment) of law 21 of 2008, commonly known as the Provincial Powers Law.⁴¹ The law initially outlined a very broad transfer of power from the federal government to the provinces, including local security control and revenue-generating powers. Ostensibly, it represented a step towards the loose federal structure that Kurdish leaders have always advocated. However, mandates have never been fully transferred from centre to province as originally envisaged, and, under pressure from Islamist Shia political leaders in Baghdad, the authorities outlined in the law have been reduced in favour of restoring federal government control, with Baghdad reinforcing its executive authority through judicial means.⁴² It was only in 2015 that the then Abadi government, facing a backlash following the ISIS capture of territory in northwest Iraq, seriously began to implement an amended form of the legislation. But, even then, the initiative was limited, conditional and largely transitory, focused primarily on security sector reform. As the federal government recovered its footing, the scope and pace of decentralization was discussed but steadily reduced.⁴³ Provincial officials, whose own lack of administrative capacity was quickly exposed as power was transferred, complained of a lack of devolved authority, especially in spending and appointments, and an overall uneven – and begrudging – process. At the same time, the lack of administrative capacity and endemic corruption at a provincial level were quickly exposed, further encouraging Baghdad to keep a tight hold on the reins of power.⁴⁴

A future federal formula in Iraq that is workable and enjoys broad consensus needs to take into account these two absolutes: that the KRG will not sacrifice its exceptionalism and its effective independence; and that the federal government will accept a certain amount of decentralization, but will not accept a framework that meaningfully undermines its current levels of sovereign authority. Fiscal, political and security pressures will influence the specific shape of the eventual arrangement, but these two conditions appear to represent a non-negotiable for any long-term plan, and for a lasting settlement to wider disputes between the KRG and Baghdad.

Independence

On the face of it, the simplest formula would be to allow the KRG to declare independence, and thereafter to negotiate the terms of its bilateral relationship as an independent sovereign entity. Support for this option in Baghdad has waxed and waned, but as time has gone on, it has been one that some officials have been willing to entertain privately – not on the basis of Kurdish rights, but rather because the KRG is regarded as a disruptive factor in federal government affairs, with – at times at least – unrealistic fiscal and political expectations.⁴⁵

⁴¹ For the text of the original law, see 'Unofficial UNAMI Translation of Law no. () of 2008, Governorates not organized into a region', http://gipi.org/wp-content/uploads/2009/01/cor_law_governorates_not_part_regions_en.pdf.

⁴² Al-Mawlawi (2019), *Exploring the Rational for Decentralization in Iraq and its Constraints*, pp. 7–9.

⁴³ *Ibid.*, p. 4.

⁴⁴ *Ibid.*, p. 8; Fleet, M. (2019), *Decentralization and its Discontents in Iraq*, Washington DC: Middle East Institute, www.mei.edu/publications/decentralization-and-its-discontents-iraq.

⁴⁵ Author's conversations with multiple Iraqi officials and private-sector leaders, 2008–20.

Certainly, independence appears to remain the ultimate ambition for the KRG and much of the Kurdish population, even though the PUK appears increasingly less supportive of the formula than the KDP is, given the PUK's view of the greater political and financial virtue in preserving ties with Baghdad.⁴⁶ The practicality of secession has also increasingly been questioned in light of low oil prices. Nevertheless, the former KRG President Masoud Barzani sought to include an article permitting a Kurdish vote on independence within seven years in the 2005 constitution but was denied.⁴⁷ The controversial KRG referendum in 2017 illustrated beyond doubt the continued popular support for secession, with official results showing that 92 per cent of voters supported the notion.⁴⁸

However, the refusal of the federal government and most international states to recognize the poll or its outcome illustrates the challenge to the independence option, at least for the time being. Baghdad rejected the legality of the poll unequivocally,⁴⁹ setting in train a series of events concluding with federal government forces re-establishing control over the disputed city of Kirkuk, which had effectively been under KRG security control since 2014. The federal government's grievance was as much about the way the poll was organized and implemented (independently by the KRG and with no coordination or approval from Baghdad) and the KRG's apparent determination to include disputed territories in its eventual states, as it was with the vote itself. Federal government officials, and especially Islamist Shia leaders, recognized the dangers of the precedent that the KRG's move could set for disgruntled groups or provinces in the rest of Iraq, and the risks that these could pose to the country's territorial integrity and to federal government authority.

Kurdish aspirations were also dashed by the almost complete absence of regional and international recognition for the referendum or its outcome. While some states quietly backed the vote, only Israel recognized it formally.⁵⁰ Crucially, the US – which had counselled the KRG to at least delay the poll until ISIS had been defeated in Iraq – was not one of those states.⁵¹ Meanwhile, Turkey and Iran – despite their increasingly close ties to Erbil – rejected the poll and its outcome,⁵² thereby denying the KRG backing for its ambitions from two states that were crucial to its hopes of establishing the necessary economic and fiscal independence that would make secession viable.

⁴⁶ Indeed, this difference has become the source of deep internecine struggles between leaders of the two parties. Author interview with PUK-linked businessman, Erbil, June 2020. The differences in views were also apparent in the Chatham House July 2020 poll, which showed that a majority of respondents in Sulimaniyah (the traditional base of the PUK) favoured federal government control over oil, fiscal and foreign affairs. By contrast, the majority of respondents in Erbil (the KDP's base) favoured regional control over these powers.

⁴⁷ Author's conversation with officials in the US Embassy, Baghdad, June 2005.

⁴⁸ BBC News (2017), 'Iraqi Kurds decisively back independence in referendum', 27 September, www.bbc.com/news/world-middle-east-41419633.

⁴⁹ Reuters (2017), 'Iraqi PM Abadi insists outcome of Kurdish independence referendum be canceled', 26 October, www.reuters.com/article/us-mideast-crisis-iraq-kurds/iraqi-pm-abadi-insists-outcome-of-kurdish-independence-referendum-be-canceled-idUSKBN1CV0PZ.

⁵⁰ *The Telegraph* (2017), 'Israel becomes first state to back an independent Kurdistan', 14 September, www.telegraph.co.uk/news/2017/09/14/israel-becomes-first-state-back-independent-kurdistan.

⁵¹ Author's conversation with senior US National Security Council official, June 2017.

⁵² *Independent* (2017), 'Kurdistan referendum: Erdogan says Iraqi Kurds risk "ethnic war" and threatens military response to vote', 26 September, www.independent.co.uk/news/world/middle-east/kurdistan-referendum-kurdish-turkey-military-recep-tayyip-erdogan-iraq-kurds-krq-independence-a7967566.html; Hafezi, P. (2017), 'Khamenei says Iran, Turkey must act against Kurdish secession – TV', Reuters, 4 October, <https://uk.reuters.com/article/uk-iran-turkey-visit/khamenei-says-iran-turkey-must-act-against-kurdish-secession-tv-idUKKCN1C9116>.

The referendum experience suggests that, for independence to be a viable option in the future, it will need to be shaped by negotiation not imposition. Erbil has neither the military nor diplomatic power to impose a new reality on Baghdad. Consequently, the first step for Kurdish leaders almost certainly needs to be reaching a consensus with the federal government over the political, economic and security contours of a new Kurdish state, and its geographic boundaries.

Economic and financial arrangements as well as borders are likely to be the most contentious issues to disentangle in any secession negotiations. The levels of and conditions for budgetary disbursements from Baghdad have beset federal government–KRG relations for the past decade, and disagreements over long-term arrangements have blocked passage of a revenue-sharing law. Audits of mutual liabilities have been mandated in successive budgets over the past few years, but they have never been carried out. Kurdish leaders insist that they are owed around \$54 billion in unpaid past revenue,⁵³ while the federal government claims that these sums were forfeited due to Kurdish oil export arrangements, and that it is Erbil that is in debt to Baghdad. In more recent negotiations, the KRG has also pushed for higher real disbursement amounts, arguing that it needs the extra money to meet its public sector obligations.⁵⁴

The ongoing dispute reflects an underlying reality: that, in its present structure, the KRG lacks the financial basis for fiscal independence, at least without a massive restructuring of its public sector (and, therefore, underlying political patronage arrangements). The Kurdistan region is a financially weak entity with an economy that is no less oil-dependent than the rest of Iraq. The need to manage fiscal demands without depending on Baghdad and without any foreign reserves of its own has already forced the KRG to assume massive debt levels and engage in pre-export financing deals over oil that have limited its future options. Kurdish leaders have raised the spectre of reparations claims from Baghdad to compensate for past political and economic injustices,⁵⁵ which would provide a future Kurdish state with the financial foundations for independence. But any such conditions would almost certainly scupper a negotiated settlement with Baghdad, and the federal government has no incentive to acknowledge these demands unless imposed by international authorities, which seems unlikely.

Financial concerns are also likely to colour negotiations over borders between a future Kurdish state and Iraq. Kurdish territorial claims have, in the past, extended to any areas where there are Kurdish populations, with some maps extending the boundaries of Kurdistan as far south as Maysan province.⁵⁶ These ambitions may be exaggerated, but nonetheless there are areas that are likely to be particularly contentious – notably Kirkuk, which has been the source of repeated tension and the stumbling block in past negotiations and

⁵³ Letter from the KRG head of the Cabinet Diwan to the general secretariat of the Federal Council of Ministers, 28 April 2020.

⁵⁴ Tahir, R., Hussein, M. and Van Heuvelen, B. (2019), 'Ahead of oil talks with Baghdad, KRG proposes new budget framework', *Iraq Oil Report*, 22 August, www.iraqoilreport.com/news/ahead-of-oil-talks-with-baghdad-krp-proposes-new-budget-framework-42052.

⁵⁵ Argus (2020), 'KRG condemns Baghdad's decision to halt payments', 29 April, www.argusmedia.com/en/news/2100937-krp-condemns-baghdads-decision-to-halt-payments.

⁵⁶ See Rekaewicz, P. (2013), 'Kurdistan Borders', *Le Monde Diplomatique*, <https://mondediplo.com/maps/kurdistanborders>. Senior Kurdish leaders would sometimes bring out examples of these maps to show UK officials in 2003–04 to illustrate how compromising they were being with the extent of their modern demands.

agreements between Kurdish leaders and authorities in Baghdad going back to the establishment of an independent Iraq in 1932. This historical and social attachment is important, but it is also underpinned by a fiscal imperative, with Kurdish leaders recognizing the political power that unimpeded access to Kirkuk's oil resources would give them.⁵⁷

This is no less the case now than it was in the 20th century: the money that this oil would deliver would be vital to sustaining an independent Kurdish state budget in the long term. But while Kirkuk no longer plays the outsized role it once did in securing Iraqi finances, it is nonetheless a sizeable revenue generator. Roughly 250,000 barrels per day (b/d) are currently produced from oil domes under the federal government's control representing more than 5 per cent of national oil output; it also promises significant increases in future crude production if and when long-term rehabilitation and development of this acreage begins.⁵⁸ Consequently, Baghdad is unlikely to reverse its previous insistence on retaining authority over Kirkuk and over key border posts that link Iraqi trade with Iran and Turkey, unless there is a major change in economic conditions in the country, which is not expected any time soon.

Kurdish leaders also face regional and international obstacles to fulfilling their independence ambitions. Neighbouring states, especially Turkey and Iran, have actively facilitated Kurdish economic autonomy over the past decade, allowing (and, in the Turkish case, becoming partners in) independent Kurdish oil exports. Yet none is ready to countenance an independent Kurdish republic on its borders for fear of the impact on its own restive Kurdish populations. Just as neither country recognized the KRG's 2017 independence referendum, despite the futile hopes of Kurdish leaders, both Ankara and Tehran are likely to remain opposed to independence even if Kurdish secession is the outcome of a negotiated process with Baghdad. This pressure would be only partially offset by the likely international recognition that an independent Kurdish state would receive if it were the product of a negotiated settlement with Baghdad. (Past opposition from the international community, including the US, has been based on concerns regarding the security and stability implications of unilateral Kurdish moves.) Kurdistan's position as a land-locked territory that is dependent economically on Turkey in particular for its major finance-generating activities gives Erbil little leverage to change Ankara's or Tehran's opinion; both have the capacity to squeeze a new Kurdish entity economically and in other ways, were it to be established.

Formalizing asymmetric federalism

A more viable alternative resolution to the federalism dispute in the medium term would be to take the situation as it exists at present and codify it through legal and institutional mechanisms to reinforce the political and economic foundations of the relationship, giving both sides a greater sense of confidence in its long-term stability and equity.⁵⁹ What is currently in place is a de facto but still not fully stable

⁵⁷ See, for example, McDowall, D. (1996), *A Modern History of the Kurds*, London: I. B. Tauris, pp. 317, 331 and 335.

⁵⁸ Zhdannikov, D. and Rasheed, A. (2020), 'BP pulls out of Iraq's Kirkuk field as expansion plan stalls', Reuters, 21 January, www.nasdaq.com/articles/exclusive-bp-pulls-out-of-iraqs-kirkuk-field-as-expansion-plans-stall-2020-01-21.

⁵⁹ An earlier version of this proposal was presented in Kane et al. (2012), 'Iraq's Federalism Quandary', pp. 20–30.

form of asymmetric federalism. The KRG – with its own constitution, laws, treasury and security framework – enjoys more autonomous powers than Iraqi provinces that are not regions. But the ambiguities of the current political formula mean that the KRG is at once part and not part of the Iraqi state, and is unable to enjoy the full financial and military protection of the state. To some degree this latter point is due to the KRG's insistence on imposing its vision of a loose federal model as the only basis for compromise with Baghdad. By accepting the status quo (rather than insisting on a maximalist solution), and building on it, both Baghdad and Erbil have an opportunity to solidify the foundations of the Iraq state in a way that would benefit both directly.

As is the case with independence, financial arrangements are the most important element to be resolved: crucially, what areas of its current fiscal independence Erbil is willing to forsake to reinforce its financial ties to Baghdad, and what concessions the federal government is willing to offer to restore the KRG's confidence that the region's economic interests will be protected in the long term. Erbil cannot expect to receive more funds proportionally than the rest of Iraq, irrespective of its autonomous fiscal obligations as a region; the stability of all Iraq is paramount to the federal government, and it faced a backlash in the CoR in the past when it was perceived to be making overly generous concessions to the KRG.⁶⁰ But at the same time, Baghdad could and should use its sovereign fiscal and monetary powers to support Kurdish financial stability – including the provision of debt and guaranteeing international loans – in return for governance and authority concessions from Erbil.

Agreeing on long-term mechanisms for the management of oil production and exports would be critical first steps in this regard. Baghdad's view of oil management in the Kurdistan region has evolved significantly since the federal government's initial absolute rejection, in the early and mid 2000s, of Erbil's right to sign contracts independently of the federal ministry of oil. Rather than the legality of these deals, it is the KRG's authority to export crude oil autonomously and to collect revenue from these sales into the local treasury that Baghdad contests.⁶¹ While this opposition from Baghdad has not stopped Kurdish oil sales internationally, which have risen to more than 500,000 b/d, pursuing such sales places significant financial demands on Erbil and Iraq as a whole, with the Kurds forced to discount the price of their crude and pay lucrative transport contracts to third parties in order to secure a market for locally produced and exported oil. Erbil has also invested in an expensive export pipeline designed to bypass the existing Iraqi transport network (the northern part of which was made inoperable by ISIS) and thereby ensure an independent evacuation route to Turkey that generated additional revenues for the KRG through transfer fees.⁶²

Efforts to agree a workable budgetary formula that would facilitate Kurdish exports while ensuring the uninterrupted disbursement of federal funds to the KRG have consistently broken down over the issues of primacy and sovereign authority. Since late 2015, different exports-for-revenue formulas have been

⁶⁰ See, for example, Iraq Oil Report (2019), 'Scrutiny mounts on Baghdad-KRG energy and revenue pacts', 9 July, www.iraqoilreport.com/news/scrutiny-mounts-on-baghdad-krge-energy-and-revenue-pacts-41917.

⁶¹ Author interview with a senior oil ministry official in Baghdad, November 2014.

⁶² Petkova (2019), 'What did Russia get from its KRG gamble?'

included in the national budget that would compel the KRG to hand over sales authority and revenue for a percentage of Kurdish exports to the federal government in return for guaranteed budgetary disbursements. However, these budgetary initiatives have unravelled due to the KRG's preference for prioritizing local fiscal obligations over transferring crude and title to Baghdad authorities, and financial shortfalls at the federal government level that have limited the revenue available for disbursement to the KRG. That said, in proportional terms, the volumes of crude that the KRG has exported independently have largely been in line with the share of the federal budget that it would have received under the budget arrangements.

Despite these setbacks, the export-for-revenue formula provides the building blocks for a long-term revenue-sharing mechanism to underpin asymmetric federalism. It is not the framework proposed so far that is defective; it is the lack of political will to implement the deal, in part because of the KRG's preference for preserving its export authority over a dilution of that mandate, and because of Erbil's attempts to secure a preferential share of national revenue compared to the rest of Iraq because of its local fiscal obligations.

The compromise proposed in the 2019 budget offers the blueprint for a first step: KRG transfer of 250,000 b/d of crude to the federal government's State Oil Marketing Organization (SOMO) in return for an equivalent net revenue share, with the KRG topping up its funding through independent oil sales. To further strengthen KRG authority and allow it to reduce the discount – and therefore increase the netbacks – on its independent crude sales, Baghdad could also formally recognize the KRG's right to export local crude through a regional branch of SOMO. Moreover, over time, Baghdad could – subject to the introduction of a transparent audit of federal and KRG crude sales – introduce a fiscal mechanism that would ensure top-up funds to the Erbil treasury if overall national volumes of oil production and exports increase propitiously and, as a result, leave the share received by the KRG below a set proportion of net budgetary revenue (the figure currently used is 13 per cent). In return, Erbil could guarantee open use of its pipeline to Turkey for northern Iraqi exports without being subject to any transport fees, in view of eventually transferring ownership of the pipeline to the federal government, on the understanding that Baghdad would assume all financial liabilities for the project.

This initiative could serve as a confidence-building prelude to a future arrangement that would bring the Kurdish oil sector back under the umbrella of national authorities. At that point, Baghdad would potentially assume the contractual liabilities that the KRG has committed to, as well as the right to renegotiate contracts with foreign investors to align them with national terms.⁶³ But this step would not be a necessity, rather an option for greater integration of the two federal units in the long term, based on commensurate concessions from the Kurdish side, such as Baghdad's control over production policy. Either way, agreement

⁶³ The KRG has previously proposed that, as part of a deal with Baghdad, the federal government would pay the region's debt to foreign oil and gas investors. However, the federal government has balked at this, arguing that these commitments were made illegally.

on revenue management and sales authority would provide the basis for renewed discussion on a hydrocarbon law that would also address long-term obligations and liabilities.

More importantly, an oil deal could be used as a basis to readdress long-stymied revenue-sharing legislation and long-term mechanisms for budgetary distribution that will bolster stability. Concluding a workable law acceptable to both Erbil and Baghdad has long required a key concession by the KRG: acknowledging that limiting the federal government's fiscal and monetary powers, and making it little more than a distribution hub for Iraqi revenue, is a non-starter for most if not all Arab-Iraqi factions, and that any formula must preserve Baghdad's current spending power. A deal that finally and unambiguously recognizes the legality of Kurdish oil sales and the mechanisms for future oil revenue distribution (for example, by making budgetary disbursements to the KRG a first-line budget item) could provide the KRG with long-term confidence in its access to its unimpeded share of the national budget. The federal government would remain fiscally powerful, but that would be part of the essence of asymmetric federalism in the Iraqi case.

An oil deal could be used as a basis to readdress long-stymied revenue-sharing legislation, and long-term mechanisms for budgetary distribution that will bolster stability.

Secure fiscal arrangements to consolidate an asymmetric federal framework could also unlock new opportunities to resolve disputed territories, such as Kirkuk, by reducing the financial incentive for independent control on both sides. A KRG that is secure in the knowledge that its access to revenue flows will not be impeded, and a federal government that is confident that Kurdish demands to control the city are not linked to secession aspirations, may both be willing to consider joint arrangements for this and other territory. This arrangement could begin with joint political, security and economic administration of Kirkuk, with authority and revenue collection divided equally between the federal and regional governments. If this model can be shown to reduce tensions and conflict, it could be introduced into new mechanisms to manage any other disputed territories that are likely to create an obstacle to agreeing internal borders between the Kurdistan region and the rest of Iraq. Moreover, it would address some of the most complicated security sector issues that need to be confronted, including joint operations and the areas of responsibility and movements of Kurdish and Iraqi federal troops.

An asymmetric federalism model between Baghdad and Erbil would not be without its difficulties. One possible area of tension is long-term Kurdish representation in the federal government, although there are numerous examples worldwide of regions with independent governing institutions that also enjoy full participatory rights in national governments (as is the case with Quebec in Canada). What will be critical is to agree a broadly accepted and unambiguous constitutional formula that lays out the division of powers between the region and the federal government, and which aims at integrating the two rather than separating them.

Consequently, constitutional reform of some sort will eventually be necessary to codify asymmetric federalism. A long-term agreement will require the KRG to concede that the current constitution, while legally valid, is not workable in its present form given the prevailing politics. Articles 110 (listing the powers of the federal government), 112 (on oil sector management), 115 (giving competent authority to regions and provinces), and 116 to 121 (defining the establishment and powers of regions)⁶⁴ would need to be renegotiated to systematize the unique relationship between Baghdad and the KRG, while reinforcing the federal government's authority in the rest of Iraq. Other key articles covering executive, legislative and judicial authority would also need to be negotiated and amended to reflect the new arrangement.

Constitutional reform of any sort is likely to run into two major hurdles: Kurdish opposition; and a backlash in the rest of Iraq to asymmetric federalism proposals. Since its introduction, Erbil has consistently opposed any efforts to amend the constitution for fear that any changes would include measures to undermine their autonomous powers and strengthen the federal government at their expense. Article 142 of the constitution created provisions for an early review of the text when the document was first approved, but it also provided the KRG with an effective veto over any changes.⁶⁵ In the end, Kurdish refusal to countenance serious debate over amending regional powers provisions helped to stymie this process. The constitution does make alternative provisions for amendments to be proposed; according to Article 126, amendment measures can be initiated by the president and prime minister collectively, or by one-fifth of the Council of Representatives, with the articles of amendment subsequently put to a national referendum for approval. However, Kurdish opposition to any form of constitutional amendment has been an insurmountable obstacle to any initiatives, including most recently in November 2019, when the Council last discussed a constitutional review.⁶⁶ The KRG's solution to the federalism impasse has been simple: implement the provisions that already exist in the constitution.

However, rather than weakening the KRG or threatening the security and integrity of the Kurdistan region, it would be to the region's advantage to amend the constitution as the final stage in a process that is designed to reflect KRG exceptionalism and codify measures that solidify a mutually advantageous relationship with Baghdad based on the current status quo. It would enshrine and protect Erbil's special status and its autonomy, while giving Baghdad greater confidence in the long-term ambitions of its Kurdish partner. Moreover, by introducing constitutional reform at the end of the negotiating process, not the beginning, it could be used to codify deals reached on oil, revenue-sharing, territorial control and power-sharing once there is confidence that both sides are willing to implement them as agreed.

⁶⁴ For the text of the Iraqi constitution, see Republic of Iraq, 'Iraqi Constitution'.

⁶⁵ Article 142 mandated that the first parliament after passage of the constitution should form a committee to recommend to the Council of Representatives amendments to the constitution. Paragraph 4 of the article mandates that any changes are not rejected by two-thirds of voters in three or more provinces in a national referendum.

⁶⁶ See, for a recent example, Menmy, D. T. (2019), 'As Iraqi calls to amend constitution rise, Kurds fear loss of political gains', *Al-Monitor*, 18 November, www.al-monitor.com/pulse/originals/2019/11/iraq-kurdistan-constitution-protests.html.

One of the key challenges for the federal government in this process would be how to revisit the constitution without opening up a Pandora's box of other demands for concessions and amendments from other communities and provinces in the rest of Iraq. While Baghdad has generally acknowledged KRG exceptionalism (albeit reluctantly and inconsistently at times), it has also been cognizant that in responding to Kurdish fiscal and security demands, it must be sensitive to the need for equity with the rest of Iraq, especially the oil-producing governorates of the south. This recognition has checked the federal government's willingness to make concessions to Erbil in the past, especially in fiscal areas, for fear that it will engender a backlash in other Iraqi provinces and calls for equal measures to be applied outside the Kurdistan region.

History suggests that any initiative by the federal government will prompt some reaction in the non-Kurdish provinces, especially those that have been most vociferous in calling for a degree of autonomy for themselves. Thus, Baghdad will be forced to address its current relationship with the provinces it controls, and potentially offer a new social compact there that responds to at least some of the core provincial demands. One obvious way for the federal government to approach this challenge is to implement the decentralization measures mandated in existing legislation more systematically through the rest of Iraq.

As is the case with the KRG, revenue-sharing reform presents an opportune early confidence-building avenue that could provide the basis for wider initiatives. Successive governments have included direct fiscal disbursements of a portion of locally generated hydrocarbon revenue in the federal budget and, while these transfers have been prey to financial pressures at the centre, this formula nonetheless provides the basis for negotiating a longer-term mechanism for direct revenue-sharing with hydrocarbon-producing provinces, which could mitigate some of their likely grievances about asymmetric federalism. Local tax collection, including keeping a portion of custom receipts, is another possible mechanism. The process of constitutional reform itself would enable new dialogue between the federal and provincial governments to negotiate and agree on a long-term power-sharing arrangement that acknowledges the need for greater decentralization, while preserving core areas of federal government authority, and establishes the stable foundations for longer-term centre-periphery relations.

Conclusion

Politics in Iraq over the past 15 years have demonstrated repeatedly the costs of failing to resolve the issue of federalism arrangements between the KRG and the federal government. The text of the 2005 constitution, which outlines a formula that gives primacy to regions and provinces over the centre, and which severely limits the powers of the federal government and its sovereign competent authority, reflects a unique moment in time. The balance of political forces was then overwhelmingly in favour of Iraq's Kurdish leaders, who, with the support of SCIRI and the US, were able to drive through their vision of a loosely federated Iraq state at the expense of the opinions of many of their Arab partners. However, as the federal government became more coherent and more powerful,

its non-Kurdish leaders quickly rejected the notion of giving up power and the patronage that came with control in Baghdad, leading to the blockage of legislation that would have cemented the constitutional model. In the interim, Erbil has been able to preserve its exceptionalism in the Iraqi state, but it has lacked the financial resources, and the political and military power, either to impose loose federalism on the centre, or to secede.

As a result, the question of federalism has become a matter of enduring dispute between Erbil and Baghdad that has created continued enmity between the two sides and, on occasion, has been destabilizing for the country at large. As it has seeped into critically important areas such as the hydrocarbon sector, it has also resulted in the loss of considerable net revenue to the country overall, with the KRG arguably faring worse than the federal government in this regard. At the same time, it has led to lasting military tension in disputed territories, the status of which has been impossible to resolve while the wider federalism question has remained alive.

Yet, despite these pressures, a relatively stable status quo has been established between the federal government and the KRG over the past decade and a half. While Kurdish ambitions and demands have been challenged by Baghdad, the federal government has recognized the region's exceptionalism (at least within the borders that it presently controls). The mechanisms for managing various aspects of the relationship between the two, including financial and revenue-sharing frameworks, have been a source of regular dispute, but short-term solutions with long-term applications have been found. Throughout this period, the status of the KRG as an autonomous entity with its own exclusive government, institutions, laws and military forces has generally been recognized. Erbil has consistently called for the full implementation of the constitution and for legislation that would enable a loose form of federalism to be implemented across Iraq. Nevertheless, the KRG has increasingly come to terms with the reality that the federal government is unlikely to take any measures that will significantly reduce its own power.

Finding a way to codify the compromises that circumstance has forced Baghdad and Erbil to reach could offer an effective way to resolve the federalism question once and for all. The basis for confidence-building first steps lies in a variation of the export-for-revenue formula that has been discussed in recent budgets, especially as any enduring mechanism will require deals that go to the heart of the federalism dispute: revenue-sharing; defining legal competent authority; hydrocarbon sector management; and, territorial control. To make this work will require the political will to promote the formula, rather than insisting on maximalist agendas, and to cement these arrangements in new laws and, eventually, a new constitution.

If fiscal arrangement can be mutually agreed, it could offer new avenues for addressing wider federalism-related questions, such as resolving disputed territories and long-term security cooperation. Moreover, once the existential fear associated with decentralization has been eased, it could convince the government to introduce more systematic transfer of authority in the rest of Iraq that will empower local governments and address their demands for improved administration and power-sharing.

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Cover image: A view of the Iraqi parliament floor in Baghdad on 21 December 2010.
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