

# **Modes of Iraqi Resistance to American Occupation**

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# **Modes of Iraqi Resistance to American Occupation**

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The United States invaded Iraq in March 2003 with a clear vision for Iraq's future. In moving to topple Saddam Hussein, Washington foresaw the development of a stable, democratic, friendly, and non-threatening Iraq. Resistance to U.S. preferences, however, developed from day one and over time the United States was forced to modify its policies and lower its expectations. Political and military, not to mention violent, opposition to U.S. and allied officials revealed the problematic U.S. assumptions going into the war and led to repeated changes in US policy. In addition to the direct human, financial, and political costs, the long term implications of Iraqi resistance are significant.

The idea of invading Iraq sparked global resistance to U.S. hegemony, but in this paper I focus on resistance within Iraq to the U.S. occupation from after the invasion in March 2003 until the handover of limited sovereignty to an interim Iraqi government on June 28, 2004. During most of this 15-month period, the Coalition Provisional Authority (CPA) and the Iraqi Governing Council (IGC) ran Iraq; the United States appointed the members of the IGC. The resistance largely came from domestic, Iraqi actors, but also included foreign fighters and jihadists who came to Iraq to violently resist the U.S. occupation. Although I address violent resistance, more of this chapter is about political forms of resistance to CPA policy as demonstrated through the actions of Ayatollah Ali al-Sistani, a Shi'ite leader, and Kurdish officials.

In terms of the larger project, the emphasis in this paper is more on the *actions* of resistance than on the *modes* (unilateral, multilateral) because I am dealing with sub-state

(domestic Iraqi) and non-state actors. The modes only become relevant in the context of the transnational jihadists.

In the first section of this paper, I consider broad, long-standing U.S. objectives in the Middle East and their specific application to Saddam's Iraq. I turn next to several sources of violent resistance to the United States and its Iraqi supporters, including Sunni insurgents, Muqtada al-Sadr and his Mahdi Army, and foreign jihadists. In section three, I focus on Sistani and his months-long push for national elections at a much earlier stage than the CPA had desired. In section four, I look at a second example of political resistance to U.S. preferences that in large part revolves around U.S.-Kurdish negotiations over the interim Iraqi constitution, the Transitional Administrative Law (TAL). Despite U.S. policy preferences, Kurdish leaders satisfied their red-lines on Kurdish autonomy and other issues.

In section five, I explain what lessons we may learn from the Iraqi case by referring to three of Davis Bobrow's types of resistance: Crazyness and Martyrdom, Rule Based Retaliation, and Schedule Delays. I also note the consequences of the unplanned interplay between political and violent resistance, and the manner in which broad U.S. objectives create openings for resisters to support some U.S. goals even as they undermine others. I close in section six by listing some U.S. costs in Iraq, including the cost in lives and dollars, the damage done to the ideas of nation-building and democratization, and the development of templates for both political and military resistance.

## **US preferences in the Middle East and Iraq**

During much of the Cold War, U.S. policy in the Middle East focused on preventing Soviet penetration of the region, maintaining the free flow of oil at a reasonable price, and ensuring Israel's survival.<sup>1</sup> With the collapse of the Soviet Union in December 1991, the issue of Soviet meddling became moot, and both the other U.S. objectives became easier to achieve. On September 11, 2001, after a decade respite, a third element was added back into the U.S. equation: stopping the Middle East from serving as a base for violent, anti-American Islamists. To different degrees, oil, Israel, and Islamist terrorism created the fundamental base upon which the Bush administration built its case for war against Iraq in 2003. After looking at these broader U.S. objectives, I will hone in on specific U.S. preferences in Iraq.

The United States has long played in Persian Gulf politics in order to secure some of the largest petroleum reserves in the world. In 1953, the United States helped restore the Shah of Iran to power and, in doing so, toppled a nationalist Iranian leader who sought to nationalize the Iranian oil industry. By the 1970s, the United States was relying on twin pillars in the region, Iran and Saudi Arabia; like President Richard Nixon's effort in Vietnam, the approach relied on local proxies to protect U.S. interests. The anti-U.S. Iranian revolution in 1979 ended this approach and then President Jimmy Carter established the pre-cursor to the U.S. Central Command, the unified U.S. military forces responsible for the Horn of Africa, the Middle East, and Central Asia.<sup>2</sup> In the 1980s, then, the United States played both a direct and indirect role in Gulf politics: providing

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<sup>1</sup> A more detailed analysis would note that these three factors were not always equal, or even relevant, at all times from 1945 – 1991.

<sup>2</sup> In 1983, U.S. CENTCOM took over for the Rapid Deployment Joint Task Force, a temporary organization created by Carter in 1980.

material support to Iraq in the Iran-Iraq war, reflagging Kuwaiti oil tankers and thus bringing them under U.S. naval protection, seeking a secret deal with Iran in what came to be known as the Iran/Contra scandal, and continuing to develop U.S. relations with Saudi Arabia and the five other members of the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, the United Arab Emirates). The United States conducted training exercises, sold arms to Gulf allies, pre-positioned U.S. military equipment, and signed basing agreements.

The U.S. reaction to the Iraqi invasion of Kuwait in 1990 symbolized an even deeper and more direct U.S. policy to maintain a stable and friendly Gulf region. When over half a million U.S. forces expelled Iraq from Kuwait, the United States operated out of Saudi Arabia, Turkey, and other states. Most of the financial cost of the U.S. effort was borne by Iraq's neighbors, especially Kuwait and Saudi Arabia. Throughout the 1990s, U.S.-led forces policed a northern and southern no-fly-zone over Iraq, supported weapons inspections in and economic sanctions against Iraq, and continued to develop U.S. military ties with the Gulf monarchies (though relations with Iran remained cold). The proxies were now largely serving as bases for U.S. forces and equipment rather than as U.S.-trained or armed intermediaries responsible for defending U.S. interests in the region.

Since the early 1960s, and especially after the 1967 Arab-Israeli War, the United States also has been deeply enmeshed in ensuring Israel's survival. This has meant U.S. arms sales and economic aid to Israel, diplomatic support for Israel at the United Nations and elsewhere, serving as Israel's patron vis a vis its Arab enemies and the Soviet Union, and facilitating Arab-Israeli political negotiations in an effort to lessen or end the conflict.

Washington secured the Israeli-Egyptian peace treaty in 1979 and became deeply engaged in Israeli-Palestinian negotiations in the 1990s (and especially the Oslo process). Guaranteeing Israel's survival has been, at times, difficult to square with the U.S. commitment to the free flow of oil because so many of Israel's adversaries are major oil-producing states.

Islamist terrorism is the third and newest element in the U.S. political and security picture in the region. Although al-Qaeda was based in Afghanistan, many of its members came from and went back to the Middle East; it received financial backing and political sympathy from people located all over the region. As has often been noted, 15 of the 19 hijackers on September 11 were from Saudi Arabia. If the United States was going to crush anti-U.S. terrorists with a global reach, as President George W. Bush pledged in the days just after September 11, 2001, it was going to need to act in the Middle East to achieve that objective.

The U.S. invasion of Iraq was premised on the need to get rid of Iraqi President Saddam Hussein, but also drew on these long-running U.S. objectives in the region. By getting rid of Saddam Hussein, the United States planned to change Iraq from being a hostile, dangerous dictatorship to a pliant democracy. More importantly, a pro-U.S. Iraq would give the United States a new anchor for U.S. security policy in the Gulf region and thereby help the United States protect its oil interests and fight Islamist terrorism.

In Iraq, toppling Saddam would open the door, it was thought, to three beneficial changes from the U.S. perspective. First, Iraqi regime change would eliminate the threat to the United States from Iraq, its weapons of mass destruction, and Iraqi links to global terrorism. The Bush administration was certain Iraq had non-conventional weapons, as

Vice President Dick Cheney claimed in August 2002: “Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction.”<sup>3</sup> The implicit U.S. argument was that these security challenges were a manifestation of the particular Iraqi regime (Saddam) rather than of the national interests of any Iraqi leader. Change in Iraq would mean an improvement for U.S. national security.

Second, by managing Saddam’s replacement, the United States could ensure that post-Saddam Iraq was a pro-American ally. Regime change, though often accomplished through less intrusive or obvious means like a coup, has long been a favored way of winning or maintaining a US ally (*e.g.*, Iran 1953, Guatemala 1954, South Vietnam 1963, Chile 1973, Grenada 1983, Panama 1989).

Third, the United States wanted to democratize Iraq. A democratic Iraq would not only improve the lot of the Iraqi people but also could serve as an example for other authoritarian states in the Middle East. Some U.S. officials thought in terms of a demonstration or contagion effect: Iraqi democracy would serve as a role model and infect other states with the democratic bug. They hoped Saddam would be the first of many regional autocrats to fall, as President Bush later explained: “Iraqi democracy will succeed—and that success will send forth the news, from Damascus to Teheran—that freedom can be the future of every nation. The establishment of a free Iraq at the heart of the Middle East will be a watershed event in the global democratic revolution.”<sup>4</sup>

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<sup>3</sup> Dick Cheney, “Vice President Speaks at VFW 103rd National Convention,” Aug. 26, 2002, available at <http://www.whitehouse.gov/news/releases/2002/08/20020826.html>. For an extensive list of similar statements, see <http://lunaville.org/WMD/billmon.aspx>.

<sup>4</sup> George W. Bush, “President Bush Discusses Freedom in Iraq and Middle East,” Remarks by the President at the 20th Anniversary of the National Endowment for Democracy, United States Chamber of Commerce, Washington, D.C., Nov. 6, 2003, available at <http://www.whitehouse.gov/news/releases/2003/11/20031106-2.html>.

These specific U.S. objectives for Iraq vary greatly in terms of the amount of Iraqi cooperation and capabilities that are needed to achieve them. This, in turn, opens up more avenues for resistance. The U.S. military toppled Saddam's regime in a matter of weeks. The initial U.S. invasion and occupation of Iraq also limited threats from non-conventional weapons, had such weapons existed. In contrast, ensuring a pro-U.S. regime is more difficult unless Washington plans to occupy the country indefinitely. A democratic government cannot be done by American fiat; Iraqis must be willing and able to support this objective. As a result, these latter objectives may require a longer U.S. commitment and higher U.S. costs which create more openings for resistance. If the United States had only objectives that it could achieve in a matter of weeks, post-Saddam political and military resistance would have had little meaning. That Washington had aims that needed years to come to fruition set a dramatically different time frame and one that US opponents were able to exploit much more easily. The scope of the objectives helps shape the possibilities for resistance.

One sign of U.S. interest in Iraq was talk of new U.S. bases in Iraq that would not only help in the post-Saddam era for Iraq but would also give the U.S. instruments to defend its wider regional objectives. Although this talk died down since the heady early days of a 'mission accomplished,' it remains to be seen if the United States still plans to keep several military bases in Iraq and if so, how many.<sup>5</sup> The United States has already used military facilities in Iraq to launch unmanned surveillance drones to spy on Iran.<sup>6</sup>

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<sup>5</sup> Thom Shanker and Eric Schmitt, "Pentagon Expects Long-Term Access To Key Iraq Bases," *New York Times*, April 20, 2003 and "Rumsfeld Denies the U.S. Has Plans for Permanent Iraq Bases," *New York Times*, April 22, 2003. Rumsfeld's denial was that top officials had not discussed the idea with Iraqi officials. See also Kimberly Marten and Alexander Cooley, "Permanent military bases won't work," *International Herald Tribune*, Feb. 3, 2005 (op-ed). Andrew Arato offered a more critical view: "Any fool could see that the original American project aimed at establishing a quisling government to which pseudo-sovereignty would be given and with which the Americans, in classic neocolonial style, would then



As it turned out, many Iraqis were pleased with the initial U.S. goal of getting rid of Saddam, but broke with the United States on its other preferences. In October 2003, 17 % of Iraqis wanted US soldiers to leave Iraq and 43 % saw the United States as an occupier rather than a liberator. By April 2004, the numbers had risen to 57 % and 88 %, respectively.<sup>7</sup>

The U.S. preferences in Iraq were based on three inter-related assumptions about post-war Iraq that all proved to be incorrect. Washington assumed Iraqis would welcome U.S. soldiers as liberators indefinitely. Vice President Cheney explained in the same VFW speech mentioned earlier: “As for the reaction of the Arab ‘street,’ the Middle East expert Professor Fouad Ajami predicts that after liberation, the streets in Basra and Baghdad are ‘sure to erupt in joy in the same way the throngs in Kabul greeted the Americans.’”<sup>8</sup> In reality, the United States was quickly seen as an occupying force that was suppressing and harming Iraqis. This Iraqi perception was reinforced in May 2004 and afterward by the news of the torture of Iraqi prisoners at Abu Ghraib. The United States also assumed that U.S. military forces would be able to maintain a secure environment. Lastly, U.S. officials argued that economic improvements would be rapid and follow a one-way trend-line, always getting better.

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negotiate a ‘treaty’ for bases, oil, and whatever else they wanted.” See Arato, “Constitution-making in Iraq,” *Dissent* 51, no. 2, Spring 2004, pp. 21-28 at 24.

<sup>6</sup> Dafna Linzer, “U.S. Uses Drones to Probe Iran For Arms,” *Washington Post*, Feb. 13, 2005.

<sup>7</sup> Alissa J. Rubin, “Iraqi Silence Indicts U.S. Occupiers,” *Los Angeles Times*, May 16, 2004.

<sup>8</sup> Dick Cheney, “Vice President Speaks at VFW 103rd National Convention,” Aug. 26, 2002, available at <http://www.whitehouse.gov/news/releases/2002/08/20020826.html>.

## **Violent Resistance**

From the start of the U.S. occupation, U.S. military forces and the Coalition Provisional Authority (CPA) faced violent resistance from multiple actors including Saddam loyalists and Sunni nationalists jockeying for power in the post-Saddam era, Muqtada al-Sadr's Mahdi Army, and a small group of foreign fighters seeking to extend their global anti-American jihad to Iraq. Iraqi nationalism and opposition to foreign occupation played a role for almost all the Iraqi fighters. Though all these groups used violent tactics, they did not share the same goals. The insurgency succeeded in undermining the American ability to achieve its objectives in Iraq, and increased the leverage of Iraq's political actors by creating time pressures on U.S. officials. In the face of the violence, the CPA needed signs of political progress, not stalemate.

### **'The Sunni Triangle'**

The attacks on U.S. forces and their allies in the so-called Sunni triangle come from a mix of Saddam loyalists (most of whom are Sunni Arabs), Sunni nationalists concerned about being subjugated by a democratically-empowered Shi'ite Arab majority, and Sunni Islamists seeking to build a theocratic state. The Sunni triangle is an English-language term for the area of Baghdad and west of Baghdad. In an insurgency really composed of multiple and largely unaffiliated insurgencies, this one was the most intense.

Saddam's regime disproportionately benefited Iraq's Sunni Arab minority and intentionally set the stage for post-war violent resistance. Prior to the U.S. invasion, Iraq made plans and stockpiled weapons and material in order to fight the United States after the United States had 'won' the (initial) war.<sup>9</sup> The United States also quickly disbanded

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<sup>9</sup> Douglas Jehl, "Plan for Guerrilla Action May Have Predated War," *New York Times*, Nov. 15, 2003 and Eric Davis, "Democracy's Prospects in Iraq," Foreign Policy Research Institute, June 30, 2004. On the

the Iraqi army after the invasion, creating a reservoir of unemployed Iraqis with military experience and an immediate grudge against the CPA.

After years under the rule of a Sunni Arab (Saddam), some of Iraq's Sunni Arabs turned to violence to avoid domination by Iraqi Kurds or Shi'ites. Ba'athist and non-Ba'athist Sunni Arabs may also have been jockeying for power above and beyond any loyalty to Saddam's regime. Efforts to re-assert Sunni rule would only work if they could drive the United States from Iraq. Thus, they attacked targets that were part of the American and Iraqi ruling framework. Sympathizers of this sort tended to use nationalist, not Islamist, rhetoric.<sup>10</sup>

Much of the violent resistance was designed to stoke fears of participating and promote silence if not build active support for the opposition. The cumulative impact of many attacks on Iraqi police stations or assassinations of political officials such as the President of the Iraqi Governing Council, Ezzedine Salim (May 2004), was probably to dampen public involvement. (Although, it is possible that one could also posit an opposite theory: that eventually a silent majority gets so fed up that it decides to take action.)

One danger in categorizing Iraqi resistance into so many disparate groups is missing the linkages between different elements, especially on the topic of Islam. A prominent former weapons inspector, for instance, has argued that in the 1990s Saddam's regime began to shift the source of its ideological legitimation from Ba'athism to Islam. He claims that this helps us understand the current resistance—Saddam loyalists are able

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likely problems urban warfare would create for US forces in Iraq, see Barry Posen, "Foreseeing a Bloody Siege in Baghdad," *New York Times*, Oct. 13, 2002 (op-ed).

<sup>10</sup> Noah Feldman, *What we owe Iraq* (Princeton, NJ: Princeton University Press, 2004), pp. 43 – 44, 80.

to ‘use’ Islamists because of an ideological shift toward Islam that has been going on for a decade in the former Iraqi regime.<sup>11</sup> It is not, he alleges, merely a post-Saddam marriage of convenience between Ba’athists and Islamists.

The fighting and end of hostilities in Fallujah, a city west of Baghdad, saw the United States concede both the idea of achieving total security in Iraq and of designing the re-birth of Iraqi security forces. On March 31, 2004, Iraqis in Fallujah brutally killed four U.S. military contractors. In response, the United States pledged to capture those responsible, rout the insurgents based in Fallujah, and restore law and order.

Three weeks of heavy fighting began in April. U.S. forces took far heavier casualties than they had been taking in Iraq prior to the spring of 2004. There were few signs that U.S. forces were on the verge of achieving their goals of defeating the opposition or calming Fallujah. Instead, Fallujah served as touchstone for wider Iraqi opposition, including some tensions between Bremer and IGC members over U.S. tactics in Fallujah. The fighting in Fallujah set back US efforts to win Iraqi hearts and minds across Iraq.

When the hostilities ended by agreement on April 29, the United States had conceded on every local issue and a broader one as well, the issue of de-Ba’athification. The U.S. turned Fallujah over to the Fallujah Brigade, led by one and then a second general from Saddam’s regime. The force contained many former Ba’athist soldiers and, more importantly, many of the same Iraqis who had been fighting against U.S. forces.

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<sup>11</sup> Scott Ritter, “Saddam’s people are winning the war,” *International Herald Tribune*, July 23, 2004 (op-ed). See also Alexis Debat, “The jihadi movement has set its sights on Iraq,” *Financial Times*, June 30, 2004 (in contrast with Ritter, Debat notes that a “fundamentalist Sunni underground” developed in Iraq in the 1980s and 1990s); Dan Murphy, “Radical Islam grows among Iraq’s Sunnis,” *Christian Science Monitor*, July 28, 2004; and Anne Garrels, *Naked in Baghdad* (New York: Farrar, Straus and Giroux, 2003, 2004), pp. 54 – 56.

Fallujah remained very dangerous for U.S. forces. The city developed into a base of operations for violent U.S. opponents and the Islamicization of the city intensified.<sup>12</sup> The United States did not capture the contractors' killers. The United States only re-took Fallujah in November 2004 several months after the dissolution of the CPA, when many of the insurgents in the city probably moved on to Mosul.

### **Muqtada al-Sadr**

The son of a slain, senior Shi'ite cleric, Muqtada al-Sadr was a young, relatively junior cleric who not only sought to assume his father's mantle but also sought to rally Iraqi Shi'ites more widely. In contrast with many of the more reserved senior Shi'ite leaders, al-Sadr was willing to directly confront the United States through political and military means. In the post-Saddam political era, al-Sadr saw this confrontational approach as the best way for Iraq's Shi'ite majority to capture the political power it had so long been denied. At least in the short term, al-Sadr's theocratic tendencies and view of the United States as an occupier clashed with larger US objectives of establishing a democratic, pro-American Iraq. One can imagine, however, that he was not fundamentally opposed to positive relations with the United States as long as the United States accepted Shi'ite control of the Iraqi government and the centrality of (Shia) Islam in Iraqi law and governance.

In the spring of 2004, U.S. forces fought al-Sadr and his Mahdi Army and ended up making comprehensive concessions to achieve a cease-fire. The fighting was touched off by the U.S. closure of a Sadrist newspaper, *al-Hawza*, on March 28 and publicity

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<sup>12</sup> Hamza Hendawi, "Fallujah Emerging As Islamic Mini-State," *Associated Press*, May 25, 2004.

surrounding an arrest warrant for al-Sadr. U.S. and Sadrist forces battled in Kufa, Najaf, Sadr City (in Baghdad), and elsewhere for much of April and May.

When the United States suspended anti-Sadr operations on May 27, 2004, it had not achieved either of its stated goals: arresting al-Sadr or disarming his Mahdi Army. Dan Senor, the CPA spokesperson, used Orwellian language typical of U.S. comments after major concessions: “We have not altered our position with regard to the need to dissolve and disarm Moqtada's militia throughout Iraq or with Moqtada al-Sadr's obligation to meet the requirements in the arrest warrant issued against him.” Senor added that the United States expected Shi’ite leaders to negotiate these matters by an unstated and essentially non-existent deadline.<sup>13</sup> By mid-summer 2004, the United States (or the Allawi government) had not achieved either objective. Overall, al-Sadr’s fight with the United States appears to have boosted his political profile, though this has seemed at times a double-edged sword for al-Sadr since more senior Shi’ite leaders may react by trying to rein in al-Sadr.

### **Foreign Jihadists (al-Qaeda)**

For the foreign jihadists, Iraq became a place to attack U.S. forces. It has also likely served as a rallying cry to increase recruitment and fundraising for al-Qaeda. The jihadists are not the driving force behind the Iraqi insurgency, though such an allegation provided political benefits to President George W. Bush in his effort to claim linkage between Iraq and the War on Terror.<sup>14</sup> The Bush administration focused on one member of al-Qaeda and alleged that he was the foreign ringleader in Iraq, Abu Musab al-

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<sup>13</sup> Daniel Williams, “U.S. Halts Attacks On Sadr's Militiamen,” *Washington Post*, May 28, 2004, p. A1.

<sup>14</sup> Jim Krane, “Extent of Foreign Fighters in Iraqi Insurgency May Be Less than Often Portrayed,” *Associated Press*, May 3, 2004.

Zarqawi. Whereas before the fall of Saddam Hussein there was no meaningful relationship between Iraq and al-Qaeda, as the insurgency developed al-Qaeda clearly saw Iraq as a new front in the war against the United States.<sup>15</sup>

The foreign jihadists sought to frustrate U.S. goals in Iraq, but unlike their Iraqi counterparts they did so as part of a global (or at least regional commitment) to frustrate U.S. objectives and harm U.S. allies. Most importantly, they wanted to prevent the development of another pro-American state in the region, and, in doing so, undermine the reputation of U.S. military forces and the international credibility of the U.S. government.

## **Ayatollah Sistani**

The most prominent political resistance to U.S. policy was from the widely respected Shi'ite cleric Ayatollah Ali al-Sistani. As one U.S. advisor noted, "No Iraqi commands a wider following of respect and consideration, and has more capacity to steer political developments away from violence and extremism, than Sistani."<sup>16</sup> Another U.S. advisor described him as "a figure whom no one could afford to ignore." Sistani was "the democratic (or at least the majoritarian) conscience of the occupation."<sup>17</sup> Sistani repeatedly pressured the CPA on the importance of early elections. Although the CPA resisted Sistani for months, the two sides eventually agreed to hold elections earlier than

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<sup>15</sup> On the absence of a pre-invasion al-Qaeda-Iraq link, see *The 9/11 Commission Report* (New York: W.W. Norton & Company, 2004), p. 66, which stated, "But to date we have seen no evidence that these or the earlier contacts ever developed into a collaborative operational relationship. Nor have we seen evidence indicating that Iraq cooperated with al Qaeda in developing or carrying out any attacks against the United States."

<sup>16</sup> Larry Diamond, "Transition to What in Iraq?" Stanford Institute for International Studies, May 11, 2004, p. 8. On Iraqi Shi'ites more generally, see Juan Cole, "The Iraqi Shi'ites," *Boston Review*, Nov./Dec. 2003; Yitzhak Nakash, *The Shi'is of Iraq* (Princeton, NJ: Princeton University Press, 1995); and Rodger Shanahan, "The Islamic Da'wa Party: Past Development and Future Prospects," *Middle East Review of International Affairs* (MERIA) 8, No. 2 (June 2004).

<sup>17</sup> Noah Feldman, *What we owe Iraq* (Princeton, NJ: Princeton University Press, 2004), pp. 36, 67.

the CPA wanted but later than Sistani had suggested. This indirect deal came about after the UN envoy, Lakdhar Brahimi, said elections were not logistically possible in Sistani's preferred time frame (Sistani had preferred elections to be held during the summer of 2004).

What is much less clear in the case of Sistani is whether he and other Shi'ite leaders largely disagreed with U.S. timing and tactics or also had different objectives. Sistani is not a liberal, but he accepted a democratic system as a way to institutionalize Shi'ite power based on Iraq's Shi'ite majority. Would he support or oppose a pro-American Iraq five years down the road? What was the Shi'ite vision for Iraq's national security? These questions remained unanswered during the CPA period, a period which by definition did not ask players to make final choices about Iraq's future.

On June 28, 2003, Sistani issued a two-page fatwa calling for the constitution to be written by elected representatives. The approved English translation rejected the appointment of members to draft a constitution. Instead, it called for a "general election" to choose representatives to a "foundational Constitution preparation assembly." Later, the constitution so prepared would be put to a referendum.<sup>18</sup>

L. Paul Bremer, the U.S. head of the CPA, mistakenly thought he could overcome Sistani's opposition by getting backing from other Shi'ite clerics for the CPA's plan or by changing Sistani's mind. Neither approach was likely to work given Sistani's revered status and the hierarchical nature of Shi'ite jurisprudence. More junior Shi'ite clerics did

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<sup>18</sup> For the full text of the fatwa, see Feldman, *What we owe Iraq*, n.32 at p. 40.



not have the authority to over-rule Sistani. Moreover, his opinion was only likely to shift on the basis of new information, not mere political pressure.<sup>19</sup>

Why did the United States oppose national elections? According to one CPA advisor, “CPA thinking was dominated by the view that elections ought to be delayed as long as possible.”<sup>20</sup> The CPA frequently highlighted the potential logistical problems including the absence of reliable voter rolls, and one could argue that the U.S. position was based on technical matters. A second explanation is that U.S. officials were familiar with other models of post-conflict transitions in which premature elections undermined the move toward stability and recovery. Thus, the initial U.S. position on national elections was based on the fear that such elections would be divisive and destabilizing. A third possibility is that the United States was concerned with who would win the elections and how it would affect future Iraqi-U.S. relations. The elections might favor those already organized, the Islamist and Ba’athist parties. In other words, the election could bring to power Iraqi forces who were anti-democratic and hostile toward Washington.

Whatever the primary factor, throughout 2003 the CPA favored other ideas for selecting the drafters. Instead of elections, the United States initially thought that U.S. and Iraqi officials would jointly appoint the drafters. When the IGC was formed in July 2003, the CPA and the new IGC members discussed the issue and agreed the IGC would appoint a commission to settle on a mechanism. In the summer of 2003, the United States pursued a second idea, partial elections in which “the occupation authority would

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<sup>19</sup> See Rajiv Chandrasekaran, “How Cleric Trumped U.S. Plan for Iraq,” *Washington Post*, Nov. 26, 2003; and Prof. Juan Cole’s blog, Informed Comment, for Nov. 26, 2003, <http://www.juancole.com/2003/11/sistanis-fatwa-trumped-bremer-rajiv.html>.

<sup>20</sup> Feldman, *What we owe Iraq*, p. 114. In explaining the CPA’s thinking, Feldman highlights the logistical concerns and the fears that Ba’athists would dominate the election.

organize caucuses in each governorate, or province, that would be limited to political, religious, tribal, academic and trade union leaders as well as other influential local figures approved by the Americans. The caucus would select the drafters of the constitution.<sup>21</sup>

The IGC then appointed a commission to consider the issue, but even under U.S. pressure the commission did not endorse a U.S.-favored mechanism. In early September 2003, the commission voted unanimously to support general elections, in part because of Sistani's position. According to a CPA advisor, the committee "found itself completely constrained by the existence of the [June 28, 2003] fatwa."<sup>22</sup> The United States expressed its displeasure. Yet even in its final report on September 30, the commission declined to endorse any of the three options: appointment, partial elections, or direct elections.

During the fall of 2003, the United States and its allies were unable to change Sistani's position. In addition, in the late summer and fall of 2003, some Shi'ite members of the IGC supported Sistani's position that national elections were the best mechanism. Meanwhile, the growing number of U.S. casualties in Iraq put pressure on the United States to resolve the impasse. Whereas 44 U.S. soldiers died in all of October 2003, 32 U.S. soldiers were killed in the first week of November; this included the victims from two U.S. helicopters downed by missiles on November 2 and 7. (Even as of early 2005, November 2003 remains one of the worst months for casualties for US and allied forces with 82 US dead and 28 dead from international allies.)<sup>23</sup>

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<sup>21</sup> For much of this story, I draw on Rajiv Chandrasekaran, "How Cleric Trumped U.S. Plan for Iraq," *Washington Post*, Nov. 26, 2003.

<sup>22</sup> Feldman, *What we owe Iraq*, p. 40.

<sup>23</sup> "Iraq Coalition Casualty Count," [icasualties.org](http://icasualties.org), last accessed Feb. 8, 2005.

In mid-November 2003, Bremer unexpectedly came back to Washington for consultations with President Bush and other top officials. At these meetings, the United States decided to try to overcome Sistani's objections by deferring the writing of the constitution. The United States did not drop its opposition to national elections to select the drafters. The new plan still included something previously unacceptable to Sistani, partial elections (caucuses). At the same time, the new plan called for the United States to transfer sovereignty to Iraqis before the permanent constitution was written, a reversal of earlier U.S. sequencing that planned for the transfer of sovereignty after the writing of the permanent constitution. This revised approach would give Washington more time to gain support for a mechanism for selecting drafters other than through national elections. The revised plan was approved by the CPA and IGC on November 15, 2003.

Sistani maintained his objection to the proposed selection of an interim Iraqi government by caucuses. On November 29, 2003, in a statement responding to questions submitted by *Washington Post* reporters, Sistani codified his stance: "The mechanism in place to choose members of the transitional legislative assembly does not guarantee the establishment of an assembly that truly represents the Iraqi people." He further explained what was acceptable to him: "This mechanism must be replaced with one that guarantees the aforesaid, which is elections, so the assembly will emanate from the desire of the Iraqi people and will represent them fairly without its legitimacy being tarnished in any way."<sup>24</sup>

Tensions rose in January 2004 and culminated in a massive Shi'ite protest calling for direct elections. On January 11, Sistani again called for national elections and

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<sup>24</sup> Anthony Shadid and Rajiv Chandrasekaran, "Leading Cleric Calls For Elections in Iraq," *Washington Post*, Nov. 30, 2003.

emphasized the absence of national elections could lead to violence. The next day, Bremer reiterated in the press his commitment to the caucus approach, and the January draft of what became the TAL included the caucus mechanism.<sup>25</sup> On January 19, a Shi'ite-led demonstration brought tens of thousands of Iraqis into the streets of Baghdad to call for direct, national elections.<sup>26</sup>

By mid-February, most IGC members opposed the caucus plan, and the United States had accepted a UN team, led by Lakhdar Brahimi, to study the feasibility of conducting national elections.<sup>27</sup> The United States may have decided to rely on Brahimi to provide a face-saving way out of the stalemate over the mechanism for choosing the drafters of the constitution and for setting the timing of the national elections. One U.S. advisor saw the UN role as proof of Sistani's impact: "Ayatollah Sistani had done what Tony Blair could not: he had brought the United States to the United Nations, hat in hand, seeking its involvement in nation building in Iraq."<sup>28</sup> His report, according to one CPA official, was a "critical" factor in determining the new framework.<sup>29</sup> Furthermore, the United Nations had significant experience in handling elections in post-conflict societies. Given that experience, some US officials may have felt that if the UN team felt elections could be held in Iraq despite the logistical challenges, the United States was willing to go along. Even before the Brahimi report was officially released, the United States finally conceded that the caucus approach was dead.

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<sup>25</sup> Daniel Williams and Pamela Constable, "U.S. Rebuffs Cleric on Iraqi Vote Plan," *Washington Post*, Jan. 13, 2004; and an interview with a US official of the CPA, Feb. 2005.

<sup>26</sup> Anthony Shadid, "Shi'ites March for Elections in Iraq," *Washington Post*, Jan. 20, 2004.

<sup>27</sup> Rajiv Chandrasekaran, "Iraqi Panel Pivots on U.S. Plan," *Washington Post*, Feb. 17, 2004.

<sup>28</sup> Feldman, *What we owe Iraq*, p. 41.

<sup>29</sup> Interview with a US official of the CPA, Feb. 2005.

The report from Brahimi's fact-finding mission was issued by UN Secretary-General Kofi Annan on February 23, 2004. Brahimi rejected both a caucus approach and holding national elections by June 30, 2004. "Credible elections," he wrote, "cannot take place by 30 June 2004."<sup>30</sup> The report argued for the decoupling of the handover of sovereignty and national elections. The elections could be delayed even if the transfer of sovereignty still took place by June 30, 2004. That meant, however, that the report had to come up with a new mechanism for choosing the post-June 30 transitional Iraqi government; the report offered some suggestions but did not advocate any single option. Brahimi's report also suggested that elections be held by the end of 2004 or shortly thereafter for a legislative and constitutional assembly (In the November 15, 2003 agreement, the United States agreed to elections for a constitutional assembly by March 15, 2005).

On February 26, 2004, Sistani responded to the UN report by accepting a 6-month delay in holding the elections as long as there were "clear guarantees" such as a UNSC resolution.<sup>31</sup> Sistani had met with Brahimi on February 12 and the meeting apparently helped to convince Sistani of the logistical difficulties of having elections by June 30, 2004. The deal was enshrined in the TAL and UNSC Resolution 1546 on June 8, 2004.

In opposing U.S. policy, Sistani relied on a core American norm: one person, one vote. Given the significant Shi'ite Arab demographic advantage in Iraq (probably 60 – 65 % of the population), Sistani could pay lip service to this central principal of democracy without necessarily being committed to American democracy. I do not know whether

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<sup>30</sup> "The Political Transition in Iraq: the report of the fact-finding mission," <http://www.un.org/News/dh/iraq/rpt-fact-finding-mission.pdf>, p. 12, accessed Feb. 15, 2005.

<sup>31</sup> Anthony Shadid, "Iraqi Cleric Yields on Elections," *Washington Post*, Feb. 27, 2004.

Sistani is committed to a functioning Iraqi democracy, but such an idea guaranteed Shi'ites political power.

Who prevailed? Neither the CPA nor the Sistani faction got exactly what it wanted, but the end result was much more favorable to Sistani. The U.S. effort to move forward through the appointment and then partial election (caucuses) of drafters of the constitution was stymied by Sistani. The elections schedule, however, did not follow Sistani's initial preferences, although this was due to the logistical difficulties described by Brahimi and the UN mission rather than to the persuasive power of the United States. The constitution writers would be selected by Sistani's method but the transitional government of Iraq—what became the government of Prime Minister Iyad Allawi—would not.

Why did the United States have to take heed of Sistani's opposition? I think several factors came together. As I noted already, the insurgency created time pressure on U.S. officials. In addition, Sistani's religious power translated into significant political power and he played it well; even many Iraqis working with the United States respected Sistani's viewpoint. If the United States was not already aware of Sistani's strength, his popular support was made clear by the January 2004 rally. Sistani's call for national elections also raised the issue of U.S. legitimacy in Iraq. How could the United States promote anti-democratic means to force a democratic process when the democratizing aspect was being used as such a central justification for U.S. policy in Iraq? The old notion of a pro-consul does not work as well when the occupying power is seeking to democratize the occupied people in short order. Finally, the United States may

have wanted to favor Sistani as a Shi'ite leader who could deliver in the face of a rising challenge from al-Sadr.<sup>32</sup>

Even after the elections issue was settled, Sistani still exerted his influence on the political process. On March 5, 2005, five Shi'ite members of the IGC refused to sign the TAL at what was supposed to be the official signing ceremony. Although the document was signed a few days later, the brief disagreement may have delayed an inevitable clash over the Kurdish desire for autonomy and legal protections from the central government. The five Shi'ites echoed Sistani's opposition to Article 61(c) article, the clause giving any three provinces the ability to scuttle the permanent constitution. The opponents included Ahmed Chalabi of the Iraqi National Congress, Abdul Aziz Hakim of the Supreme Council for Islamic Revolution in Iraq, Ibrahim Jafari of the Dawa party, Mowaffak Rubaie, and Muhammed Bahr Uloum, a Shi'ite cleric. After meeting directly with Sistani on March 7, the five hold-outs signed the TAL the next day without any changes to the draft. A few months later, Sistani successfully pushed the United States to exclude a reference to this interim document in UNSC Resolution 1546 on June 8, 2004. In a letter to the president of the Security Council, Sistani warned that any direct reference to the TAL in the proposed resolution would have "serious consequences."<sup>33</sup>

## **Kurds**

Although Kurdish leaders had worked with the United States for several years, after the fall of Saddam the two sides clashed over militias, checkpoints, and political issues. The main objective of Kurdish leaders was conservation: to protect their past

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<sup>32</sup> Juan Cole, "The United States and Shi'ite Religious Factions in Post-Ba'thist Iraq," *Middle East Journal* 57, no. 4 (Autumn 2003), pp. 543 – 566.

<sup>33</sup> Feldman, *What we owe Iraq* endnote 33, p. 147.

gains. Since 1991, northern Iraq functioned as an autonomous zone outside of Saddam's control. It was under the partial protection of the United States and Britain, and it was dominated in the political realm by the two main political and military Kurdish entities, the Kurdistan Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK). In 1992, Kurds held elections for a regional parliament, the national assembly. A council of ministers, including a prime minister, was first formed in September 1996. Together they form the Kurdistan Regional Government based in Irbil.

In order to protect this autonomy, Kurds supported the same type of Iraq as Washington wanted. Kurdish officials had already worked with the United States in the 1990s and called for "a free, federal, pluralistic and democratic Iraq."<sup>34</sup> The leaders of three Kurdish political groups served as members of the Iraqi Governing Council: Massoud Barzani (KDP), Jalal Talabani (PUK), and Salaheddine Bahaeddin of the Kurdistan Islamic Union. The Kurds accepted U.S. objectives for Iraq but had some of their own in addition, and this led to some important policy differences between the two.

After Saddam's fall, as throughout the 1990s, Kurdish leaders emphasized a federal solution and did not push for Kurdish independence. Much more powerful external actors objected to Iraqi Kurdish independence including Turkey, the United States, and the rest of Iraq. Turkey threatened to intervene if Kurdish leaders expanded the size of the autonomous region, let alone declared independence. Moreover, the practicality of independence for a land-locked country surrounded by four larger neighbors—Iran, Iraq, Syria, and Turkey—was questionable. With independence,

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<sup>34</sup> Nechirvan Barzani (Prime Minister of the Kurdistan Regional Government), "Kurdistan and Iraq," *Washington Times*, Jan. 28, 2005. This was enshrined in article 4 of the TAL: "The system of government in Iraq shall be republican, federal, democratic, and pluralistic."



unresolved issues like the status of Mosul and Kirkuk and the division of Iraq's oil revenues might not be decided in the Kurd's favor. In short, the calculation seems to have been that it was better to protect what Iraqi Kurds had achieved than to risk it all by seeking independence, thereby risking a return to domination by others, death, and destruction.

The Kurds resisted some initial CPA policies, but the CPA backed down. The CPA initially called for the Kurds (and others) to disband militias and take down checkpoints. The Kurds resisted both policies and clearly stated they never intended to disband their militias, known as the peshmerga. The checkpoints then came down. However, they quickly went back up after a few bombings in Kurdish controlled-areas. The militia issue was not resolved until the TAL came into force, and U.S. and Kurdish leaders signed a private memorandum, as noted below.

The United States opposed interim legal recognition of and sanction for Kurdish autonomy, while Kurdish leaders raised a number of issues to protect Kurdish power and, in the case of Kirkuk, improve on the status quo. In early January 2004, Bremer twice met with Kurdish leaders "to urge them to back down from their demands to retain autonomy."<sup>35</sup> Drafts of the TAL from January 2004 did not contain a mechanism to ensure the Kurdish ability to block an unfavorable version of the permanent constitution, something that was included in the final TAL (Article 61(c)).

The Kurdish leaders pressed for concessions on a range of issues including the peshmerga, protection from national legislation, the judiciary, ratification of the permanent constitution, the status of Kirkuk, and the disbursement of oil revenue. When

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<sup>35</sup> Robin Wright and Alan Sipress, "Kurds' Wariness Frustrates U.S. Efforts," *Washington Post*, Jan. 9, 2004.

the TAL was signed, it included recognition of the special status of Kurdistan and put in place a number of constitutional protections. On the militias, the protection from national legislation, and constitutional ratification, the Kurdish position prevailed while Kurdish leaders only conceded much ground on the new judicial structure. The status of Kirkuk and the oil question were in essence deferred.

Many of these concerns were contained in a Kurdish proposal for a chapter in the TAL devoted solely to Kurdistan. Although the final version of the TAL did not contain a separate chapter on Kurdistan issues, officials incorporated several of the ideas into the TAL. The Kurdish proposal, entitled “Special Provisions For The Kurdistan Region Of Iraq,” was originally given to CPA officials, probably in early February, and then the Kurdish government posted the document on its website on February 20, 2004.<sup>36</sup> The proposed chapter contained six articles relevant to this discussion.<sup>37</sup> Article 1, “Continuity of the Kurdistan Region,” protected the legal, territorial, and governmental aspects of Iraqi Kurdistan and the KRG. Article 2, “The Iraqi Kurdistan National Guard; Security of the Kurdistan Region,” called for the maintenance of separate Kurdish militias (security forces). Article 3, “Natural Resources in the Kurdistan Region,” called for Kurdish control of land, water, and oil (including the sale of oil). Article 5, “Kurdistan Region Ratification of Successor Laws to the Transitional Law,” required Kurdish popular approval of any permanent constitution. In a general sense, the continuity of the Kurdistan region and the ratification issue were dealt with in the TAL

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<sup>36</sup> Interview with an American observer of Iraqi politics, Feb. 2005. The Kurdish government’s web site is [www.krg.org](http://www.krg.org).

<sup>37</sup> I do not address Article 4, “Fiscal Arrangements” and Article 6, “Effective Date in the Kurdistan Region.” For the proposal, see <http://home.cogeco.ca/~kurdistan1/21-2-04-special-provision-krg.htm> as the official Kurdish government’s website no longer displays the proposal.

along the lines proposed in this document, the security forces were dealt with in a separate memorandum, and the oil issue was deferred.

On the question of disbanding Kurdish militias, the TAL is ambiguous, but the two parties signed a private memorandum of understanding that largely endorsed the Kurdish position. According to TAL Article 27(b), all militias must be under the central government's "command structure." Article 54(a), however, allows the KRG to "retain regional control over police forces and internal security." The memorandum of understanding goes even further and directly addresses Kurdish concerns raised in article 2 of the proposed separate chapter on Kurdistan for the TAL. A small number of Kurdish forces will become part of the Iraqi National Guard under the control of the central Iraqi government. The remaining peshmerga will be known as a KRG internal security force and include rapid reaction forces, anti-terror forces, and mountain rangers. These internal security forces will report to the KRG, not to the central government.<sup>38</sup>

The TAL also provides the Kurds protection from many national laws including in the controversial area of Islam. In terms of federal laws, "the Kurdistan National Assembly shall be permitted to amend the application of any such law within the Kurdistan region" with the exception of foreign policy, national security, fiscal policy, natural resources, telecommunications, and a few other matters (Article 54b with reference to 25 and 43d). This clause would provide the Kurds protection against the intrusion of (Shi'ite) Islamic observance into daily life and governmental practice. If, for example, the federal government passed a law mandating that women must be covered when in public, the Kurdish assembly could legally block the application of the law in

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<sup>38</sup> Interview with an American observer of Iraqi politics, February 2005. See also Peter Galbraith, "Iraq: The Bungled Transition," *New York Review of Books* 51, no 14, Sept. 23, 2004.

Kurdistan. The TAL itself contained compromise language on the relationship between the law and Islam (See Article 7). During the negotiations, Bremer “indicated that he will veto any interim constitution that makes Islam the sole source of legislation.”<sup>39</sup>

The definition of the judiciary in the TAL gives the Kurds some protection, but they conceded that federal courts would sit above the Kurdish ones. Iraq’s new supreme court sits atop a framework designed to bring together, though not fully integrate, the two existing legal systems, one in Kurdistan and one in the rest of Iraq. The federal supreme court was given “Original and exclusive jurisdiction in legal proceedings between the Iraqi Transitional Government and the regional governments, governorate and municipal administrations, and local administrations” by Article 44(b)(1). Local court decisions, “including the courts of the Kurdistan region,” will be subject to review by federal courts (Article 46(b)). However, while most decisions will be decided by a simple majority, cases between the central government and the regional governments must be taken by a two-thirds majority of the nine justices (Article 44(d)).

For the ratification of the permanent constitution, the Kurds also protected themselves. The clause is in the interim Iraqi constitution: “The general referendum [to be held no later than October 15, 2005] will be successful and the draft [permanent] constitution ratified if a majority of the voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it” (Article 61(c)). This veto provided for in the article is not restricted to Kurds, but Kurds are the majority in three provinces and may balk at provisions imposed by the Shi’ite majority. (Incidentally, Sunni Arabs are also a majority in three provinces.) At the last minute, the clause was strongly

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<sup>39</sup> Rajiv Chandrasekaran, “Iraqi Council Shi’ites Walk Out of Session On Constitution,” *Washington Post*, Feb. 28, 2004.

opposed by Shi'ite leaders and led to a brief delay in the signing of the final version of the TAL in early March 2004.

One unresolved issue is the geographic definition of the Kurdish area. Kurdish leaders would like to expand Kurdistan as it was defined in the 1990s and to include Kirkuk and Mosul. Turkey has threatened that it will not allow Kirkuk to formally fall under Kurdish political control. This issue was not resolved during the CPA period though Kurdish leaders tried to get U.S. support during the TAL negotiations in the first months of 2004.<sup>40</sup> In the TAL, Article 53(a) endorsed the territorial status quo in northern Iraq without resolving the question: "The Kurdistan Regional Government is recognized as the official government of the territories that were administered by the that [sic] government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh."<sup>41</sup> In a separate article (58), the TAL endorsed a process to remedy the ethnic cleansing of Kurds (and others) under Saddam Hussein. The articles made specific reference to Kirkuk. In a later period after the CPA's dissolution, Iraqi Kurds who had returned to Kirkuk since the fall of Saddam were allowed to vote in the national elections on January 30, 2005. That they were allowed to vote was seen as a victory for the Kurdish political leadership.<sup>42</sup>

Lastly, the Kurds tried to ensure a more favorable distribution of Iraq's oil revenue, but the language of the TAL is ambiguous. The federal government has the

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<sup>40</sup> Daniel Williams, "Iraqi Kurdish Leader Demands Guarantees," *Washington Post*, Jan. 18, 2004.

<sup>41</sup> "Law of Administration for the State of Iraq for the Transitional Period," Mar. 8, 2004, <http://www.cpa-iraq.org/government/TAL.html>, last accessed Feb. 4, 2005.

<sup>42</sup> Gareth Smyth and Krishna Guha, "Kurdish pledge of 'no compromise' on Kirkuk raises fears of conflict," *Financial Times*, Jan. 28, 2005.

responsibility for managing Iraq's natural resources. The language on sharing the wealth takes into account many considerations:

[D]istributing the revenues resulting from their sale through the national budget in an equitable manner proportional to the distribution of population throughout the country, and with due regard for areas that were unjustly deprived of these revenues by the previous regime, for dealing with their situations in a positive way, for their needs, and for the degree of development of the different areas of the country. (Article 25(b)).

Given the multitude of factors mentioned, one can imagine this playing out in several different ways only some of which would be to the liking of the KRG.

Overall, then, the Kurdish leaders cemented their autonomous status, conceded few rights (the judiciary being the exception), and kept open some issues on which they hope to expand Kurdish powers. Given the initial U.S. opposition to legal protections for Kurdish autonomy, the United States (and non-Kurdish Iraqis) conceded several important points.<sup>43</sup> In short, the TAL and the memorandum of understanding addressed the Kurdish red lines.

Near the end of the CPA phase, Kurdish leaders worried that the interim Iraqi government that would take power after the handover of sovereignty (which took place on June 28, 2004) would not protect the Kurdish status quo. After a U.S. official told Barzani and Talabani that a Kurd could not be Prime Minister or President in the transitional government, they appealed directly to Bush in a letter of June 1 and threatened to withdraw support.<sup>44</sup> Kurdish officials pressed for more Kurdish representation in the interim government. The post of deputy prime minister for Barham

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<sup>43</sup> The Kurds had to negotiate with the CPA and with representatives of other Iraqi groups.

<sup>44</sup> Galbraith, "Iraq: The Bungled Transition," *supra* note 38.

Salih (PUK) was a late addition, but the Kurds were not put in charge of the defense or finance ministries (Hoshiyar Zebari, KDP, held the foreign ministry).

This discussion of Kurdish-CPA relations begs the question as to why the Kurds got what they wanted. One plausible explanation is the time pressure on the United States due to the insurgency and the need to avoid the appearance of a political stalemate in Iraq. If the CPA refused to concede the major Kurdish red lines, the Kurds could have held up the TAL negotiations and undermined yet another aspect of the November 15, 2003 agreement, the signing of a transitional constitution by February 28, 2004. If the CPA could not negotiate the TAL in a timely fashion, the United States could not move toward transferring sovereignty to Iraqis and holding elections. The sovereignty and elections issues, along with a general sense of forward momentum, helped the Bush administration on two inter-related points. First, they helped Bush in the U.S. presidential election. He could tell voters he had a plan that was working. Second, they helped keep the American people feeling like U.S. troops would not be in Iraq forever. Stalemated political talks in Iraq would send the opposite message and support for the war might drop quickly. This was especially important at a time when some Americans were just starting to recognize that Bush's Iraq war would be much more costly in human and financial terms than the administration had previously admitted.

## **Types of Resistance: Lessons from Iraq**

Iraqi resistance to US policy preferences typifies a number of ways in which weaker actors may resist dominant powers. The Iraqi case includes examples of three of Bobrow's categories: Crazy and Martyrdom, Rule Based Retaliation, and Schedule Delays. In addition, the Iraqi case also suggests how the interaction between violent and

political resistance may increase the likelihood that the great power is stymied. First, violent resistance creates time pressure that affects the time frame for political actors as well. Second, political actors may be forced to (or feel compelled to) react to events taking place in the violent realm. Differences of opinion among rival political actors may emerge which are solely based on how to deal with the violent resistance. In terms of the modalities outlined by Bobrow, this means that resisters need not be working together formally as part of a front or network in order to benefit from their respective anti-U.S. tactics. Finally, the case addresses how resisters may exploit a great power who seeks to achieve many goals simultaneously.

### ***Craziness and Martyrdom***

Some Iraqi insurgents used extreme violence, attacks on civilians, and self-sacrifice to affect policy in Iraq, the United States, and elsewhere. Suicide bombings, beheadings, and attacks on Iraqi police and governmental personnel sent a message. They might cause Iraqis who were considering working with the CPA and IGC to stay on the sidelines. They might influence the U.S. public to back away from Iraq given the high and ghastly costs. In the international arena, this type of violence could lead other states and international actors to question whether the United States could succeed. This in turn would affect the willingness of others to get involved: why join a sinking ship?

The Sadrists do not generally fit into this category. Their battles with U.S. and Iraqi forces could have a similar impact on Iraqis, the U.S. public, and the international community. However, the message sent is a different one; it is one of nationalist determination, not craziness. We are here, this is our land, and we will use force to



defend it is meant to be a rational argument for the high costs the US and others would pay if they continue to occupy Iraq.

### ***Rule Based Retaliation***

Actors may use “codes of behavior previously accepted” by the United States to undermine U.S. policy. Once Washington sets the rules of the game, actors may resist by using the accepted rules against the rule-maker. While the most obvious applications of rule-based retaliation may be in the international economic realm, Sistani’s reliance on democratic norms is a more subtle illustration. Sistani took the general U.S. commitment to democracy and elections and insisted that the United States also uphold that commitment in the Iraqi context. He must have known that such an appeal for democratic elections would have deep resonance with Bush’s constituents back in the United States.

### ***Schedule Delays***

The time frame for the United States and Iraqi actors was not the same, and this meant that Iraqi negotiators could threaten to wait out political disagreements with the United States and other Iraqi actors. While Washington wanted continual signs of progress in order to satisfy domestic and international observers, Shi’ite and Kurdish leaders could better afford to bide their time. The possibility of political deadlock, delays, and missed deadlines was alarming to the United States and gave greater leverage to the Iraqi representatives. This situation may also be linked to a fourth category of Bobrow’s, *Conditional Support Commitments*, in which the prospects of compliance are held out as being explicitly contingent on some condition that the bargainer knows is unlikely to be met.”

One interesting aspect of the resistance to U.S. preferences in Iraq was the interplay between the violent insurgency and political interactions between the CPA and other Iraqi actors. Unlike some cases where the militant and political actors may be linked (*e.g.*, the Irish Republican Army and Sinn Fein), most of the insurgents were wholly distinct from many of the most powerful Iraqi political players. Neither Sistani nor the Kurds were in any way cooperating with the insurgents. Al-Sadr was not a puppet of Sistani, and the Kurds strongly opposed the insurgency.

Nonetheless, the insurgency affected CPA-Iraqi interactions in two ways. First, it created controversial decision points to which political actors had to react. For instance, in the spring of 2004, Ghazi al-Yawir, a Sunni member of the IGC and later the transitional President, said he would resign if the Fallujah stand-off was not resolved diplomatically. Shi'ite member Abd-al Karim al-Mahmadawi expressed similar concerns after coalition attacks on al-Sadr's forces.<sup>45</sup> In short, the counter-insurgency campaign created splits among some Iraqi politicians and the CPA/U.S military.

Second, the insurgency created a sense of urgency among U.S. officials that probably gave Sistani and the Kurds greater leverage in disagreements with the United States. The Bush administration needed good news to sustain political support for the Iraqi adventure back in the United States, especially given that President Bush was up for re-election in November 2004. The combination of insurgency and failed political negotiations would not have boded well for the Bush administration. U.S. officials could not end the insurgency by modifying U.S. policy short of leaving Iraq, but they could accommodate political resistance through reasonable concessions. Moreover, the United

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<sup>45</sup> See <http://www.globalsecurity.org/military/world/iraq/igc.htm>.

States was the external actor far from home whereas Iraqis were home and fighting, whether politically or militarily, for control of that home. The Iraqis had nowhere else to go.

Iraqi resistance is also suggestive about the interplay between different U.S. objectives in a given setting like Iraq. First, resisters may be selective about which U.S. objectives they can best resist. For Iraqis willing to use military means, it may have made more sense to wait until the United States had toppled Saddam's regime and then launch an insurgency rather than try to stave off the U.S. invasion in March and April 2003. The American military advantage was greatest during the initial invasion, while the battlefield became more competitive during the insurgency. In both a literal and figurative sense, Iraqi resisters had to pick their battles.

Second, some resisters may embrace some U.S. goals but not others. When the United States has many broad goals as it did in Iraq, resisters may quickly understand the potential conflict between various U.S. objectives and seek to exploit the areas of goal incompatibility. Sistani may have seen that he could support the democratic path even if that meant that United States might have to sacrifice its desire for a pro-U.S. Iraqi regime. In a more speculative vein, perhaps Kurdish leaders were willing to protect Kurdish autonomy even if that was at the expense of the territorial integrity of Iraq, an important baseline for Iraq's future from the U.S. perspective.

## **Costs and implications for the United States**

What have shifts in U.S. policy in Iraq cost the United States? While each of these costs are not solely the result of opposition to U.S. preferences in Iraq, the magnitude of each is greater as a result of successful challenges to U.S. policy. A closer

look at CPA interactions with Kurdish and Shi'ite leaders suggests that the United States did not impose the transitional constitution, the TAL. Some observers have argued otherwise: "After flaunting his veto power, Paul Bremer pushed through a draft constitution in almost coup-like fashion."<sup>46</sup> In fact, the United States conceded too many central issues for one to view the interim constitution as 'imposed.' Sistani's success at pushing for elections and Kurdish provisions on the three-province veto and the status of Kurdistan were all counter to initial American positions.

As in any war, the United States has expended blood and treasure. By the transfer of sovereignty, over 850 U.S. soldiers had been killed in Iraq. The U.S. financial bill was into the hundreds of billions of dollars. Broadly, Iraq failed to demonstrate the ease and replicable nature of nation-building or democratization. The U.S. experience in Iraq makes nation-building look very difficult, costly, and time-consuming. The U.S.-led effort struggled to build a secure environment, a better economy, and a legitimate government and political system. The Iraqi debacle could easily inspire future leaders to say what then-candidate Governor George W. Bush said on October 11, 2000 in his second debate with then Vice-President Al Gore: "And so I don't think our troops ought to be used for what's called 'nation-building.'"<sup>47</sup>

The same is probably true with democratization. While Iraq could yet emerge as a democratic country, the U.S. role in Iraq is unlikely to inspire democrats and liberal reformers in the near term. In addition to constant alterations on procedural questions, the United States compromised democratic and liberal values on major symbolic and

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<sup>46</sup> Arato, "Constitution-making in Iraq," p. 25.

<sup>47</sup> See [http://www.c-span.org/campaign2000/transcript/debate\\_101100.asp](http://www.c-span.org/campaign2000/transcript/debate_101100.asp).

substantive issues such as through the Abu Ghraib scandal and other torture allegations, the above-mentioned concessions in Fallujah, and the general reversal of de-Ba'athification processes. In the absence of Iraqi WMD and al-Qaeda-Iraq terror links, democracy and human rights became the major ex-post Bush administration justifications for the war, but they lose some impact in the face of anti-democratic or anti-liberal behavior.

Lastly, the U.S. performance in Iraq and the Iraqi insurgency help al-Qaeda by playing on both American power and weakness. The invasion and reconstruction of Iraq serve as a motivating tool for recruitment and fundraising. The evil giant, America, invaded and occupied another Muslim land. At the same time, the insurgents' success in inflicting casualties and creating a climate of fear and disorder demonstrates that U.S. forces are vulnerable. It gives encouragement, and possibly tactical models, to others elsewhere who hope to confront the United States. If Iraq remains unstable for the next several years, it could become a formal or informal training area for jihadists and other U.S. opponents. In short, American military and economic dominance does not mean that the United States can dictate its desired outcome in every political or military arena.