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State-Building, Stability, and Oil as “Shared Competencies” in Iraq

TRACI L. NELSON

Introduction

Despite the democratic and developmental progress made in Iraq, the state’s key ethnic, sectarian, and political groups have yet to achieve consensus on core issues, including the division of oil wealth and resolutions to territory disputes in Khanaqin and Kirkuk. Control of Kirkuk represents control over one of two major oil producing regions in Iraq and, thus, control over a substantial amount of wealth from the surrounding region’s oil development. Moreover, tensions between the leadership within the Government of Iraq (GOI) and the Kurdistan Regional Government (KRG) demonstrate that progress on issues such as these is critical to achieving a stable, secure Iraq that is not merely a short-term phenomenon. These tensions are exacerbated by the inability of the Council of Representatives (COR) to pass a set of hydrocarbon laws that clarify oil and gas policies as well as related management procedures, constitutional amendments, and other investment laws.¹ The short history of Iraq’s nascent, democratically elected government has shown that legislation passed by the COR sometimes fails to be implemented. Even worse, a meddlesome executive is occasionally wont to tinker with legislation already passed or, in extreme cases, quash it altogether. These actions only serve to degrade a legislative process that is beset with indecision and institutional delays most recently associated with the certification of the 2010 election results and the protracted government formation process. As of October 2010, the four hydrocarbon laws that were

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introduced in the COR in 2007 have been neither finalized nor signed into law. The discord regarding hydrocarbon legislation is, arguably, driven by competing regional interests and exacerbated by the asymmetrical constitutional division of powers and weak institutions that exist at the federal, regional, and gubernatorial levels. Blanchard notes:

Concurrent negotiations regarding constitutional amendments have had direct implications for the hydrocarbon legislation debate, particularly efforts to clarify the specific authorities granted to federal and regional governments to regulate oil and gas development and export activities under Articles 111 and 112 of the Iraqi Constitution . . . violence and political tension that have prevailed in Iraq in recent years have not been conducive to careful consideration of detailed hydrocarbon sector legislation or new national oil and natural gas contracts.²

The focus of this analysis on intergovernmental control over the oil and gas industry is deliberate—Iraq has the world’s fourth largest oil reserves, and its primary economic challenges are complicated by weak institutions and persistent stability and security concerns.³ While oil and gas are part of Iraq’s economic policy, each is not treated as such in the Constitution, Provincial Powers Law of 2008, or the draft oil and gas laws. Understanding oil as such is critical, because qualitative and quantitative studies suggest that a state’s oil resources can have antidemocratic effects, rentier effects,⁴ repression effects,⁵ and modernization effects.⁶ Regardless of the structure of the government it may very well place at risk state-building, stability, and democratic consolidation given the lack of economic development often associated with resource wealth.⁷ When tying these effects together, existing research suggests that states like Iraq face a “resource curse” wherein the greater the state’s resource wealth, the more slowly the state develops, the greater the instability, and the more likely it is to experience civil war.⁸

Decision-makers in Iraq are faced with overcoming these effects and the constitutional dilution of the GOI’s federal authority, specifically with respect to the regulation of the oil and gas industry and its resources. The division of powers related to oil as a “shared competency” of the federal, regional, and provincial governments has the potential to lead to negotiation gridlock across these government levels and result in the continued promotion of alternative markets for the sale and export or trafficking of oil not regulated by the government. Here, a decentralized approach allows decision-makers to search for extraconstitutional mechanisms to enforce their preferences. The lack of structure or specific powers in the Constitution, enabling the GOI to regulate the oil and gas industry, is problematic for the overall physical security and economic, legal, and political stability of Iraq. Given this in particular, the intergovernmental relationships that develop are likely to determine the extent to which democratic consolidation takes

hold in Iraq. Moreover, if gridlock results and alternative markets persist, the people of Iraq are likely to perceive the government as unstable and an illegitimate functionary to manage the state’s wealth, particularly where oil wealth is being diverted from providing basic services to the Iraqi people.⁹ This article is not intended to be a treatise on these issues but rather a beginning to a discussion that connects previously disjointed concerns; the outcome of which carries with it high stakes for the people of Iraq and directly affects Iraq’s relationship with the United States.

The greater the state’s resource wealth, . . . the more likely it is to experience civil war.

Constitutional Division of Powers and the Provincial Powers Act

The Iraqi Constitution does not delineate the structure or necessary prerequisites required to manage the relationships between the burgeoning institutions at the federal, regional, and provincial levels of Iraq’s government. To this end, the Constitution contains an exceptionally large number of provisions that defer decision-making to the direct enactment of some future law passed by the COR or other legislative body. In some cases, these future laws have to be passed by a two-thirds COR majority. Likewise, many of the provisions use discretionary language (may) as opposed to mandatory language (shall) to direct the COR. Only one of the fifty-four undefined provisions carries with it a timeline by which the COR or other legislative body needs to provide clarification.¹⁰ On the one hand, the Constitution’s general lack of specificity permits the GOI and its institutions to take shape as the Constitution evolves.¹¹ On the other, decentralized decision-making coupled with the lack of constitutional clarity as to the ownership of the oil and gas industry suggests that Iraq is subject to resource wealth effects and the “resource curse.”¹² While the Constitution charges the federal government in Section IV, Article 109 with preserving the “unity, integrity, independence, and sovereignty of Iraq and its federal democratic system,” it contains articles that confound the federal government’s ability to satisfy these goals.

The Iraqi Constitution establishes three levels of governance—the federal government in Baghdad, regional governments of which there is currently only one, Iraqi Kurdistan, and the governorates (provinces) of which there are eighteen.¹³ It also specifies that “[o]il and gas are owned by all of the people of Iraq in all the regions and governorates.” This provision in Article 111 gives all citizens of Iraq, wherever a resident, an undivided interest in all of the country’s oil and gas resources. It neither vests ownership of oil and gas in the federal government nor allocates the resources to

particular regions or governorates. By its language and separation from the exclusive authorities of the federal government and the shared authorities, Article 111 suggests that oil and gas are, at a minimum, a shared competency.¹⁴ The language of Articles 112 and 113 support this conclusion.¹⁵

Despite these articles, the Constitution does not recognize the shared ownership of presently identified oil fields or those identified after 2005. Articles 112 and 113 specify neither how or by whom oil and gas will be managed nor how its revenues will be distributed. The administration of strategic policies necessary to develop the oil and gas industry requires, at a minimum, legislation to clarify issues related to the shared ownership of this industry. Because subsequent regulations will be statutory as opposed to constitutional amendments, we should expect political pressure will persist, influencing the law, its implementation, and enforcement. Accordingly, forthcoming negotiations regarding the lack of ownership structure given to present and future oil fields and the distribution of revenues are likely to exacerbate instability and the GOI's ability to legislate matters related to the oil industry at the federal level.

Attention to these negotiations as potential drivers of instability is important, because Article 121 allows the regional powers to exercise executive, legislative, and judicial powers, "except for those authorities stipulated in the exclusive authorities of the federal government." Oil is not part of exclusive authorities of the federal government; it is a shared competency. The constitutional devolution of powers to the regional and provincial governments compromises the federal powers necessary to manage Iraq's resource wealth.¹⁶

Complicating intergovernmental relationships are issues tangential to the management and distribution of oil and its revenue. These include: customs, environmental policy, and formulating development and general planning policies. All are listed in Iraq's Constitution as shared competencies of the federal, regional, and provincial governments. It is unclear whether the Constitution gives priority to Article 110 or 114. A strict reading of the Constitution suggests that where conflict among the federal, regional, or provincial governments exists, Article 115 will supersede and give priority to the decision-making bodies of the regional and provincial governments. Clarifying these issues is critical to Iraq's stability and the management of the oil industry and its revenues. Recent failure of the COR to pass amendments to the Constitution or legislation affecting oil and revenue sharing that address the inconsistencies previously outlined puts additional pressure on the incoming COR to resolve these matters in such a way that the populace and other interested parties assume defensive postures leading to instability.

Given the lack of clarity of the provincial powers in the Constitution, the COR passed the Law of Governorates not Incorporated into a Region

(Provincial Powers Law) of 2008.¹⁷ The Provincial Powers Law transfers additional authority from the federal level to the provincial councils and governors, including power to approve provincial budgets, adopt legislation, nominate and dismiss senior officials, and direct non-federal security forces. The law also grants the COR and the Council of Ministers the power to remove provincial governors and senior officials and dissolve provincial councils.

These changes are important to our understanding of how these governments will develop and claim constitutional and legal powers that may impede the federal centrality necessary to manage the oil and gas industry. The enactment of the Provincial Powers Law grants the provinces significant authority not previously recognized by the GOI. Exercise of this power may result in procedural challenges, because this approach will likely conflict with an interpretation of the Constitution or existing legislation that views the provinces and governorates as administrative units of the federal government. The power delegated to the provinces is likely to affect stability in Iraq, particularly when provincial governments begin asserting power or experience internal conflict due to political or ethno-sectarian differences.¹⁸ This assertion of power is likely to increase tensions between the GOI and provinces as the powers of each are negotiated. Given the potential for constitutional, legal, and legislative challenges to the exercise of such power, the absence of structure increases the probability of renewed conflict over how power sharing is defined, thus affecting the oil industry.

Shared Powers Regarding Oil and Natural Resources

The lack of extant legislation to clarify the relationship of the different levels of government on issues of oil and gas is likely to perpetuate existing instability and regional tensions, leading to negotiation gridlock at every level of government. This may result in a vacuum that promotes alternative markets for the sale and export or trafficking of oil not regulated by government entities. Accordingly, we should expect that where Iraqi decision-makers are unable to compromise without sacrificing core goals and interests, they will adopt uncompromising attitudes and positions. These positions may only support the constitutional or legislative provisions and related institutions that best protect the decision-makers' core interests, while rejecting accommodations that could be a viable alternative. At the institutional and individual level these core objectives and interests include, but are not limited to, providing basic services or control over geographic areas and lucrative industries, such as Iraq's oil and gas production. This article was developed at the very time the North Oil Company announced the discovery of approximately 40 unexploited oil wells in the Hanrin area and the Iraqi Ministry of Oil (MOO) called for increased commissions to

owners of gas and kerosene filling stations, multiple rounds of licensing auctions, and worked directly with the Kuwait Oil Company on the exploitation of border oil fields. Concurrently, the South Oil Company moved forward with plans to allow foreign firms to start developing the Al Gharrah Oil Field in late 2010. At the provincial level, the Dhi Qar Council announced it is drafting a plan for disbursing oil revenues earned by the province in the absence of controlling federal legislation.

The current instability, a direct result of intergovernmental tension, has resulted in a lack of accommodation and an inability to compromise given the high stakes associated with the oil industry as evidenced by the fact that:

- No compromise has yet been reached in the nearly four years that the COR has been reviewing four separate pieces of oil and gas legislation introduced in 2007.

- Heightened international participation and interest in entering into oil contracts has forced the COR to deal with oil and gas revenue distribution through the budgetary process, leaving many decisions to the MOO, which has made little progress in improving oil infrastructure.

- Underneath all of this is a constitutional and legislative structure that cedes power to the regional and local governments that are, in many ways, not fully equipped with the technical competence to manage the oil industry.¹⁹ To this end, Mahdi notes “the appropriation of community representation [envisioned by the Constitution]—whether in the form of unwritten rules or in sectarian balances . . . are forms of power and authority that are not conducive to transparency and accountability.”²⁰ Persistence of this approach is problematic for building a stable, secure Iraq.

The ownership structure of Iraq’s oil and revenue is necessarily part of Iraq’s federal economic policy—despite the fact that the Constitution, existing legislation, and draft oil and gas laws do not support it in this way.²¹ Arguably, “the future of democracy depends on the future of economic development in Iraq . . . obstacles to economic development are obstacles to the expansion of democracy.”²² It is critical that the oil and gas industry be totally integrated into the federal economy beyond mere financial contributions. To effectively accomplish this, federal oversight and management of the industry is requisite. Because the Constitution and draft oil and gas laws do not establish the oil industry as a federally-based entity and are purposely weak on the economic rationale for not doing so, one would expect that ethno-sectarian, economic, and political preferences will further serve to solidify regional and provincial control over the oil and gas industry, its resources, and its revenue stream.

History suggests that this has been precisely the case—“control over oil and its integration into the economy have led to instability, regional

tensions, and foreign intervention.”²³ The Iraqi oil industry was largely managed by private contracts during Iraq’s anticolonial struggle, which gave birth to the Iraq Petroleum Company (IPC).²⁴ After the British-installed monarchy was overthrown, the GOI passed Law No. 80 in 1961, which nationalized unexploited oil reserves, leaving the IPC intact but limiting its control to 0.5 percent of the industry. Law No. 80 permitted the state to exploit oil in all areas outside those specified for the IPC.²⁵ After full nationalization of the oil industry, the 1970s witnessed an increase in production and export capacity, along with expanded exploration and refining capabilities.²⁶ Development of the industry continued in earnest until Iraq’s attack on Iran in 1980. Nearly a decade of war caused Iraq’s oil industry to suffer. It suffered even more following Iraq’s invasion of Kuwait and the resulting international sanctions levied in the 1990s. As a means to recover from all this instability, the proposed oil and gas laws drafted in February 2007 gave exploration and planning responsibilities to a newly created federal oil and gas council, designating the exploration responsibilities to the state-run Iraq National Oil Company (INOC). Precise mechanisms for how the INOC, a currently inactive state entity, would manage Iraq’s oil reserves are included in separate legislation, also languishing in the COR.²⁷ Gridlock on these issues is expected to continue because the Constitution cedes broad power to the regional and provincial levels and fails to clearly define oil and gas as a federal entity. The real challenge is the fact that the proposed oil and gas legislation is aimed at developing a powerful federal entity to manage the oil industry.

One potential avenue for increasing stability in the management, income, and ongoing operations of the exploitation of Iraq’s oil and gas revenue would be full or partial privatization of the extraction, refinement, and transshipment of these resources.²⁸ Privatization and a concurrent reconfiguration of revenue streams from oil and gas resources (trust funds, dedicated [statutorily mandated] public service projects, etc.) could help stave off manifestations of the rentier effect and make the handling and disposition of natural resource wealth more transparent and accountable at every level of government.

Not surprising, perhaps, the unresolved disputes that have stalled political decision-making related to oil and gas legislation center on the power allocated to regional government versus that centralized in the federal government. The majority focus on the terms and extent of foreign participation in oil and gas production and the development of future fields, along with myriad formulae for revenue sharing. Specifically, these disagreements include the KRG’s desire to control its own oil resources and restrict the power of the MOO, disputes regarding security in areas inhabited by Kurds, and the Kurds’ claim that the province of Kirkuk be formally integrated

into the KRG.²⁹ Opposition to the proposed oil and gas law is not, however, confined to Kurdistan. Sunnis dominate the areas of Iraq that have limited oil or gas deposits and thus generally favor centralized control of oil revenues. In southern Iraq, the Shia generally argue for localized rather than centralized control to ensure that the people in the South retain control of that oil producing region and are proportionally compensated. Also in the south, oil field managers and workers' unions affiliated with the Federation of Oil Unions have threatened to strike if the law eventually passes, due mainly to the fact that implementation of the law would cede control of Iraqi's oil wealth to foreign entities.³⁰ These tensions are exacerbated as the GOI and KRG enter into contracts with foreign entities related to the development and export of oil. Tensions also persist because the GOI and KRG argue that the contracts into which the other has entered are illegal and invalid. Even Muqtada al-Sadr has demanded the government renegotiate the "illegal" contracts from 2009, since the COR did not ratify them.³¹ Saleh al-Muhammadawi, a leading official in Sadr's movement, argues that the Iraqi MOO "exceeded its powers and acted beyond its legal authority" in executing these contracts.³² This assertion is factually correct given the absence of oil and gas legislation and the unclear scope and reach of the MOO's contractual authority. Here, the lack of an institutional structure to remedy such disputes, persisting tensions, and threat of strikes directly impact the infrastructure of the oil industry and increase the viability of underground markets, which present security risks for existing oil fields and pipelines. All of these actions erode the economy and threaten development.

Stalled decision-making at the federal level directly affects decision-making at the regional and provincial levels. Because the COR has been unable to reach a political compromise on oil and gas legislation in nearly four years, the GOI and KRG have moved forward with production and development contracts. This precedent may lead provincial governments to do the same given their increased powers under the Constitution and the Provincial Powers Act. This is problematic for a great number of reasons. To begin, the provincial governments and, to a much lesser extent, the GOI and KRG do not possess the technical competence to manage their own oil operations or effectively negotiate international contracts for production and development. To the latter point, Mahdi argues:

Favorable [contractual] terms are extremely unlikely to materialize absent sovereignty and stability, particularly as political and security risks are reflected in the contracts Pooling resources nationally is not only more effective managerially, but more conducive to informed public participation in a highly technical area, and therefore aids transparency.³³

While some contend that devolving control of the oil industry to the regional and provincial levels increases individual access to information consistent with democratic principles, this argument assumes information is being shared, decisions are transparent, and technical expertise exists to strategically manage these resources. Devolving control over the oil and gas industry to the regional and provincial levels opens the oil sector to unchecked decision-making and international involvement that may increase local conflicts over resources and foster instability. Local control may also exacerbate oil smuggling and the proliferation of alternative markets, thereby allowing insurgent groups continued access to the revenue generated by the oil and gas industry. Each reason emphasizes the need for the effective management of the oil and gas industry, its resources, and its revenue with federal centrality.

Although increased powers are granted to the regional and provincial levels, the broad implications of the oil and gas industry’s economic and environmental effects suggest it may be difficult to secure an outcome that is beneficial for the Iraqi people when regional and local plans are not coordinated with the federal blueprint. Mahdi suggests that elements of the oil and gas industry like “pipelines, terminals, storage depots, and ancillary services are shared assets, . . . [but] these shared facilities require large-scale and long-term investment[s], more likely undertaken by a regulated state monopoly.”³⁴ The Constitution notes exclusive federal control over commerce and defines customs, environmental policy, development formulations, and general planning policies as shared competencies.³⁵ How these integrate to support the economy and oil and gas industry remains unclear and on unstable footing.

As different levels of government compete for power and a share of the oil industry, negotiation gridlock like the one experienced in the COR is likely to promote alternative markets for the sale, export, and trafficking of unregulated oil at every government level. Alternative markets divert resources from the domestic market; it is these unregulated markets that leave Iraqis with few choices. Authors Dreher, Kotsogiannis, and McCorriston espouse the belief that improvements in the quality of government institutions possessing legal and structural specificity reduce the presence of what they term the “shadow economy” or alternative markets. The lack of institutional quality—bureaucracy, regulatory discretion, rule of law, corruption, and a weak legal system—drive economic agents to support alternative markets and develop underground economies.³⁶ This is certainly the case when the government is not sufficiently constrained by its constitution. Iraq, while improving, has a weak legal structure, unstable and immature institutions, and an alternative market in oil and gas that are driven by a protracted government formation process, an absence of

adequate legislation, and structural asymmetry of governmental powers as defined by the Constitution; all of which directly impact the ability of institutions to function effectively.

Building a Stable State

Cultural and political institutions and their development are critical to the future of Iraq. At the individual level, institutions influence societal and cultural norms, beliefs, and actions, shaping governmental and individual outcomes.³⁷ The form and function of governmental institutions “depend on the conditions under which they emerge and endure.”³⁸ To this end, political scientists and economists agree that: “leaders in mineral-rich states fail to build viable institutions that are crucial for fostering state capacity, democratic regimes, and long-term economic growth.” They also agree it is the presence of these weak or immature institutions, particularly regulatory or fiscal institutions, that are the critical link between “resource wealth and the countless negative economic and political outcomes attributed to it.”³⁹ The lack of clarity regarding the intergovernmental relationships responsible for the control of the oil and gas industry directly impacts the instability and institutional weakness. Authors Luong and Weinthal note that much of the research on the “resource curse” that follows oil wealth ignores “an intermediary cause of institutional weakness—the structure of ownership over mineral resources, or who owns and controls the development of these resources—that is rooted not in resource wealth per se but in the domestic conditions that precede resource development.”⁴⁰ These domestic conditions, covered in the previous section, include decades of distrust of a noninclusive, discriminatory government whose economic development was deterred by internal and external forces.

In a comparatively short time, Iraq has begun to recognize that deep sociocultural divisions like the ethno-sectarian identities present in the country today constitute, in a number of cases, the greatest threat to democracy. David Waldner argues that:

The lesson for institutional engineers is that divided societies can best secure democracy if institutions encourage grand coalitions uniting cohesive political parties representing distinct cultural blocs. Stability is reached because representatives of all the major societal groups participate in decision making while each group retains autonomy in sub-national affairs.⁴¹

This approach is supported by three phases:

- A compromise wherein parties denounce militancy and begin the constitutional drafting process.

- A crafting wherein decision-makers enter into negotiations, select the governing institutions, and oversee the implementation of those institutions.

- The consolidation phase where these institutions establish and enforce democratic order.⁴²

Iraq has successfully completed the first stage but has faced major challenges in moving to stages two and three. The prime examples of this failure are the linked intergovernmental relationships and oil and gas regulations, failures created by the structural asymmetry built into the Constitution and executed in phase one. It was COR's failure to successfully negotiate the terms of legislation related to oil and gas in phase two that remains a major obstacle. Waldner analyzes a process tracking model that supports this conclusion. He notes that in Iraq:

It becomes clear that the drafting of the Constitution and the selection of electoral institutions have not been a mechanism for conflict resolution and accommodation: they have been instruments for intercommunal competition and conflict. The [divisions] within Iraqi society and polity have driven the process of institutional selection. That institutional engineering has failed simply reflects these underlying conflicts.⁴³

While the arguments presented in this article identify the benefits of centralized control, they do not suggest an all-or-nothing centralized or localized approach to the management of the oil and gas industry. Rather, the structural asymmetry of the Iraqi Constitution, devolution of governmental powers via the Provincial Powers Act, and lack of extant hydrocarbons legislation that defines the relationships between the federal, regional, and provincial governments present a protracted challenge for Iraq that may ultimately threaten the state's short- and long-term stability while eroding economic development. The lack of specific laws or regulations outlining the ownership of oil and gas has permitted Iraqi decision-makers at the federal, regional, and provincial levels to make decisions consistent with their core goals and interests. The result is a lack of compromise on core issues, further complicated by constitutional and legislative provisions that are selectively applied, the stalling of hydrocarbons legislation in the COR, and the rejection of any accommodation as a possible solution. It matters not that Iraq has a structurally asymmetric constitution and problems associated with the devolution of powers; these are facts with which GOI must deal and to which it and the United States must find durable solutions. It does matter how these issues are resolved, because each directly affects the state, regions, and provinces, as well as the government's ability to structure resource wealth in such a manner as to provide for basic services and generate economic development.

Iraq's inability to successfully exploit and manage its resource wealth has contributed directly to the sluggish pace of building and replacing infrastructure for public utilities. In many parts of Iraq, the availability of electricity from the national grid as well as water and sewer services is at or below Saddam Hussein-era levels. And no government in Iraq's modern history has been able to properly manage its scarce, but potentially adequate water resources. Water and electricity are critical elements utilized in the extraction of oil. Additionally, a sufficient and dependable supply of electricity is required to power pipelines and refineries. In an unfortunate reverse, Iraq's lack of coal, nuclear power, or hydropower leave oil as the mainstay in the production of electrical power. But the country's antiquated refining capabilities, coupled with an ever-increasing domestic demand, leave it a net importer of refined petroleum products. Among the many contributing factors to low levels of electricity production have been the continual shortfalls of MOO's capacity to provide adequate (and mutually agreed upon) supplies of gasoline and kerosene to the Ministry of Electricity. The government's inability to provide a reasonable level of public services, particularly electricity, has strained civil tranquility to its limit. In Basra, Iraq's second largest city, large demonstrations protesting the lack of electricity erupted recently, with the police killing two of the demonstrators. Regardless of the billions of dollars allotted and the seven years the government has had to fix the problems, all of Iraq continues to suffer from a woefully inadequate provision of public utilities—electricity perhaps being the most acute.

These facts provide additional evidence that the wealth of resources associated with the oil industry has historically undermined democratic consolidation at every level of government. These include but are not limited to the well-documented rentier, repression, and modernization effects of resource wealth. The critical question facing GOI is how the state will define the federal, regional, and provincial intergovernmental relationships, consistent with the Constitution. Any such definition needs to reflect agreement by the critical players, so they can leverage the oil and gas issue in their effort to stabilize the state and quell any underlying ethno-sectarian and geographical tension. When the role of government is perceived as transparent and the institutions charged with oversight of the oil and gas industry are viewed as legitimate and representative of a stable state, an environment in which alternative markets and the associated shadow oil economy flourishes will be suppressed. In the absence of such actions; however, we can expect the shared competency of oil and gas to persist in fostering instability and negotiation gridlock across the federal, regional, and provincial levels of government.

State-Building, Stability, and Oil as “Shared Competencies” in Iraq

NOTES

1. Department of Defense, *Measuring Stability and Security in Iraq*, report to the United States Congress in accordance with the Department of Defense Supplemental Appropriations Act of 2008, Section 9204, PL 110-252, (2010), 4.

2. Christopher M. Blanchard. “Iraq: Oil and Gas Legislation, Revenue Sharing and U.S. Policy.” Congressional Research Service (3 November 2009), 5.

3. Philippe LeBillion, “Corruption, Reconstruction and Oil Governance in Iraq.” *Third World Quarterly* 26, no. 4/5 (2005): 685-703. As a key asset for Iraq, the oil industry and its resources have proved to be vulnerable economic targets for insurgents, including al-Qaeda in Iraq (AQI). See also <http://www.nationmaster.com/country/iz-iraq/ene-energy> for more information on how Iraq is ranked worldwide on oil consumption, exports, imports, and production.

4. Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991). Huntington suggests that where states depend on the revenue raised from oil exports increased control by the state bureaucracy follows.

5. Michael Ross, “Does Oil Hinder Democracy?” *World Politics* 53 (2001): 325-361. Oil wealth is thought to lead to larger military forces for two reasons: (1) a self-interest that suggests that where the resource-rich government has the ability to arm itself against popular pressures it will; and (2) oil wealth causes ethnic or regional conflict.

6. The modernization effect suggested here does not tackle the traditional effects of modernization. Rather, the concern of this article is that if economic development does not produce the expected cultural and social Seymour Martin Lipset, “Some Social Requisites of Democracy: Economic Development and Political Legitimacy,” *American Political Science Review* 53 (1959): 69-105. Karl W. Deutch, “Social Mobilization and Political Development,” *American Political Science Review* 55 (1961): 634-647.

7. The rentier effect, prominent in resource rich states like Iraq, persuades governments to use low tax rates and patronage-clientelism, resulting in low levels of democratic transparency and accountability. The repression effect causes state wealth from resources like oil and gas to slow democratization because governments choose to allocate revenues to security spending to protect the state. Finally, the modernization effect suggests that “growth based on the export of oil and minerals fails to bring about the social and cultural changes that tend to produce democratic government.” See Ross, “Does Oil Hinder Democracy?” 328.

8. See generally LeBillion, “Corruption, Reconstruction and Oil Governance in Iraq.” Michael Ross, “The Political Economy of the Resource Curse,” *World Politics* 53 (1999): 325-361; Jeffrey D. Sachs and Andrew M. Warner, “The Big Push: Natural Resource Booms and Growth,” *Journal of Development Economics* 59 (1999): 43-76.

9. The perceptions of the Iraqi people are of utmost importance to democratic consolidation. LeBillion notes that for the Iraqi people, oil is one of the primary reasons that Iraqis distrust the United States and United States forces.

10. See Iraq Const. Sec. 4, Art. 118.

11. As this article is being written, negotiations over the formation of the Iraqi government include proposals to change the constitutional powers of certain government positions/offices, namely the powers of the Office of the Prime Minister and the President. This highlights the iterative nature of the Iraqi Constitution and the potential for additional delay in decision-making given related ethnic and regional implications.

12. The resource curse is widely discussed in literature in relation to the rentier effect. See Pauline Jones Luong and Erika Weinthal, “Rethinking the Resource Curse: Ownership Structure Institutional Capacity, and Domestic Constraints,” *Annual Review of Political Science* 9 (2006): 241-263; Richard Auti, *Resource Abundance and Economic Development* (London: Oxford University Press, 2001); Ross, “The Political Economy of the Resource Curse.”

13. Three of these 18 are part of the Kurdistan Regional Government. “Province” and “Governorate” are used interchangeably throughout this article to describe the local level of government. The Iraqi Constitution is silent on qadas (districts) although qadas are referred to and granted powers in the Law of Governorates not Incorporated into a Region of 2008, Article 31, Eleventh section.

14. This is balanced by the areas in which the federal government retains exclusive authority, including but not limited to, “formulating foreign sovereign economic and trade policy,” and “regulating commercial policy across regional and governorate boundaries in Iraq” (see Iraq Const. Art. 110). The argument being that if the federal government retains exclusive authority over these areas, the shared authority of Article 112 is constrained by the power of the federal government to prescribe and set trade and investment policy. The opposite is argued by the KRG who interpret Article 111 to mean that the oil wealth and resources within its region fall under the sovereignty of the regional government not the federal government. See Kamil Mahdi, “Iraq’s Oil Law: Parsing the Fine Print,” *World Policy Journal*, (Summer 2007): 1-23. See also Iraq Const. Art. 110 (exclusive federal powers) and 114 (shared powers).

15. Articles 112 and 113 respectively require that the federal government “with the producing governorates and regional governments shall” (1) “undertake the management of oil and gas extracted from present fields;” and (2) “together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people” Article 112 specifies that “management” of oil revenues “shall be regulated by a law” but neither defines “management” nor subjects it to any words of limitation. Naturally, Article 112 is debated given that “present” is not defined. It is unclear whether this means fields that are known to exist or refers to oil fields that are in the development stage or in full production. This definition is now a matter of contention in the proposed oil and gas law that has been stalled in the COR for nearly four years. The draft oil and gas law “contains three annexes defining the status of 78 known fields according to three categories: ‘producing,’ ‘close to production contract,’ and ‘far from production contract.’” See Mahdi, “Iraq’s Oil Law,” 16-17. Mahdi notes that the “three category-classification . . . has no parallel in the constitution itself.”

16. Article 115 cedes power to the “authorities of the regions and [provinces or] governorates that are not organized in a region” and gives priority in the case of powers shared between the federal and regional governments to the “law of the regions and governorates not organized in a region in case of dispute.” Article 121 is consistent with Article 115 and states that “[i]n case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region” (see Iraq Const. Arts. 115 and 121). The clear exception to this is Section IV, Article 110, which identifies commerce or “regulating commercial policy across regional and governorate boundaries in Iraq” as an exclusive power of the federal government.

17. See also Iraq Const. Art. 122, which states that “governorates that are not incorporated into a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law.”

18. Department of Defense, “Measuring Stability and Security in Iraq.”

19. *Ibid.*, 19.

20. Mahdi, “Iraq’s Oil Law,” 17.

21. Many believe it is unlikely that the COR will consider the set of four hydrocarbon laws until the new government is seated in mid-to late 2010. The Defense Department recommends that the COR prioritize two of the four hydrocarbon laws. “The hydrocarbons framework law is essential to regulate control over Iraq’s multitude of oil and gas fields, especially after the recent oil bid rounds that are expected to significantly increase Iraq’s oil production. Furthermore, the revenue sharing law is also important to codify the arrangements that will determine the allocation of the GOI’s expected increases in revenues for the years to come” Department of Defense, “Measuring Stability and Security in Iraq,” 5. See also Reuters, “Allawi: Iraq Oil Law ‘A Priority,’” (31 March 2010) Reuters News Service, <http://www.reuters.com/article/idUSLDE62U1CO20100331> (accessed May 29, 2010).

22. Huntington, *The Third Wave*, 311.

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23. Mahdi, “Iraq’s Oil Law,” 12.
24. Blanchard, “Iraq: Oil and Gas Legislation, Revenue Sharing and U.S. Policy.” and Kenneth Katzman, “Iraq: Politics, Elections, and Benchmarks,” Congressional Research Service, (15 January 2010).
25. Michael E. Brown, “The Nationalization of the Iraq Petroleum Company.” *International Journal of Middle East Studies* 10, No. 1 (1979): 107-124.
26. Mahdi, “Iraq’s Oil Law.”
27. Greg Bruno, “Why Iraqis Cannot Agree on an Oil Law,” *Council on Foreign Relations, Backgrounder* (2008), <http://www.cfr.org/publication/13298> (accessed May 29, 2010).
28. A general model for highly successful privatization of state-owned and parastatal enterprises can be found in the experience of the first post-communist decade in Latvia: <http://www.fdi.net/documents/WorldBank/databases/plink/factsheets/latvia.htm>
29. For a thorough overview of these tensions see Katzman, “Iraq: Politics, Elections, and Benchmarks.”
30. For an extensive overview of oil in southern Iraq see Reider Visser, “Basra Crude: The Great Game of Iraq’s ‘Southern’ Oil,” NUPI Working Paper No. 723 (2007); See also Vivienne Walt, “Why Iraq’s Oil Law Remains Deadlocked Three Years On,” *Time.com*, October 10, 2009, <http://www.time.com/time/world/article/0,8599,1929201,00.html> (accessed May 29, 2010).
31. “Sadr: Renegotiate ‘Illegal’ Iraq Oil Contracts,” *United Press International*, *upi.com*, http://www.upi.com/Science_News/Resource-Wars/2010/04/28/Sadr-Renegotiate-illegal-Iraq-oil-deals/UPI-87971272472526/ (accessed May 25, 2010).
32. *Ibid.*
33. Mahdi, “Iraq’s Oil Law,” 17.
34. *Ibid.*, 18.
35. See Iraq Const. Arts. 110 and 114.
36. Axel Dreher, Christos Kotogiannis and Steve McCorriston, “How Do Institutions Affect Corruption and the Shadow Economy?” *Business and Economics* 16, no. 6 (2009): 773-796.
37. Adam Przeworski, “Institutions Matter?” *Government and Opposition* (2004), http://as.nyu.edu/docs/IO/2800/go_2004.pdf (accessed June 2, 2010).
38. *Ibid.*, 327.
39. Pauline Jones Luong and Erika Weinthal, “Rethinking the Resource Curse,” 242.
40. *Ibid.*, 242.
41. David Waldner, “The Limits of Institutional Engineering: Lessons from Iraq,” *United States Institute of Peace, Special Report No. 222*, 3. The academic literature on this topic is quick to note that institutions alone do not secure democracy. Instead, stable institutions act as a barrier against democratic collapse where they are supported by cultural, economic and social forces, short-term and long-term stability is assured.
42. Waldner, “The Limits of Institutional Engineering.”
43. *Ibid.*, 13.