

Discussion Paper
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**Rebuilding Governance in Iraq:
The Need for a Comprehensive Framework**

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Abstract

While the priority in Iraq remains on military issues, with the forthcoming election emphasis is shifting towards establishing civilian forms of governance that are legitimate and sustainable. Although driven by the noble aim of building a liberal democracy, the approach to political reform by the US-led coalition has led to real concerns: it is based on ideology and one that is badly attuned to Iraqi history and society. This paper argues that reorganizing state-society relations governance in Iraq will not be an easy task, but the chances of success will be greatly enhanced if the strategy chosen is more comprehensive, draws on evidence not ideology and focuses on processes. Based on a recent study, the paper proposes a broader, more open-ended framework for rebuilding governance in Iraq and discusses priority issues, opportunities and challenges, based on the current context in Iraq and drawing on experiences from similar efforts around the world.

Introduction

The transition in post-war Iraq continues to be dominated by military issues. Law and order remains tenuous and it is understandable that these issues remain top-of-the-list. With the hand-over of sovereignty and forthcoming elections, there is increasing emphasis on establishing civilian forms of governance that are legitimate and sustainable.

The Iraqi people are concerned about what the future holds in this regard and so are many in the international community. They have been surprised by the lack of planning by the US-led coalition for what came after the hostilities ended. It seems that the US was unprepared for, and seriously ill informed about, the challenge of

nation-building in Iraq.¹ It seemed to have had the view that the regime's ruling elite could be removed cleanly and then everything would work out fine. This has been coupled with an approach to political reform that is driven by liberal democratic ideals² rather than informed by a deeper understanding of Iraqi history, society and politics.

This paper suggests the strategy should emphasize improving governance more broadly. A focus on governance implies a less prescriptive approach than that proffered by US administration officials and some academics.³ It is also more cautious in that it does not assume that democracy will be possible to engineer in the short run in Iraq. There are some lessons from the experience of Germany and Japan.⁴ But, the fundamental conditions in Iraq are very different not only from those two cases but also from the situation in post-Communist Central and Eastern Europe. Nevertheless there are many experiences from governance reforms around the world that provide useful insights.

The value of a broader governance approach lies initially in its ability to reduce the pressures on the military role of providing law and order. In the longer term, improving the functions of the state and the relations between state and society in a less blinkered and more nuanced and open-ended way would also ensure greater participation, and thus a sense of ownership, in the political process. A broader approach to governance reforms would also lead to more effective rules for private enterprise as well as dispute resolution. These aspects of nation-building will probably be best handled by the United Nations, if for no other reason that it takes away much of the impression that the U.S. wants to impose its own values on Iraq. In fact, greater attention to a comprehensive framework for rebuilding governance may provide a window of opportunity for bringing in other countries into the coalition without the

¹ Dodge, T., 2003, *Inventing Iraq: The Failure of Nation-Building and a History Denied*, London: Hurst.

² Mary Kaldor, *Iraq – the democratic option*, <http://www.opendemocracy.net/debates/article-2-95-1579.jsp>
Accessed: 9 January 2004.

³ Dawisha, A. and Dawisha, K., 2003, How to Build a Democratic Iraq, in *Foreign Affairs* (May/June 2003). Lawson, C., 2003, How Best to Build Democracy: Laying a Foundation for the New Iraq, in *Foreign Affairs*, July/August 2003.

⁴ Ray Salvatore Jennings, 2003, *The Road Ahead: Lessons in Nation Building from Japan, Germany, and Afghanistan for Postwar Iraq*, *Peaceworks*, 49, Washington, DC: USIP.

same controversies that arise when such efforts are attempted within military structures.

Massive resources over a long period will be needed for improving state-society relations in Iraq. The rest of this paper is structured as follows. We start by outlining what we mean by governance and why a strategy needs to go beyond the narrow liberal democratic approach. We then outline what our governance framework would look like and provide an initial outline for what such a strategy for Iraq might contain – within six key arenas of governance. We conclude with some of the opportunities and challenges for rebuilding governance in post-war Iraq.

Meaning of Governance

Governance has emerged as one of the most debated themes in international relations and development. The term is typically used as a heuristic concept referring to the multiple institutions that are involved in state-society relations and managing development. “Good” governance is a specification of this concept that has become associated with a set of liberal democratic values.

There are two problems with this application of the governance concept. One is that it is very general and really not allowing for a more standardized measure of qualities of governance and how these change over time. The second problem is that when qualified by the notion of what is ‘good’ governance, it easily tends to become ethnocentric. The only measuring rod becomes the liberal democratic system that we are familiar with in the United States and Western Europe.

Why should the latter be a matter of concern? The coalition – or at least the US part of it – believes that the allies in Iraq have a moral responsibility to promote good governance in the form of liberal democracy. Partly inspired by the analysis of the Middle East provided by Bernard Lewis in his recent book,⁵ conservative commentators in the US contrast the freedom that Iraqis now enjoy compared to the

⁵ Bernard Lewis, *What Went Wrong? Western Impact and Middle Eastern Response*. New York: Oxford University Press 2002.

days when Saddam's dictatorial rule was in place. We are not arguing that pressing for more freedom in that country is wrong, but we are convinced that the task is much more complex and complicated than just playing the "freedom string". There is much more to rebuilding governance and the less pretentious the rhetoric, the more likely that the task will be credible and effective.

Another reason for concern is that Iraq is a multicultural society where shades of opinion differ from those that are dead set against anything liberal and secular to those that are quite favorable to democratic reform. The challenge in such a heterogeneous context is to demonstrate that a democratic form of governance can bring greater personal security and welfare to people than the previous regime. This means attention to multiple principles of governance. Fortunately, this task may be rendered more realistic by the fact that Iraqis have suffered the consequences of economic sanctions for over a decade. However, the unexpectedly easy way that the allied forces were able to "occupy" the country last year has had the effect of raising public expectations. In the eyes of many Iraqis, as television reporters and others have repeatedly noted, the U.S. is the "Superman" for whom nothing is impossible.

It is for these reasons that governance needs to be defined and operationalized in more careful ways. We associate the concept with the norms and rules within which social and political action occurs. As such, governance refers to the way relations between state and society are organized and implemented. Those engaged in governance are not only government officials, but also all others who enter the public realm in order to have the rules of the game changed or reinforced. What we are saying here, therefore, is that governance refers to the constitutional, legal and moral scaffolding within which policy is being formulated and implemented. Governance is a concept that is separate from both policy-making and public administration or management.

From the perspective of the individual citizen, governance takes on special importance because it is rights-oriented. It gives prominence to respect for the rules of the game and therefore, those institutions that are established to oversee and execute the laws and morals of the land. The importance of how a political system is constituted was emphasized already by Aristotle who argued that, "we should see the

difference between a good political arrangement and a bad one in terms of its successes and failures in facilitating people's ability to lead 'flourishing lives'".⁶ More recently, the Gallup Millennium Survey – the largest ever public opinion survey – highlighted the importance of human rights to ordinary people in both developed and developing countries.⁷ Similarly, the *Voices of the Poor* study highlights the importance of governance issues in developing countries in providing certainty, safety, and opportunities for participation.⁸

The challenge in any nation-building exercise is to find concepts that travel across cultural boundaries. It becomes so much easier to get things done if the norms applied to governance do not just reflect those of one viewpoint. In short, imposition of a set of liberal democratic values alone may cause its own backlash. What is needed is a set of principles that are cross-cultural. Based on an extensive study⁹, we believe that six such principles or norms have the greatest potential of being effective:

- *Participation* – the degree to which affected stakeholders are able to sense ownership and involvement in the political process;
- *Fairness* – the degree to which rules are applied equally to every one in society
- *Decency* – the extent to which rules are handled without humiliating or harming people;
- *Accountability* – the extent to which political actors are perceived as responsible to the public for what they say and do;
- *Transparency* – the degree to which rules about openness and clarity are upheld in the public realm;
- *Efficiency* – the extent to which rules enhance effective use of scarce resources without incurring waste or delay.

These principles are universal in the sense that they are respected in different societies all over the world. Even though, they may at times contradict each other, they are part and parcel of the mental map that political actors bring to the game regardless of

⁶ UNDP, *Human Development Report 1990*. New York: Oxford University Press, pp. 9.

⁷ Sprogard, R. and James, M. "Governance and Democracy: The People's View. A Global Opinion Poll", Paper presented at the UNU Millennium Conference, Tokyo, January 19-21, 2000.

⁸ Narayan, D., Patel, R., Schafft, K., Rademacher, A. and Koch-Schulte, S., *Voices of the Poor: Can Anyone Hear Us?* Washington DC: The World Bank 2000.

⁹ Hyden, G., Court, J. and Mease, K., 2004, *Making Sense of Governance: Empirical Evidence from Sixteen Transitional Societies*, Boulder, Co.: Lynne Rienner.

whether they are Christian, Muslim, Hindu or Buddhist. The first three are particularly relevant to the way state actors relate to citizens, while the last three are more specific to the operations of the state itself. Governance refers to how particular actors apply these principles in formulating and sustaining the rules that guide the political process.

It is in this sense that governance is a political concept. It affects the legitimacy of the various stages or arenas through which a political issue typically passes. Adopting the notion of an input-output model of politics, it is possible to distinguish between six such arenas:

- *Civil Society* – rules affecting the way citizens become aware of and raise issues in the public;
- *Political Society* – rules shaping the way issues are combined into policy by political institutions;
- *Government* – rules affecting the way policies are made by government agencies;
- *Bureaucracy* – rules determining the administration and implementation of policies;
- *Economic Society* – rules regarding state-market interactions;
- *Judiciary* – rules defining the resolution of disputes and conflicts.

Rebuilding governance in Iraq, as we see it, should focus on these six principles and six arenas. They provide a comprehensive overview of the full task of rebuilding governance in Iraq and disaggregate it at the same time into manageable units that can be treated independently but also collectively. As Table 1 proposes, they constitute the principal ingredients of a possible framework for rebuilding governance in Iraq. The challenge that goes beyond this paper, but which needs to be completed before major activities are attempted, is to fill in the details for each empty box in the table. This should draw on the insights of a cross-section of the Iraqi stakeholders and the experience of governance elsewhere in the world and deduce a set of propositions on which to act in each arena.

Table 1. Rebuilding Governance in Iraq: Framework for a Strategy

	Civil Society	Political Society	Government	Bureaucracy	Economic Society	Judiciary
Participation						
Fairness						
Decency						
Accountability						
Transparency						
Efficiency						

Key Issues and Challenges for Iraq

In this section we outline some of the key issues in each arena and the particular challenges facing Iraq. The efforts to rebuild Iraq will take place in a country that is divided in many different ways – between ethnic groups, between religious sects, and between those who were loyal to the ousted Baath regime and those who fought against it. To be more specific, there are longstanding tensions between the 21 million Iraqi Arabs and its 4 million Kurds. There are also divisions within the Arab community – between Sunnis who dominated the Saddam regime and Shiites who comprise 60% of Iraq’s population. There are also divisions among the Kurds, who fought a civil war less than a decade ago. Furthermore, there are likely to be tensions between the religious and the secular realms. Many people will be slow to trust the coalition given years of propaganda. Remnants of the old regime – and other dissatisfied groups – are likely to try to spoil any progress, as has already become evident. Much of the rest of this paper will be devoted to highlight key issues associated with each of the six governance arenas identified above.

Civil society

Civil society is that part of the political system where persons get familiar and interested in public issues and how rules tend to affect the articulation of interests from society. This arena focuses on rules guiding public involvement in the political

process. Scholars from Tocqueville to Putnam emphasize the importance of local associations in building trust and confidence both in institutions and among people.¹⁰ It focuses on the conditions under which citizens can express their opinions, organize themselves for collective action, compete for influence, have an input into policy, and fulfill their own obligations as citizens in the conduct of public affairs.

Critical issues are establishing the freedom of association and freedom of expression. These are governance norms with important implications for development. As Amartya Sen has repeatedly pointed out, a free press plays an important part in highlighting shortcomings and failures, such as humanly induced famines.¹¹ Iraq has already seen its first public gatherings – people speaking freely after years of oppression. People are gathering – both to celebrate and protest. Regardless of motive, the key issue is that people see that they rightfully have a choice. After 20 years of repression and silence, it is not always easy to find one's voice. Nonetheless, there are signs that a civil society, however, fledgling, is beginning to emerge and it is important to nurture its existence. Like transformations in Latin America and Eastern Europe described by Juan Linz and Alfred Stepan, Iraq is likely to witness a continuing explosion of expression of interests that previously were latent due to fear of the public authority.¹²

Participation or expression alone, however, does not constitute enough to build a civil society. The latter implies respect for tolerance, trust and reciprocity, in short, the formation of social capital that holds Iraqi society together. There are two strong challenges for any one attempting to strengthen governance in the civil society arena. The first is the relative vacuum that was created by Saddam's dictatorial rule. Associations were forced underground and many of their members were arrested, tortured, or, if lucky, able to escape into exile. Much of what exists on the ground in Iraq, therefore, are informal organizations. Special effort ought to be made to identify these and, whenever appropriate, upgrade them into formal associations with nationwide recognition.

¹⁰ Robert Putnam. *Making Democracy Work: Civic Traditions in Italy*. Princeton: Princeton University Press 1993.

¹¹ Amartya Sen, *Development as Freedom*. New York: Anchor Books 1999.

¹² See Juan Linz and Alfred Stepan. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore: Johns Hopkins University Press 1996.

The second challenge is the limited availability of what Putnam calls ‘bridging’ social capital, i.e. trust that cuts across associational boundaries. The bulk of social capital in Iraq is of a ‘bonding’ character, i.e. it exists within organizations but does not transcend its boundaries.¹³ More specifically, it is a matter of building alliances across community boundaries, whether between Sunnis and Shiites, religious sects and secular groups, Kurds or Arabs. Needless to say, this will not be easy given the historical legacy of relations among these groups.

Another challenge will be to facilitate public input into the making of policy. Evidence suggests that policies tend to be better designed when there is broad participation. Furthermore, participation enhances the likelihood of sustained support required for long-term maintenance of policies.¹⁴ The point we try to make here is that formal or representative democracy does not necessarily guarantee good policy output. Many governments simply do not provide an environment in which such input is facilitated. For state and civil society to engage in win-win types of processes, it will be important that those charged with rebuilding Iraq pay attention also to what forms of participatory democracy may be necessary to strengthen the rules that govern civil society and that help make it an important contributor to policy.

Political Society

This arena deals with how ideas and interests are aggregated, reconciled and eventually turned into policy or law. Many authoritarian regimes find the transition in this arena the most difficult since rules affect who gets to power. There is clearly a massive challenge in Iraq with the obliteration of the Baath party. Who can represent the people in a fair and legitimate manner? It is a particularly serious challenge given that both the internal and the external opposition groups are divided. So, what should governance actors pay special attention to during the transition? The design of an appropriate electoral system is a priority because it tends to shape the party system, which in turn influences the way the legislature operates. Below, we look at each of these issues.

¹³ Putnam, *op.cit.*

¹⁴ Narayan et al., *op.cit.*

The electoral system, as Sartori has argued, may be the most powerful instrument available in constitutional engineering.¹⁵ Without agreement on this fundamental issue, the regime at large is at risk. Because of the significance of political society as the prime arena for contestation of power, any violation of the ‘rules of the game’ is viewed as especially serious. Whenever such designs are associated with a transition from autocracy to democracy, they are likely to be especially vulnerable, because so many other issues are unsettled at that time.

There are two main considerations in choosing an electoral system: fairness and accountability. Proportional representation satisfies the first principle (fairness) more effectively, because it establishes a close association between percentage of votes and percentage of seats in the legislature. Plurality systems foster accountability in the sense that the single-seat formula encourages closer links between the electorate and their representative.¹⁶ In addition, proportional representation tends to be inclusive by providing more scope for minority representation, while the plurality system tends to create a clear majority on which government can depend in order to carry out its policies.

We do not have any particular recommendations to make regarding electoral system in Iraq. It should be an issue that is resolved by the Iraqis themselves with advice, if necessary, from the outside. What they choose in the end, however, will have a bearing on the party system and that is why the issue cannot be seen in isolation from how a stable party system can be generated. Parties are very important in mediating the relationship between citizen and government and tend to be indispensable to the task of forming government as well as constituting an effective opposition.¹⁷ The rules that determine the way the party system works are significant because they also bear on how the legislature operates and how it is perceived. As such, the effectiveness of political society will partly depend on the extent to which a manageable and functioning party system is in place. The challenge for Iraq, as

¹⁵ Giovanni Sartori, “Political Development and Political Engineering” in J.D. Montgomery and A. O. Hirschman (eds.), *Public Policy*. Cambridge: Cambridge University Press 1968.

¹⁶ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State*. New York: Wiley 1954.

¹⁷ Scott Mainwaring and T.R. Scully, *Building Democratic Institutions: Party Systems in Latin America*. Stanford: Stanford University Press 1995.

elsewhere, is to foster a system where party matters more than person and policy more than patronage.

How the party system is institutionalized matters greatly. Scholars have noted that a middle path seems to be most effective – problems begin to occur with an under-institutionalized party system or an over-institutionalized one.¹⁸ In the last few months, Iraq has tipped from the latter to the former. Prior to the conflict, Saddam and the Baath party had monopolized the political process for a very long time, alienating much of the country and removing the autonomy of other political institutions. Now, similar to many other transitional societies, Iraq faces the problem of many, but also very weak political parties. There is likely to be a high level of volatility for some time because of a lack of experience with multi-party politics and each candidate's assumption that it is going to become a viable entity.

Over time it seems that parties are likely to coalesce along religious and ethnic lines, because each group constitutes a natural political constituency for hopeful candidates. Though thoroughly discredited, the Baath party remains functional in large parts of the country and may reemerge as a political force, similar to the Communist parties in some Eastern European nations. The most serious challenge to the emergence of a functioning multi-party system may come, not from the Baath Party, but from certain Shiite quarters that advocate an Islamic theocracy. Their influence has been on the rise and it will be important for other actors to be able to contain those Shiites who are hostile to voices other than their own.

The third choice that Iraqis have to make in the political society arena concerns the form of legislature they want to have. There is a great variety of experiences from around the world to draw from and it is hard to advocate one without attention to the specifics in each country. Ex-communist countries have overwhelmingly chosen parliamentary systems for purposes of governance, while democratizing countries elsewhere in the world have preferred a strong executive in the form of the presidential or semi-presidential system of government.

¹⁸ Larry Diamond, *Developing Democracy: Toward Consolidation*. Baltimore: Johns Hopkins University Press 1999, pp 96-98.

Given the multiple divisions that characterize Iraqi society, a bicameral system like the U.S. Congress may be suitable. It would provide the potential for a chamber with the role of transcending populist claims that are likely to arise in a house whose members are directly elected in single-member districts. There may also be a case for a full presidential system with a separation of power like in the U.S. The risk with such a system, however, is that the executive office will seize powers at the expense of the other institutions in political society. Our position is that these issues are so vital to the survival of improved governance in Iraq that a constitutional review commission and conference may be the most effective ways of resolving them.

Government

The rules of governance that are of particular importance in the government arena concern its overall stewardship of society. Governments do not just make policies. They are also responsible for creating a climate in which people enjoy peace and security. The rules that they set shape the context for human security and welfare. Given the collapse of government after the fall of Saddam Hussein, this aspect takes on special significance in Iraq.

A major reason is the current lack of law and order. Although the U.S. military and its allies are doing their best in securing it, we are reminded daily about the attacks that take place in various cities around the country on both military and civilian targets. Offloading more responsibilities to the new government will only exacerbate this problem. If anything, its role will become more exposed, its legitimacy harder to sustain. A transition to more local governance, therefore, must be made with adequate attention to the potential risks associated with such an effort.

There are many concerns about the way the Ruling Council and government have been set up. It contains many exiles, who are seen with suspicion by many Iraqis. Claims of representativeness are not accepted. Some worry that institutionalizing ethnicity through its use for justifying participation in government will lead to divisiveness.¹⁹

¹⁹ Dodge, op cit.

If securing law and order is difficult, making and sustaining rules that reduce the risk of starvation and other threats to human welfare may be even harder. To be sure, Iraq may eventually begin to earn sufficient revenue from its oil exports, but much of that money will no doubt go first to infrastructural investments. Yet, being able to provide basic security and satisfy basic needs of the people will be critical to the regime's legitimacy. Iraqis have been waiting for a long time for the day when they have a government that is ready to treat their security and welfare as important priorities. They will continue to watch how well the interim administration and a new government are capable of putting rules in place that enhance these public goods.

Special attention will most likely also be paid to how well a new government is able to control the military. This has been an issue in many transitional societies, not the least in Latin America,²⁰ and it features prominently in the minds of the Iraqi people. They would like to see the soldiers back in their barracks. The fact that the allies have been at best modestly successful in upholding law and order may in fact be a blessing in disguise in the long run, as the public may turn against even their own soldiers and government is forced to establish a larger and more effective police force to assist in securing law and order.

As of now, it would be wrong to suggest that things are getting out of control in Iraq. There are signs of progress toward the establishment of conditions that would allow for an Iraqi government to be formed. Most importantly, despite what the media tend to report, chaos and violence are not the only things happening there. Nonetheless, establishing the rules for the government arena so that its legitimacy is enhanced will be a great challenge.

The Bureaucracy

The rules and procedures affecting the functioning of the bureaucracy influence the degree to which a country makes social and economic progress – or fails to do so.²¹

²⁰ See, e.g. Samuel P. Huntington, *The Third Wave: Democratization at the End of the 20th Century*. Norman: University of Oklahoma Press 1991; and, Adam Przeworski, *Democracy and the Market*. New York: Cambridge University Press 1991.

²¹ See: Peter Evans and J. E. Rauch, "Bureaucracy and Growth: A Cross-National Analysis of the Effects of "Weberian" State Structures on Economic Growth" *American Sociological Review*, Vol. 64, No 5 (October 1999), pp 748-765.

For many citizens in a country, contacts with bureaucratic officials are the closest they come to observe the operations of the state. The *Voices of the Poor* study is one example of the importance of this set of issues – the poor highlighting that their experiences with bureaucrats are often unpleasant, unfair and corrupt.²² One can expect that the way the bureaucracy operates in post-conflict Iraq will be of utmost importance for the regime’s legitimacy at large.

Many different rules will matter. How bureaucracy is structured and how it relates to the political leadership have been issues of great significance to academics and practitioners alike ever since the days of Max Weber some hundred years ago.²³ His main emphasis was to show that with modernization comes the emergence of rational-legal rules that reflect and foster an instrumentalist approach to problem solving. While the extent to which such rules prevail varies from country to country, Weber’s analysis of the need for rational forms of organization cannot be ignored in Iraq or any other developing society, for that matter.

One of the first challenges to building a more efficient and effective bureaucracy is going to be how to replace the patronage system with a professional and merit-based organization.²⁴ Many of those with expert knowledge and administration capabilities are exactly those that are seen as “tainted” by their association with Saddam’s regime. How to draw on this tainted expertise and advice without compromising the standing of the country’s bureaucracy will be an important task in the coming months and years.

Although in comparison with neighboring countries, Iraq had a relatively well functioning bureaucracy – with some 2 million educated civil servants – its current problems are only too evident. Especially serious is the lack of funds to pay public servants. Not surprisingly, there are also tensions and conflicts between the older and younger generations of servants, whose attitude toward the old regime varies. For instance, many senior managers who have been retained or allowed to return were Baath party members and are now despised by their colleagues. The issue, therefore,

²² Narayan et al., *op.cit.*

²³ Weber, M., *The Theory of Social and Economic Organizations*, New York: Free Press 1947.

²⁴ Evans and Rauch, *op cit.*

is how far Iraq can allow a de-Baathification process to go. The efficiency of service delivery will also depend on the legitimacy of the new system, and the trust of the public in those who are running it.

The most immediate issue in Iraq, however, may be access to government services. Water and electricity remain problematic, particularly in Baghdad. If services are not available to all, people will suffer, and this, in turn, will no doubt affect the legitimacy of the regime. This could be extremely destabilizing in a society where cultural divisions are sharp. It is important, therefore, that government services are restored and made available to people, preferably as fairly as possible.

Experience from other countries shows that there are a number of different ways to make the bureaucracy more effective over the medium term. Recruiting civil servants on merit, increasing the transparency of civil service processes, and setting up mechanisms of accountability will contribute greatly to the legitimacy of the new regime and its role in service delivery. Replacing confusion with credible and certain rules will most likely take its time in Iraq since nepotism, cronyism and corruption remain engrained in the social and political framework of the country.

Economic Society

This arena refers to the rules affecting the interaction between state and market.²⁵ No less an advocate of the ‘invisible hand’ of the market than Adam Smith acknowledged that the state is necessary to perform certain economic functions. All governments regulate and oversee the market in different ways and to different degrees. Yet what is important from a governance perspective is how the relations between the public and private sectors are structured. Does the state respect property rights? Are regulations applied equally? To what extent are businesses required to make corrupt payments when dealing with officials?

This arena has gained greater prominence in recent years by theorists like Douglass North.²⁶ The World Bank has devoted two of its recent reports on the state of the

²⁵ The term ‘economic society’ is borrowed from Juan Linz and Alfred Stepan, *op.cit.*

²⁶ Douglass North, *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press 1990.

world economy to the significance of state-market relations.²⁷ Work by Daniel Kaufmann and his colleagues indicates that regulatory quality and lower corruption are positively associated with per capita incomes and adult literacy and negatively associated with infant mortality. Recent surveys prepared for the World Economic Forum highlight that governance issues comprise the most important barriers to business in developing countries.²⁸

Iraq is currently in economic crisis. Many ordinary Iraqis are destitute after misrule and sanctions. They have basic foods, but little money. Nevertheless the situation is improving slowly. The most critical issue for Iraq will be the privatization of the oil industry. Given the importance of the industry for Iraq's economy it is utterly vital that the profits – now and in the future – go to help the Iraqi people and not to an Iraqi elite or to foreign companies. We know from experience in countries like Russia how easy it is for public anger to rise because of botched privatization. A key lesson is that privatization in a vacuum or political quagmire is seldom successful. It will be critical that the distribution of revenues is done fairly and decided in a transparent and accountable manner.

A second point is that countries without a tradition or long history of market orientation have great difficulties in this arena compared to those with a longer history of a market economy. Iraq fits this category – building up markets in a country where an estimated 60% of people are dependent on food aid will be a massive challenge. There are going to be major problems with property rights, economic regulation and corruption. In a society where the distinction between 'mine' and 'yours' is not always clear-cut, Iraqis are likely to struggle to understand what ownership of property means. The current trend toward reliance on the market rather than the state for resource distribution may reduce the cronyism that existed during the days of Saddam, but it will raise new issues that are bound to be controversial in the current Iraqi context. Restructuring state-market relations anywhere is not merely a

²⁷ World Bank, *World Development Report 1997: The State in a Changing World*. New York: Oxford University Press 1997; and World Bank, *World Development Report 2002: Building Institutions for Markets*. New York: Oxford University Press 2002.

²⁸ D. Kaufmann, 2003, "Rethinking Governance: Empirical Lessons Challenge Orthodoxy", *World Bank Research Working Paper*, Washington D.C.: World Bank, March 2003.

‘technical’ issue like reducing transaction costs, but a highly contested one. Post-war Iraq is no exception.

The Judiciary

This arena covers the rules created for dispute or conflict resolution. Interests in society often collide and each society usually tries to develop its own (formal or informal) structures that can effectively settle disagreements among parties. The importance of this arena has been recognized by political theorists like John Locke²⁹ and Montesquieu³⁰ as well as by anthropologists like Gluckman.³¹ The rules that apply to resolving conflicts are clearly an important governance question.

Here, like in the other arenas, there is no shortage of big issues. The immediate priority in Iraq is to move beyond the current widespread violence and theft – it is of vital significance that the situation be stabilized. Ensuring security has been hampered by massive arms distribution to the public prior to the war. Similar to the bureaucratic realm, there are bound to be tradeoffs here between short-term stabilization and longer-term legitimacy. The police force is a case in point. Many of the former police are being put back on the streets to maintain law and order, even though this move is not popular in many quarters in the country. A similar set of challenges concerns the need to bring justice to those who suffered under Saddam. The desire for revenge will need to be controlled – and so far has not occurred on the scale expected. South Africa and many countries in Latin America have used a Truth and Reconciliation Commission to deal with this issue. It is not clear how far such an instrument would be helpful and acceptable in Iraq. Nonetheless, some trade-off will have to be made between justice, on the one hand, and a focus on the future, on the other.

In the medium term, there are three issues that we think deserve particular mention. These capture issues of the dispute resolution that are vital in Iraq – and indeed in any society. The first is how *accessible* and *fair* the justice system is. The second concerns

²⁹ John Locke, *The Second Treatise of Civil Government*. Oxford: Blackwell; and, his *Two Treatises of Government*. Cambridge: Cambridge University Press 1960.

³⁰ C. Montesquieu, *Spirit of the Laws*. New York: The Free Press 1970.

³¹ Max Gluckman, *Politics, Law, and Ritual in Tribal Society*. Oxford: Blackwell 1965.

the quality of the system – issues of transparency and accountability. The third relates to non-formal issues of justice.

Ensuring fair access to formal justice may be one of the biggest governance challenges regarding in Iraq. This is certainly a problem in many other countries around the world, including the U.S. Very often, money buys justice, formal judicial processes are slow and sometime corrupt, or biased against certain groups in society. Courts in Iraq are beginning to function again, but it will take a massive effort to remove fear and ensure that Iraqi courts are not characterized by some of the common shortcomings listed above.

Second, Iraq is likely to face real problems as a result of lack of transparency, predictability and accountability in the judicial process. Legal systems typically work with laws that are passed by a popularly elected legislature, but when existing laws are problematic and an elected legislature does not exist, chances are that the old laws will be adhered to. This way justice may become obstructive rather than enabling for the transition.

Third, while formal notions of rule of law are important, Iraq, like virtually all societies, also has community justice institutions for resolving conflicts that are not or cannot be taken to court. Informal dispute resolution systems are often seen cheaper and more accessible than formal judicial processes, especially to the poor or marginalized. In Iraq, as in other Islamic societies, the religion provides a broad range of informal mechanisms for conflict resolution. The real threat, of course, is that in the absence of a functioning secular justice system, a legal system based on the Quran may emerge. Given the country's multi-cultural composition, such a move would be a great step backwards, not just for the allies who have gone there to reduce its influence, but also for Iraqi society at large.

Opportunities and Constraints

A framework is only as good as its practical value on the ground. Thus, it is important to identify the peculiarities prevailing in Iraq that will have a bearing on how useful the framework may prove to be. We believe that a major factor in determining any

effort at rebuilding governance is the role that institutions play in creating political order. Huntington's thesis from some thirty-five years ago is applicable to contemporary Iraq: he suggests that regimes will crumble because institutions are unable to cope with rising popular demands.³² The challenge in Iraq today is a dual one. One is to cope with inflated popular expectations about a better material future – the classical political economy issue of who gets what, when and how. The second is about rising expectations about a more participatory political system – a new type of challenge associated with the issue of who sets what rules for whom and how.

While institutionalization is generally an important issue in Iraq today because of the disjuncture between past and present, that has been created by the allied invasion. Such disjunctures may at times create the conditions for change in rules. They are what analysts of social movements refer to as shifts in the 'political opportunity structure'.³³ Such shifts apply also more broadly to governance, as regimes and public opinion change and thus create the possibilities for major new governance initiatives. Regime change can lead to rapid revivals, but it can also result in prolonged uncertainty and stagnation. It is not clear at this point in which direction Iraq is moving.

One cause of concern is that what some scholars call a 'honeymoon' mandate is very weak in Iraq.³⁴ Being able to seize such opportunities to introduce reforms that discredit previous rules is what typically helps to significantly enhance the quality of governance. Iraq certainly provides a case of disjuncture. The dramatic change in context offers an opportunity to significantly improve the rules in the governance realm after the autocratic regime of Saddam Hussein. But due to the negative prevailing view of the US in the Middle East and the contested nature of the military intervention, there has been virtually no honeymoon effect at all. Short of the very first few days when so many Iraqis celebrated the downfall of the old regime, there has been little that the Americans, the allies or their Iraqi collaborators have been able to fall back on as windows of opportunities. Instead, they are faced with a situation

³² Samuel P. Huntington, *Political Order in Changing Society*. New Haven: Yale University Press 1968.

³³ See Sidney Tarrow, *Power in Movement*. New York: Cambridge University Press 1998, pp 18-20.

³⁴ Stephan Haggard and Robert R. Kaufman, *The Political Economy of Democratic Transitions*. Princeton: Princeton University Press 1995.

that is full of everyday elementary problems that bog them down in their effort to improve governance. The forthcoming election may provide a political opportunity, but much depends on the security situation as well as political leadership.

We will end this paper by pinpointing a number of tactical considerations that need to be made given the conditions on the ground and the probability that the strategy to improved governance will be seriously contested.

The first is that even though there has been a dramatic regime change, Iraq cannot be treated as a 'clean slate' as many in the US administration assumed. The forthcoming election is also unlikely to provide such a clean slate as many now hope. It is still partly captive of its past circumstances – economic, cultural and political. Such issues must be considered more carefully going forward.

The second is that efforts to rebuild governance in Iraq must transcend ethnocentric or normative biases. We worry that the prevailing approach to rebuilding governance in Iraq at present is too closely associated with a specific liberal democratic agenda. The latter is far too rigid and narrow to cope with the multitude of underlying problems that characterizes the Iraqi society after Saddam. It will not be helpful, as has often happened in development assistance, for countries to receive advice on how to improve governance that has little to do with their political realities but that are 'peddled' because it is an external priority.

The third consideration is the importance of taking a comprehensive view of governance. As suggested above, there are some areas of priority, but rebuilding governance will depend on much more than the ability to handle a small number of key issues. It is necessary to see each issue in its broader context and the interconnectedness that inevitably exists among them.

Our fourth observation is that rebuilding governance is made up of two parts. One concerns the design of new rules, the other of enforcing rules, whether they are new or not. In Iraq, the issue of rule design – or re-design – is important and will remain high on the governance agenda. The principal challenge, however, is the institutionalization of rules, i.e. getting actors to take them seriously and not ignore or violate them.

The fifth consideration is the importance of trade-offs between different priorities. Rebuilding governance in Iraq is going to be controversial because there is no automatic agreement about rules and there is a shortage of resources and benefits to be shared by everyone. For these reasons, constituting the new rules or enforcing the old ones will entail compromise between different preferences. Learning to make such trade-offs will be an integral part of fostering a new political climate in the country.

The sixth point is that the task of rebuilding governance must be treated not merely as a technical exercise but as a political challenge. While expertise will be needed in providing relevant background material or advice, e.g. in drafting a constitution or working out the electoral laws of the land, those interested in having an impact must start from the political premise that underlies this task. It is one strong reason why Iraqis must be allowed to play a significant role in this process from an early point onwards.

The seventh consideration is that there is no shortcut to progress. The allies may feel under pressure to hand over authority to the Iraqis and that is, as suggested above, an important move. Yet, if it is done without a long-term perspective, rushing the process may be counter-productive. Instead, it is important, as the proposed framework implies, that shorter and medium terms considerations are set in the perspective of longer ones in order to provide a stronger rationale for prompt action in some selected areas.

The eighth point is that enough attention must be paid to informal institutions and rules. Establishing a set of formal institutions of governance on top of existing societal norms and traditions is not likely to bear much fruit. It is necessary to establish how much rules of governance may be able to build on prevailing norms rather than being foreign to the various stakeholders.

The ninth consideration is the need for establishing systematic monitoring mechanisms for the task of improving the country's governance. Expert surveys of how this process is conceived may be one important mechanisms that will help in the long run; so are focus group exercises, public opinion surveys and other mechanisms

aimed at tapping the views of people in local communities, for whom the issue of systems governance is likely to be foreign.

The tenth and final consideration is perhaps the most important, but also the most contentious for the United States and its allies. They not only want to create new governance processes, but they also want to steer Iraq in a specific direction – towards liberal democracy (and a pro-US orientation). It is important to recognize that these two objectives – influencing process and outcome – are not necessarily compatible. There will no doubt be many instances when one has to be compromised in the interest of the other. We believe that priority should be given to reforming the process even if this means that liberal democracy is not achieved at every step. As we have argued throughout this paper, improving governance is not necessarily the same as liberal democracy and it is important that structures and processes are so constituted that they provide incentives for Iraqis to participate. Building on their own foundation, therefore, means that the task more quickly finds supportive stakeholders, the sine qua non for any effort to also promote liberal democracy.

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