

Saving Iraq: a critique of Peter W Galbraith

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A dangerous trend is emerging amongst United States policymakers and political commentators. Faced in Iraq with an ever-strengthening insurgency and an increasingly bloody civil war, more of them are warming to a course of action that would bring about the worst possible outcome for Iraqi civilians. The suggestion is that the country be split into three separate entities, each of which would be home to a distinct ethnic or religious group.

This course of action has been advocated by individuals such as Senator Joseph Biden (in the *Washington Post* [1]), the journalist Michael O'Hanlon (in the *Los Angeles Times* [2]), Leslie H Gelb, president emeritus [3] of the Council on Foreign Relations, and Richard Betts [4] of the Saltzman Institute. It is rumoured that James Baker, co-chair of the Iraq Study Group, is on the verge [5] of making a recommendation to the same effect to George W Bush.

On their side is Peter W Galbraith, former United States ambassador to Croatia, and now author of *The End of Iraq: How American Incompetence Created a War Without End* [6], a 224-page explanation as to why partition is the only viable solution for Iraq. Galbraith's argument is grounded on his longstanding relationship with Iraq's Kurdish north. He has acted as an adviser to Kurdish regional government, and thus has much of interest and relevance to contribute to the urgent debate about Iraq's future.

Most of what Galbraith argues has already been set out in his numerous contributions to the *New York Review of Books* [7], but *The End of Iraq* presents his arguments in a holistic and comprehensive manner. In the book, he offers a history of Iraqi Kurdistan, provides some fascinating revelations regarding the constitutional process that took place in 2005, and finally sets out his conceptual reasons for calling upon the Bush administration to seal the partition of Iraq once and for all.

Galbraith's book has generated a measure of comment and discussion. Reidar Visser, the historian of southern Iraq, sets out [8] a detailed analysis of the author's views of Iraqi history until 2003. My comments in this contribution will focus mostly on Galbraith's account of the most recent phase of this history, from the United States-led occupation onwards.

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The ethics of contribution

Peter W Galbraith's account of the Iraqi constitutional process is particularly interesting for what it reveals about his own contribution to this process. It is by now well known that a number of external actors significantly influenced the outcome of the drafting process, and that a large part of those efforts focused more on procedure than substance, including ensuring that the Iraqi parliament would not provide the drafters with extra time to complete their work (see Philipp Dann & Zaid Al-Ali, "The Internationalized *Pouvoir Constituant* - Constitution-Making Under External Influence in Iraq, Sudan and East Timor", *Max Planck Yearbook of United Nations Law, 10/2006 [15]*).

But Galbraith's own account suggests that he (acting in an individual capacity), practically formulated the position of the Kurdish leadership himself, and in so doing had a crucial impact on the substance of the *Iraqi constitution* [16]. He writes:

"I realized that the Kurdish leaders had a conceptual problem in planning for a federal Iraq. They were thinking in terms of devolution of power - meaning that Baghdad grants them rights. I urged that the equation be reversed. In a memo I sent Barham (Salih) and Nechirvan (Barzani) in August (2003), I drew a distinction between the previous autonomy proposals and federalism: 'Federalism is a 'bottom up' system. The basic organizing unit of the country is the province or state. [...] In a federal system residual power lies with the federal unit (i.e. state or province); under an autonomy system it rests with the central government. The central government has no ability to revoke a federal status or power: it can revoke an autonomy arrangement. [...] The Constitution should state that the Constitution of Kurdistan, and laws made pursuant to the Constitution, is the supreme law of Kurdistan. Any conflict between laws of Kurdistan and the laws of or Constitution of Iraq shall be decided in favor of the former.' These ideas eventually became the basis of Kurdistan's proposals for an Iraq constitution."

This account raises some serious ethical dilemmas in relation to how far external actors should move to influence constitution-making processes. External influence is of course impossible to prevent. It can take many forms, including, but not limited to:

- individual states can intervene either at the request of the constitution-making society itself, or (in the case of an occupation) can do so regardless of the latter's intentions
- multilateral organisations such as the United Nations and the World Bank have been called upon on a number of occasions to share their expertise on international standards and best practice

- individual experts have been known to intervene as advisors either for particular drafters or political entities, or on behalf of drafting bodies as a whole.

Because external actors are in a position in which they can skew constitutional arrangements in favour of interests that are alien to a particular society - which may either prevent it from being accepted in the relevant country, or may cause it to adopt a dysfunctional system of government - there is, in each case, a concern as to how much external influence will impact on a constitution's legitimacy.

A distinction must therefore be drawn between those external actors who are motivated or affected by their own self-interest and those who are not. Thus, individual nations are more likely to intervene in a way that preserves their own self-interest (to ensure a particular economic or political outcome, for example), whereas multilateral organisations such as the United Nations are less likely to do so, if only by virtue of the varied nature of their membership. But where do individual experts such as Peter W Galbraith fit?

It is probably fair to assume that foreign experts always have an interest in ensuring that constitutions should adhere to international best practice in relation to issues such as human rights and the proper functioning of government. Although this necessarily means that they seek to influence the drafting process towards a certain outcome, many observers would probably agree that that is the type of pressure that ought to be welcomed.

But the factual, sociological and historical contentions that Galbraith offers throughout his argument make it more than obvious that he has been striving to achieve an objective that goes far beyond adherence to international best practice. Readers who wonder what that objective is need look no further than the title of Galbraith's book.

From the extract set out above, it should also be obvious that Galbraith went beyond the objectives that his Kurdish patrons initially wanted to achieve. Indeed, whereas the Kurds requested of Galbraith that he provide advice on how to structure Iraq's federal system of government, his proposed course of action - which included allowing the Kurdish constitution to be the supreme law in Kurdistan - actually amounts to establishing a confederal system of government, which is far from being the same thing.

A misreading of history

Peter W Galbraith presents a number of justifications for the way he influenced the constitutional process in Iraq. These are based in turn on Iraqi history and on the current situation in the country.

The author argues that the very notion of an Iraqi state is an aberration of history, that it is solely the product of British imperialism [17], and that it would be contrary to nature to hold it together. He writes: "(the) conventional wisdom holds that Iraq's breakup would be destabilizing and therefore should be avoided at all costs. Looking at Iraq's dismal eighty-year history, it should be apparent that it is the effort to hold Iraq together that has been destabilizing. [...] I don't believe it is possible over the long run to force people living in a geographically defined area to remain part of a state against their will," (page 162).

He goes on to maintain that in any event, and regardless of what the citizens of the country actually want, Iraq has already *de facto* ceased to exist, and so it makes no sense to try to cobble it back together: "Partition works as a political solution for Kurdistan, the Shiite south, and the Sunni Arab center, because it formalizes what has already taken place. Partition is the

reason Kurdistan is stable and the south relatively so. It is an Iraqi solution, embodied in the constitution, and not an imposed one" (page 222).

This explanation raises a series of questions about Galbraith's ethics in affecting a constitution-making process in the way that he has. His arguments also betray a subjective and selective understanding both of Iraqi history [18] and of Iraq's status quo - and the conclusions that he draws from that understanding are irresponsible at best.

The author is absolutely correct that the country's citizens suffered terribly for a large part of its modern history, and goes to some length to illustrate the extent of some of that suffering, but he makes no effort to actually prove that this is the result of some form of ethnic or religious antagonism between the country's different communities.

The conclusions that he draws - that Iraq's different communities never wanted [19] to live together - are not supported by his own historical account. Galbraith does not tell stories of the Arab inhabitants of Baghdad massacring or expelling the city's Kurds, nor does he recount massacres of Arabs by Kurds in the north - quite simply because these things never actually happened.

What his account does contain is stories of the spectacular stupidity and brutality of Saddam Hussein and of the small clique of thugs that surrounded him. Galbraith neglects to draw appropriate conclusions from the fact that for decades successive rebellions throughout Iraq were sponsored and/or used by the United States, Britain and Iran in order to weaken a left-leaning and consolidating Iraqi government in the context of the cold war. He also barely mentions that one of the only real civil wars that took place in Iraqi history is the fighting that erupted between different Kurdish factions in the 1990s, which in effect was a struggle [20] to determine who would control the purse-strings.

An Iraqi or an imposed solution?

Galbraith's understanding of how this history has impacted on inter-community relations is equally questionable. It is true that many western policymakers and commentators agree with his characterisation that Iraqis are being made to live together "against their will", but Galbraith, whose ties to Iraq run deeper than most, should know better than to make such a vague and inaccurate assertion.

By way of example, a survey [21] was conducted a few months ago in Karbala, one of *Shi'a* Islam's most holy cities and main intellectual centres, on the issue of whether the city's residents support the territorial division of the state. Only around 5% of respondents supported the formation of regions, or states, based on ethnicity or religious identity, whereas 91.6% of respondents said that they either favored a centralised form of government or a decentralised system based on administrative divisions that were independent of factors such as religion and ethnicity. Even if Galbraith is right that a majority of Iraqi Kurds are in favour of independence, he fails to mention that their wish is not shared by a large majority of the remaining 82% of the Iraqi population.

Even more surprising are Galbraith's claims that the constitution adopts partition as the model of government that should be applied in the country, and that Iraqis have shown that they approve this outcome by virtue of the fact that the constitution was approved by referendum. Each of these claims is at best open to question and at worst completely mistaken.

First, the Iraqi constitution that came into force in 2006 does not embody or favour any particular result in terms of whether or not the country should be partitioned, but is merely permissive in

that it does not actually prevent any particular outcome. But there is a fear amongst many Iraqis that eight or nine southern provinces with a majority *Shi'a* population would be grouped together to form one huge administrative region, which some argue will eventually lead to the breakup of the entire country. The issue as to whether or not this should be allowed was put off to a later date as it was decided that a law should be agreed which would set out the mechanism for forming administrative regions.

That law was officially passed [22] on 11 October 2006 by exactly 50% of the Iraqi parliament, though an investigation has been launched amid accusations that the required quorum had not actually been met [23]. Some political parties are also seeking to determine if their MPs had been bribed into voting for the law despite instructions from party leaders to the contrary.

Second, in relation to the contention that Iraqis as a whole support the model of government that is provided for by the constitution, Galbraith is contradicted by the facts that he himself recounts in *The End of Iraq* [24]. He correctly notes (page 203) that "the constitution is not a national compact. It was made by Shiites and Kurds without the Sunni Arabs." To be more precise, everyone involved in the constitutional process knows that the permissive federal model was actually devised by six senior Iraqi politicians - two of whom were Kurdish and the other four *Shi'a* - in a drafting process that was as opaque as they come.

It is well known too that the Iraqi parliament was not allowed to debate the draft constitution's provision before the referendum date, and that most Iraqis never actually received a copy of the draft. Galbraith also conveniently fails to mention that, regardless of what the constitution actually provides, a large segment of the population was enticed to vote in favour of its adoption on the assumption that it would be amended shortly thereafter.

Galbraith goes on to say that there was "no alternative" to this manner of proceeding because the *Sunni* were intransigent in their positions. Once again, his assertions are not supported by history. In fact, the *Sunni* were only involved in the constitutional process for slightly more than three weeks, barely enough time to engage in it at all. A decision to exclude them was taken on 5 August 2005 on the assumption that their inclusion would force an extension of the process by six months, an outcome that the United States did not favour. Galbraith himself tells us what happened next: the US ambassador "summoned Iraq's top leaders to the capital's Green Zone, initiating three weeks of nonstop talks that produced the Kurdish-Shiite deal that is the basis of Iraq's constitution," (page 192).

Remarkably, Galbraith's contention is also contradicted a few pages earlier in his book. He writes that instead of entering into a Kurdish-*Shi'a* deal, "the National Assembly should have invoked a clause in the [Transitional Administrative Law] allowing for a six-month extension of the drafting process. But President Bush, wanting to show progress to an increasingly uneasy American public, insisted that Iraqis needed to meet their deadlines. Although every senior Iraqi leader with whom I spoke wanted the six-month extension, none dared say so openly," (page 195). It seems that Galbraith is having trouble sticking to his own story.

Legal contortions

All of this reveals the extent to which Galbraith has twisted the story of what happened in Iraq to support his personal views that the country should be split apart. This overzealous attitude is also more than apparent when Galbraith offers to interpret the Iraqi constitution for his readers.

He notes that the constitution sets out an exhaustive list of areas in which the federal government is exclusively competent, and notes that regional law and constitutions have primacy in all other areas. That much is true, but Galbraith goes much too far when he says that

"(religion), human rights, and gender are not among the exclusive powers of the federal government" and that therefore regions are free to legislate as they see fit in these areas (page 200).

This in fact represents a fundamental misinterpretation of the constitution. These issues may not be among the exclusive powers of the federal government, but they are listed in the chapter that deals with fundamental principles, and the constitution makes it clear that it is "the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception." There can therefore be no doubt that when the constitution says that no law may violate the "established principles of Islam," this applies to both federal and regional law.

The same type of error of interpretation is made in relation to the powers of the supreme court. Galbraith says that the court was "stripped of its power to review regional laws", including those laws passed by the Kurdish legislature. Because there is nothing in the constitution that would support this bizarre assertion, the only possible explanation is that Galbraith has relied on a poor translation of the Arabic original.

The original text provides that the supreme court is exclusively competent to review the constitutionality of laws "*annafidha*". The use of this term is standard in Arabic legal terminology, and was designed to indicate that the constitutionality of laws should only be reviewed after they come into effect (and not before, as is the case in France, for example).

Galbraith presumably drew on a source which interpreted *annafidha* as meaning that the supreme court could only review legislation that is already in existence at the time when the constitution came into effect, and not the constitutionality of laws passed after that date. Although Galbraith has never claimed to be perfect and is entitled to make mistakes, it is particularly surprising that he is alone in claiming that the supreme court cannot review laws passed by the Kurdish legislature. In so doing, he shows that he is more desperate for the Kurds to be independent than the Kurds themselves.

Also in openDemocracy on the future of Iraq as a unitary state:

Reidar Visser, "[Iraq's partition fantasy](#) [25]"
(19 May 2006)

Reidar Visser is author of *Basra, the Failed Gulf State: Separatism and Nationalism in Southern Iraq* ([Lit-Verlag, 2005](#) [26]); many of his own writings on questions of federalism, autonomy and decentralisation in southern Iraq are available [here](#) [27].

Learning from mistakes

What makes *The End of Iraq* even more disturbing is that it was published in the midst of a wave of the [defeatist](#) [28] statements by American policymakers and commentators cited at the outset. That the Bush administration should feel that it has been defeated in Iraq is understandable - but what is more important is what it decides to do with that knowledge. The growing trend is to say that war is lost and that the country should be split apart before we all drown with it.

Most Iraqis have difficulty understanding this attitude and consider it to be unconscionable. They cannot understand why the mistakes that have already been committed cannot be rectified with a view to moving forward on a more solid footing. Galbraith's book is one example of the failure to approach Iraq's predicament in this way. Although he pulls no punches when he describes the Bush administration's actions in the country, he offers a historical analysis at variance with

the facts. The result is that he has confused what should otherwise have been a clear debate on the errors of US policy.

Galbraith considers that the US government has created a "war without end" not as a result of its poor administration of the country, but by trying to force Iraq's different communities to live together despite the fact that they do not, and never did, have a desire to do so. I have already explained in some detail the reasons why I consider this vision of Iraq's intercommunal relations to be wide of the mark. But this error in analysis is more offensive than the others precisely because it will serve to distract policymakers from focusing on the very real mistakes that have been committed since 2003.

Even more seriously, Galbraith and his co-thinkers are unwittingly encouraging a course of action that will actually escalate and accelerate the violence, not end it. The problem is that they misunderstand the nature of the war [29] that is ongoing in Iraq.

Each of the militias involved in the fighting - apart from those that have dedicated themselves to resisting the occupation - is now involved in a military campaign to establish facts on the ground precisely because they anticipate that the country is going to be split apart. They are therefore fighting over those areas that they consider to be up for grabs - Baghdad, Baquba, and Kirkuk, amongst others - and trying to achieve control by physically eliminating the opposition. If the Bush administration follows Galbraith's advice and splits the country apart, the militias will fight to the last man to seize control of the capital and will most likely take what is left of it with them in the process.

This is true particularly in Baghdad, which the militias are in the process of destroying precisely because each refuses to surrender it to the others. Although Galbraith is aware of this dilemma, the first and only time he mentions it in his book is on page 222. He confesses that his proposed course of action of partitioning the country does not "solve the problem of Baghdad" but, in an impressive display of irresponsibility, the book ends precisely two pages later, without even a modest attempt at proposing a solution. Galbraith has therefore suggested a course of action that he knows will lead to a bloodbath in the nation's capital, but does nothing to address this problem.

Iraqis agree that the levels of violence that we are currently experiencing were avoidable, and that this could have been achieved first and foremost by insisting upon the application of the rules that the US occupation itself instituted. By way of example, by virtue of its Order 92, the Coalition Provisional Authority [30] provided for the establishment of an independent electoral commission [31] which would be responsible for administering the many elections [32] and voting processes that were to take place in Iraq after 2003.

The commission in turn formulated a code of conduct [33] that is binding on all Iraqi political entities. It provides *inter alia* that political parties seeking to contest elections in Iraq cannot "have or be associated with an armed force, militia or residual element", cannot "be directly or indirectly financed by any armed force, militia or residual element" and "must strive to achieve full transparency in political finances and expenditures." It is a pity, therefore, that all those candidates who respected those rules are precisely those who are not represented in the parliament. Indeed, all those candidates who decided to play by the rules were at an extreme disadvantage because these rules were never enforced.

It is about time that the policymakers in the United States realise how poor [34] their administration of Iraq has been and that it has created a political system that is corrupt [35] to the bone. If Iraq is to have a chance of surviving the current occupation and war, the proper lessons must be learned from the past three and a half years. Otto von Bismarck once remarked

that wise men learn from others' mistakes, whereas fools learn from their own. Perhaps Peter W Galbraith will now be able to tell us how we ought to refer to someone who simply never learns.

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