Iraq after the 2003 US invasion: The Kurdish Question

Historical Background of the Kurds in Iraq

Current Iraq Demographics

<table>
<thead>
<tr>
<th>Ethnic Group</th>
<th>% of Population</th>
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There are two major ethnic groups in Iraq: the Arabs and the Kurds. The Arabs, which form the larger part of the population can be divided into two groups: Sunni Arabs and Shiite Arabs. There is much conflict between these two groups which has lead to civil unrest on many occasions. Historically the Sunni Arabs have been in positions of political power since the creation of the Kingdom of Iraq under British imperial rule in 1921. Despite the rise and fall of various regimes, Sunni Arabs have managed to hold onto their positions in society until very recently with the 2003 Iraq Invasion. They are located primarily in central Iraq. Meanwhile the Shiite Arabs, though forming the majority of the Iraqi population have had a history of repression and horizontal inequality under the policies of the central government. They are located primarily in southern Iraq.

The Kurds are a separate ethnicity, actually divided primarily among four different countries: Iraq, Iran, Syria, and Turkey. The vast majority of Kurds practice Sunni Islam but the difference in religion is not a source of dissension within Kurdish society. The Kurds have been under imperial rule under various empires in the past but at the beginning of the 20th century began their movement for independence and self-government and have had varying degrees of success in obtaining them. Such nationalist movements have been a source of tension between the current governments that they are under. In Iraq, they reside in a region known as Iraqi Kurdistan which is to the north.

According to the CIA World Factbook, the most practiced religions in Iraq consist of Shiite Islam (60%-65%) Sunni Islam (32%-37%) and others (3%).

The Origin of Modern Kurdish Nationalism (1880 – 1919)

The Kurdish people lived relatively peacefully with other ethnic groups, including the dominating Arabs and the Turks, under the Arab and Ottoman Empires. Most Kurds inhabited the mountainous regions on the border of present-day Iran, Iraq, Turkey and Syria. Given its geographical distance from the heartland of the Middle Eastern empires, Kurds used to enjoy a de-facto self-ruling status from the medieval period to the early modern era. The first major conflict between the Kurds and the ruling ethnic group during the modern era occurred in 1880, when Sheikh Ubeydullah, a Kurdish leader, led a group of nobles in demanding Kurdish autonomy from the Turkish and Persian authorities. But this early nationalist movement did not involve armed struggle and violent repression; instead, it ended up with exile of the nationalist leaders.

In his article The Kurdish Question in Iraq, 1914-1974, Gareth Stanfield argues the defeat of the Ottoman Empire to be the starting point of “the Kurdish Question.” As the Ottoman Empire fell apart, many independent states emerged, sometimes in the form of imperial mandates for the victorious powers (for example, the British Mandate of Palestine). The emergence of these new states inspired the nationalist aspiration of the Kurds, and according to Stanfield, the imperial powers did indeed consider an independent Kurdish state over the incorporation of the Kurds into other states. C.J. Edmonds, in his journal Kurdish Nationalism, also mentions Woodrow Wilson’s Fourteen Points as an essential inspiration, which expresses the idea of national self-determination. Originally the creation of an independent “Kurdistan” was scheduled in the early drafts of the Treaty of Sevres which was created and signed August 1920 but never implemented as the final version of the peace treaty between the Ottoman Empire and the Allies, the Treaty of Lausanne (1923), did not even mention Kurdistan. Instead, Kurdish territories were separated by modern Iraq, Iran, Syria and Turkey. The failure of post-WWI efforts to establish an independent state soon pushed the Kurdish nationalist movement to a more radical direction, as early mobilization of armed groups emerged.

First Wave of Kurdish Resistance: Sheikh Mahmoud’s Revolt against the British (1919-1934)
Sheikh Mahmoud is commonly recognized as the forerunner of Kurdish armed struggle. Mahmoud was appointed as the governor of southern Kurdistan by the British, who hoped him to enforce an indirect rule in the region; victorious after World War I, the British had received the Mandate of Mesopotamia, which included Iraq. However, choosing Mahmoud turned out to be a big mistake for the British. Mahmoud was not happy with the post-war settlements regarding Kurdistan, and was much more ambitious than the British thought. Proclaiming himself to be the “King of Kurdistan,” Mahmoud raised a tribal army and launched a revolt against the British in 1919. The revolt was soon defeated, but in the words of Stanfield, “the fire of Kurdish nationalism in Iraq had been lit”. Mahmoud later returned to Iraq in 1922 from his exile into India and launched a second revolt, which lasted until 1932. Several other uprisings that attempted to establish an independent Kurdish state occurred during this period of time, but were all defeated.

What really marked the end of the first wave of uprisings was Iraq’s independence in 1932, when the Kurds in the northeastern regions such as Kirkuk, Dohuk, Erbil and Suleimania found themselves under the rule of the newly established Hashimite Kingdom. The following era between 1933 and the fall of monarchy in 1958 is the nadir of modern Kurdish armed resistance, as “there was no major armed manifestation of Kurdish nationalism” (C.J.Edmonds, *Kurdish Nationalism*). Ofra Bengio explains the reason for the two-decade-long pause to be a preparation for a new phase of Kurdish nationalism. Under the British rule, the target of Kurdish nationalism was the British colonial authority. But after the independence of Iraq and other Middle Eastern states, nationalists had to prepare for dealing with their new targets, the new authorities in Iraq, Syria, Turkey and Iran (Bengio, *The Kurds of Iraq*, 11).

**Oppression against Kurds during the Pre-Republican Era (1933 – 1958)**

It should be noted that, during the early years of the Kingdom of Iraq, the Kurdish leadership did not seek national independence but rather equal treatment and the preservation of the Kurdish culture. Among the demands were the central government’s commitment to the protection of minority rights, the official use of Kurdish language in Kurdish areas, representation in the National Assembly, and a fair share of the nation’s resources. While some Iraqi government leaders like Bakr Sidqi chose to acknowledge the fact that Iraq was a multi-ethnic country, the constant tension between the Kurdish leaders and the central government led to a withdrawal of support for the Kurds (Bengio 15). As attempts to “integrate” the Kurdish population into the new state failed, nationalism soon revived.

Although the pre-Republican era (1933-1958) was relatively peaceful compared to other eras in the modern Kurdish history, it was nevertheless essential for Kurdish nationalist movement with the formation of organized political groups and other institutions. Notable examples are the founding of Kurdistan Democratic Party in 1946 and Kurdish press that published nationalist magazines and books. A potential political breakthrough of Kurdish nationalism occurred in Iran, where Iran’s Kurdistan Democratic Party established an independent Kurdish state, the Republic of Mahabad in northwestern Iran with Soviet support. The regime only survived for less than two years, and the leader, Qazi Muhammad, was executed however. During this period Iraq’s government also paid attention on restricting Kurdish nationalist activities. Many nationalist propagandists, for example, were jailed during the 1940s. One of the influential revolts during the Hashemite ruling broke out in 1943, which was led by Mustafa Barzani, who later became one of the most important leaders in the history of Kurdish nationalism.

**Dealing with the Kurdish Question during the Early Republican Era (1958 – 1979)**
Mustafa Barzani

Barzani led several uprisings in the 1940s, and his rise to prominence came when he served as the minister of defense of the Republic of Mahabad. After the collapse of the short-lived Kurdish republic, he was exiled to the Soviet Union. Meanwhile in Iraq, the Hashemite monarchy was overthrown by Iraqi army general Abd al-Karim Qasim, who later became the regime's new Prime Minister. Having a part Kurdish background and having come to power with the support of the Free Officer movement, Abd al-Karim Qasim like Bakr before him "understood Iraq as a multi ethnic national state. Kurds and Shia Arabs were well represented in Qassem's National Council of the Revolutionary Command, the group of Free Officers leading the coup and the government." (Wimmer 117) Through his leadership, the newly establish regime proceeded to implement some of the most ambitious social reforms in Iraq's history and made attempts to include ethno-religious groups into its planning committees. Qasim went as far to invite Barzani to return to Iraq in 1958 as an attempt to negotiate a settlement for Kurdish autonomy.

Soon after his return, although Barzani regained leadership of the Kurdish Democratic Party, the party he returned to was very different from the one he left in 1946. With new leaders such as Ibrahim Ahmed and Jalal Talabani, the party had taken a left-wing approach to policies, closely aligning itself with socialist and communist parties. Nevertheless, Barzani managed to maintain both de facto and de jure leadership while crushing opposition in 1961. Eventually however, the two different forms of leadership would clash and result in the creation of the Patriotic Union of Kurdistan by Ahmed and Talabani in 1964.

In the central government, tensions mounted as Qasim struggled to maintain the inclusiveness that had brought his government to power. Nevertheless, it was painfully obvious that the regime "proved politically too weak to make a stand against the Arabist circles in the army, which were allied with urban notables and a rising class of bureaucrats. In their eyes, nation-building and political integration meant sharing power and privileges with other factions within the army, bureaucracy and government." By 1958 only 2% of the higher administrative staff of the central government were Kurds while only 15% of the lower administrative staff were Kurds. This was a stark contrast to the 1936 figures of 15% and 25% respectively. (Wimmer 115-116)

Even the Free Officers which had brought Qasim to power began to divide across ethnic lines as some of the first trans-ethnic forms of civil society, which had supported the regime, began to fracture and reform under ethno-religious backgrounds. The Kurdish sister party to the communist party fused with the estranged Kurdish officers who were under the scrutiny of an increasingly pan-Arab movement in the officer corps. The end result of all the fracturing and reforming led to the creation of fronts that distanced each along the newly established lines. Qasim faced with a lot of pressure from Arab nationalists, who were a powerful group in the new republican government and would not accept the Kurdish demand of “autonomy.” On September 1961, violent conflict between the Iraqi central government and Kurdish militants eventually resumed when Qasim sanctioned a campaign against Barzani's peshmerga forces and Barzani "issued a proclamation to all Kurds to take up arms against the forces of the Iraqi government, in what Kurds refer to as the ‘Kurdish Revolution’. (Stansfield 3)

This attack started the First Kurdish – Iraqi War, which lasted until 1970, seven years after the Ba'athists overthrew Qasim’s regime. During the war, the peshmerga received support from Iran, whose relations with Iraq proved to be crucial for the fate of Kurds in Iraq in the 1980s.

The new Ba’ath government launched several ruthless campaigns against the Kurds in 1963, but soon changed its policy towards peace as a stalemate became obvious. An agreement was reached in 1970 with then vice president Saddam Hussein leading the negotiation process. Many scholars point out that this March Agreement was one of the highest points in Kurdish political strength. According to the agreement, the Iraqi government would allow de facto autonomy of the Kurdish provinces and recognize Kurdish as the other official language of the nation. Furthermore, President Hassan al-Bakr appointed five Kurds to the cabinet in Baghdad. In exchange, the Kurds recognized the authority of Baghdad and allowed Iraqi military presence in Kurdish areas. It was an uneasy peace. (Stanfield 4)

The 1970 peace treaty was an opportunity to solve the Kurdish question in Iraq, but the Iraqi government failed to implement it in 1974. Kerim Yildiz argues that the status of Kirkuk was the most important issue that led to the failure of the 1970 peace treaty. Kirkuk is an oil-rich region that is essential for Iraq's economy, and Hussein eagerly wanted it to remain in Arab control. He launched an Arabization program by bringing Arabs from southern and central Iraq to replace the forcibly displaced up to 130,000 Kurdish residents. The prior agreements between the Kurds and
central government was that regions with a Kurdish majority would fall under the jurisdiction of the de facto Kurdish government; by displacing a huge portion of the Kurdish population in Kirkuk, the Iraqi government could lay claim to the region. As a response, Barzani accused the Bagdad regime of deliberately attempting to alter the demography of the region to reduce the area of Kurdish autonomous region (Yildiz 19).

Soon afterwards, the two sides were at war once more which lead to the defeat of the Kurish peshmerga militia due to the lack of Iranian support which they had enjoyed in years prior; Hussein had in fact cut a deal with the Iranian leadership in which the Iraqi regime would give up the Shatt al-Arab waterway in the south to Iran in exchange for turning a blind eye on the Kurds, who were soon defeated. Barzani would never return to Iraq after his final exile. Despite a low-level insurgency by Patriotic Union of Kurdistan and minor rebellions, the Kurdish nationalists would not have the ability to launch an effective armed struggle until the Gulf War.

Saddam Hussein’s “Final Solution”: From the Iran–Iraq War to the Anfal Campaigns (1986-1989)

After the defeat of the Kurdish Democratic Party, Hussein continued his plan to Arabize the oil – producing areas of Kirkuk and Khanaqin, which the Kurds considered as their territories. The border of the Kurdish autonomous region was further pushed northwards, limited to 14,000 square miles of territories of Erbil, Suleimaniyeh and Dohuk. The regime forcibly evacuated a quarter of one million Kurds from Iraq's borders with Iran and Turkey to crude new settlements known as “mujamma’at”. From the socio-economic perspective, the tension between Saddam’s regime and Kurds continued to grow long after Barzani’s wars.

The most important event that escalated the regime’s oppression of the Kurds was the Iran-Iraq War (September 1980 – August 1988). Shortly after the 1979 Iranian Revolution, Iraq invaded Iran for border disputes and fear of Shia Islamism. As the Iraqi troops were transferred to the front to fight the war and formed a power vacuum in the Kurdish regions, the PUK and KDP revived. Peshmerga troops also started to reorganize. Iran and the Kurdish nationalists were cooperated in an effort to weaken Iraq domestically. As a response, the Ba’athist regime launched the first series of campaigns against the Kurds in 1983, known as the Barzani Operation, in which approximately 5,000 – 8,000 Kurds were imprisoned or killed. Simultaneously an economic blockade was enforced, reducing Kurd food and supply (Human Rights Watch, 7).

In 1986, Tehran succeeded in brokering a truce between the PUK and the KDP. This move was viewed by the Iraqi regime as a potential formation of an Iran-PUK-KDP alliance; as a response, they planned a “final solution,” to eliminate all Kurdish threats.

(Source: Wikimedia Commons Link)

“Chemical Ali”

The responsibility to execute this final solution relied on Saddam Hussein’s cousin, Ali Hassan al-Majid, who is more commonly known as “Chemical Ali” for his notorious use of chemical weapons. Under his orders, the first recorded genocide of the Anfal Campaign occurred in April, 1987, when the KDP’s headquarters at Zewa Shikan was attacked with poison gas. The most famous case among the attacks was the Halabja Poison Gas Attack on March 16, 1988, in which 15,000 Kurds, mostly civilians, were killed.

Video: Halabja Genocide

http://www.youtube.com/watch?v=rvT7zCW7ts
According to Human Rights Watch report, there were eight rounds of attacks, starting from April 1987 to September 1988; the total number of people killed is estimated to be 182,000. 132 Villages were destroyed.

The Creation of Autonomous Republic (1991)

The genocide inevitably strengthened the Kurdish people’s will to achieve political independence, and the Gulf War provided a great opportunity. In March 1991 the Kurdish intifada broke out. Although defeated recently in Kuwait, the Hussein regime was able to send 300,000 troops to the rebellion regions to suppress the uprising. Militarily this was another defeat for the Kurds: as many as 180,000 militants and civilians were killed, and about 2 million Kurdish refugees were forced to flee into neighboring states. But due to coalition interference led by the U.S. Air Force, two no-fly zones in both the Kurdish territories in the North and the Shiite territories in the South were established, leading to safe havens where Kurds were able to consolidate and recover from the disaster.
The coalition intervention eventually forced the Iraqi forces to withdraw from the Iraqi Kurdistan. Since then the region has been considered to be independent in practice. The new-born Kurdish state however, suffered from severe economic hardship from its onset. The Saddam regime imposed an economic blockade on the region and smuggled important resources including oil from Kurdistan to the Ba’athist controlled Iraqi heartland. Internally, power struggles and competition over trade routes and resources resulted in the split of PUK and KDP, which turned into a civil war that started from 1994 until 1997.


By the time of the U.S invasion in 2003, a federal framework of Iraqi Kurdistan had been firmly consolidated. This is achieved from several different aspects: ideologically, federalism replaced separatism to the theme of Kurdish national movement in Iraq; socio-economically, Iraqi Kurdistan benefitted from the oil-food exchange program and witnessed a rapid progression from late 1990s, which enabled the Kurdish state to function independently; politically, after the end of a civil war between the two main nationalist factions, PUK and KDP, political stability was restored, and a democratic structure of the Kurdistan Regional Government (KRG) was ensured by the post-Civil War agreements.

Iraqi Kurdistan’s de facto independence during the latter years of the Saddam regime did not lead to separatism; instead, a federalist framework was built. Ofra Bengio argues that two main reasons eventually led Iraqi Kurdistan to a Kurdish federal state instead of an independent sovereignty. First, post-Gulf War developments in Iraq promoted interdependence between the Kurdish territories and the Arab territories. The Kurds controlled water and oil pipelines, which Baghdad needed desperately, while they were also dependent on the Ba’ath regime for electricity and commerce (Bengio 251). Second, Turkey, Iran and the United States, the most influential international powers in Iraqi Kurdistan, exerted pressure on Kurdish leadership to keep Kurdish territories within Iraq. They were all afraid that Kurdish separatism in Iraq would spread to the rest of the Islamic world and create political chaos in the other Kurdish territories (Bengio 251 -262).

Economically, the Kurds were better off than people in the other parts of the country due to the implementation of the oil-for-food program in 1996. Massive construction of infrastructures started and the region gradually became the major outlet for Iraqi trade and economic transactions with the outside world.

Downtown Sulaymaniya during early 2000s (Picture courtesy of skyscraper.com):

http://img440.imageshack.us/img440/9822/61935200.jpg

Politically, Kurdistan was much more politically active than the rest of Iraq due to its growing diversity of parties, groups and outside influences (Bengio 274). The Kurds also managed to maintain a strong military. The Peshmerga becomes the cornerstone of Kurdistan’s national defense and continues to grow in size and strength now. These political and economic developments in the Kurdish society earned the Kurds more influence and bargaining power in post-2003 Iraq, in which an effort to reintegrate Kurdistan under a federal system was carried out.

Iraq War and Beyond (2003 - Now)

During the 2003 American invasion of Iraq the Kurdish military groups chose to cooperate with the U.S. army. After the fall of Saddam Hussein, a Constitution was ratified in 2005, which granted Iraqi Kurdistan the status of a federal entity constitutionally and recognized Kurdish as one of the two official national languages. However, it is still too early to say the Kurdish question in Iraq has come to an end.
Part II: Strategies to Deal with the Kurdish Question in Post-2003 Iraq

US Coalition Provision Authority & the Iraqi Governing Council (July 13, 2003 – June 1, 2004)

Under supervision from the US Coalition Provision Authority, a governing council was formed in order to return Iraq to normalcy following Operation Iraqi Freedom. Eager to show Iraq as a success story in the Middle East, the Bush administration advisers arguably hand-picked the members who would lead Iraq until a more democratic government could be created.

The governing council was a stark contrast to the previous Ba’athist regime. Instead of a clear control of the political stage by the Sunni Arabs, the Iraqi Governing Council included: 13 Shiites, 5 Sunnis, 5 Kurds, 1 Turkmen, and 1 Assyrian. Among the 25 representatives, 3 were women. As many researchers argue, an obvious reason for the diverse make-up of the council was due to the fact that the US held de-facto power over Iraq during this time.

Nonetheless the governing council was a symbol of inclusive politics in a new Iraq. Two Kurdish figures would play a role during this time: Jalal Talabani from the Patriotic Union of Kurdistan (PUK) who would serve a one-month rotational term as president of the council in November 2003 and Massoud Barzani from the Kurdistant Democratic Party (KDP) in April 2004.

Iraq Interim Government (June 1, 2004 – January 2005)
The governing council soon became the Iraq Interim Government under *The Law of Administration for the State of Iraq for the Transitional Period* (TAL) which served as Iraq’s first provisional constitution when it was passed on March 8, 2004. Under this new government, Kurdish political participation expanded with the inclusion of Kurds in key cabinet positions such as:

- Vice-President: Rowsch Shaways (KDP)
- Deputy Prime Minister for National Security: Barham Salih (PUK)
- Foreign Minister: Hoshyar Zebari (KDP)

These are just key cabinet members. There were a total of 35 members of the interim government. They were appointed on June 28, 2004.

Although prior to the 2003 Invasion Iraqi Kurdistan was considered an autonomous region especially with the UN protected no-fly zones, The interim government during this period formally recognized in the provisional constitution that the Kurdistan Regional Government, which had been in existence since 1972 and in full de-facto power since 1991, as the legitimate ruling government over Iraqi Kurdistan. Furthermore, Kurdish was recognized alongside Arabic as an official language.

### Iraq’s First Parliamentary Elections

On January 30, 2005 with heavy administrating and organization by the United Nations, the Iraqi people participated in their first parliamentary elections which would lead to the creation of Iraq’s transitional government. The 275 member Council of Representatives was voted in with the following electoral rules and protocol:

- Proportional representation with party lists through one national election for 275 seats.
- Every third candidate on each party list had to be women.

Especially with proportional representation as opposed to first-past the post voting in single member districts, the Iraqi people were better represented according to their population. It was unfeasible to divide the country into districts to begin with as Iraq hasn’t had a proper census for some time. Furthermore had the more traditional first past the post method been used, controversy might have arose over the fairness of the election since certain candidates with more affluent and politically powerful backgrounds would dominate. Inclusiveness, transparency, and legitimacy were the three primary goals that were to be met in this election as the elected Iraqi National Assembly members would be critical in writing and ratifying a permanent constitution; many critics report that the PR system best fulfilled these goals.

It is important to note that the political groups which secured seats during the election were not necessarily unified political parties that one might assume from traditional democracies; instead they were coalitions of both major and minor political parties. During this election the Kurdish Democratic Party and the Patriotic Union of Kurdistan joined forces to create the Democratic Patriotic Alliance of Kurdistan (DPAK) which came in second place, won 25.7% of the popular vote and secured 75 of the 275 seats in parliament. As a whole they were over-represented. (United Nations)

The rest of the election in regards to the leading groups are as follows:

(Source: Wikimedia Commons Link)

- United Iraqi Alliance (a primarily Islamist Shiite party) 48.19%, 140 seats
- DPAK 25.7%, 75 seats
- Iraqi List of Interim PM Ayad Allawi (Secular Shiite), 13.82% 40 seats

*In accordance with Article 57B of TAL, on the same day as the national election day, there were elections for the governorate councils and the
Kurdistan Regional Government which had its first parliamentary elections since 1992 with DPAK claiming 89.55% of the population vote.

With a turnout of 58%, the election was regarded by both the United States and the United Nations generally as a success. Political groups, namely the Shiites and Kurds who had been oppressed in the prior era could now participate in a more transparent and egalitarian political process. However, there were complications throughout the electoral process with violence breaking out in contentious Sunni governorates while a large part of the Sunni Arab population boycotted the election altogether. Prior to the elections, a national poll had found: “nearly 80 percent of the Shiites, who make up about 60 percent of the population, and around 70 percent of the Kurds, who make up about 15 percent of the country, say they are “very likely” to vote; only about 20 percent of Sunni Arabs say the same.” (Christian Science Monitor)


Iraq’s first National Assembly was elected in January 2005 and was approved to hold office on April 28, 2005. The primary goals of this body were to create a working and final constitution, while continuing both the political and economic reconstruction of Iraq. The Kurds were political allies of the Shiites during this period and having formed a majority in the National Assembly, pushed for the ratification of the new constitution and democratization of the central government.

Regarding the executive branch of this government:

A president would be elected with a 2/3 majority by the Iraqi National Assembly. He/she would serve a maximum of two four-year terms as head of state. This position ultimately went to Jalal Talabani, who was seen as a symbol of inclusiveness due to his Kurdish background while the Prime Minister would undoubtedly be Shiite.

The president would name the nominee from the largest voting bloc to form a cabinet. Ibrahim al-Eshaiker al-Jafari from the UIA would gain this position.

Although the Kurds were only about 15% of the country's population, due to the Sunni boycotting of elections and their lack of participation, the inflated number of Kurdish representatives played a huge role not only in shaping what the Iraqi central government would look like in a system of federalism, but also in continuing to advance the national attitudes towards the Kurdish people which had been established under the TAL (which too hard been written under the heavy influence of Kurdish politicians).

**The Iraqi Constitution [Link to the Iraqi Constitution]**

The constitutional drafting committee comprised of 55 members of which 15 were Kurdish leaders.

The newly drafted constitution was ratified on October 15, 2005 as a referendum. 16 of the 18 governorates (including Iraqi Kurdistan) had to approve the constitution with 2/3 majority. The constitution was passed after 10 days of counting with a wide margin; only the governorates of Salah ad Din and Al Anbar rejected it. All of Iraqi Kurdistan's governorates approved with voting above 95%. (Kirkuk passed it with 62.91%)

Regarding Iraq as a whole, 78% of the population passed it and 21% rejected it. Many scholars consider the Iraqi Constitution to have been a vehicle for the advancement of Kurdish interests. Although it definitely took into account the balancing of Shiite, Sunni, and Kurdish interests as a whole, many conclude that it was not just a plain coincidence that the three governorates of Iraqi Kurdistan would have been the required number in rejecting the constitution; in some ways, the fact that the Kurdish governorates all accepted the constitution was a way to reaffirm the necessity for future central governments to rely on the Kurds for political support. The 2/3 of 3 governorates clause essentially gave the Kurds veto power in the government. (Katzman 3)

Like the TAL before it, the Constitution recognized once more the legitimacy of the Kurdistan Regional Government and with the Kurdish governorates overwhelmingly accepting the Constitution, the Kurdish people too recognized the legitimacy and authority of Baghdad over Iraq as a whole. Nevertheless the KRG was allowed greater autonomy over foreign affairs and domestic politics. Because Iraq was now formally established under a federal system, the KRG could fully utilize its political and economic strength with few strings from the central government. Political observers consider this to be one of the greatest political victories that the Kurdish politicians were able to achieve post 2003 invasion. It was clear that Iraq as a whole could prosper under a more centralized government than the one established under the constitution. However for Iraqi Kurdistan, the concept of strong governorates and loose federalism would allow for the continued existence of its Peshmerga forces which then numbered between 75,000-100,000. Iraqi Kurdistan could create its own foreign relations with neighboring countries in furthering their economic interests in regards to oil exports, especially if it managed to seize control over the disputed areas which included oil-rich Kirkuk; the steps leading up to this were ensured with the inclusion of the TAL's Article 58 in the Constitution of Iraq's Article 140 which would play a crucial role in requiring the eventual redress of arabization which had happened under Saddam Hussein. (Hitlermann)

In the Constitution of Iraq, the central government is considered a Democratic, federal, representative, parliamentary republic. Islamic law is considered a basic foundation (instead of the) for Iraqi Law and cannot be contradicted by future laws; likewise all laws which contradict the primary tenets of democracy are not allowed. Like the TAL before, Iraq is considered a multi-ethnic and multi-religious country and recognizes both Arabic and Kurdish as its official languages; families are allowed to teach their mother tongue such as Assyrian and Turkmen to future generations both in public and private educational institutions. The Constitution even allowed for regional governorates to identify their own official languages.

In regards to the Executive Branch, the prior protocols for choosing a president and prime minister remained the same and the electoral system for electing the legislative body remained the same with a few minor differences that can be seen in the December 2005 Parliamentary Elections. A point of mention is the inclusion of new legislative members to the Iraqi National Assembly as the population grows; the decided amount was 1 new legislator for every new 100,000 citizens.
There is a distinct separation of the military and civilian sectors of government with the banning of the Ba'athist Party, private militias, and the holding of office by a military official.

However there were many complications in ratifying the constitution. There was opposition in the drafting committee and later National Assembly over the phrasing of religious language as well as the outright ban on groups affiliated with the former Ba'athist Regime. Only 3 of the 15 Sunni drafters attended the signing ceremony; none of them signed the final document. Furthermore the leader of the Hewar front and primary Sunni negotiator Saleh al-Mutlaq urged his members to reject it, but the biggest Sunni block, the Iraqi Accord Front eventually accepted the document after the promise of a Constitutional Amendment Committee being set up in order to take into account their views.

**December 2005 Parliamentary Elections and the Permanent Iraqi Government**

With the ratification of the new Constitution of Iraq, parliamentary elections to elect the legislative body of the permanent government occurred on December 15, 2005. There were some differences in the electoral rules this time around in order to participate larger Sunni participation across the country. They were:

- Seats within each governorate were given to political groups based on proportional representation. This is different from the prior election where the seats were not based on governorates but simply by the overall population. This change was made so that Sunni Arabs who distinctly had power in certain districts could have a political influence.
- The PR lists were responsible for only 230 of the 275 seats. The remaining 45 seats would be distributed to parties that had a percentage of the national vote total exceeding the percentage of the 275 total seats that had been given to them already.
- Instead of every third candidate per list being women, a simple 25% quota in the Iraqi Governing Council was required.

The election breakdown is as follows:

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<th>Alliances and Parties</th>
<th>%</th>
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<td>United Iraqi Alliance</td>
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<td>Democratic Patriotic Alliance of Kurdistan</td>
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<td>Iraqi Accord Front</td>
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<td>The Upholders of the Message</td>
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<td>Turkmen Front</td>
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</table>

A total of 79.6% of the Iraqi population voted, which was considered a wide-success.

**2006 Government Formation**

A government should have been formed relatively quickly if not immediately from the Iraqi Council of Representatives which had been elected in December Parliamentary elections. Due to allegations of fraud, vote-rigging, and general disagreement among the political parties over coalition forming and Prime Minister candidates. Acting president Jalal Talabani urged cooperation and the creation of coalitions which would at minimum include the major political parties in the legislature. Although Ibrahim al-Jafari was selected from the United Iraqi Alliance, by April 2006 he was ousted in favor of now Prime Minister Nouri al-Maliki who later formed the Moderates Front coalition in August 2007 which held favorable support from the Democratic Patriotic Union of Kurdistan. In this administration, Kurdish leaders occupied significant seats in al-Maliki's cabinet: Deputy Prime Minister, Foreign Minister, Minister of Water Resources, Environmental Minister, Minister of Construction and Housing, Justice minister, Minister of Displacement and Migration, Minister of Youth and Sports, and the Minister of Industry and Minerals. Likewise in the National Security Council 4 of the 19 seats were taken by Kurdish leaders.

The inclusion of Kurdish leaders in Prime Minister al-Maliki's cabinet not only demonstrated Kurdish political strength in the central government, but as Katzman argues also showed their sustained position in Iraqi politics as “kingmakers” who would align themselves with political parties that
could meet their primary demands of continued autonomy and redress of disputed territories. However, these two issues would create as much tension in the new Iraqi democracy, eerily similarly as it had throughout Iraq's history.

The Kirkuk Question and the Expansion of Iraqi Kurdistan

(Source: Wikimedia Commons Link)

Disputed areas in Iraq according to Article 140:

- Pink=disputed area and part of the KRG since 1992
- Yellow=disputed area and part of the Iraqi Central Government
- Red=present day area under KRG.

One of the primary issues that has been brought up by the Kurdish leaders of al-Maliki's government has been the status of Kirkuk along with several other governorates which hold large amounts of Kurds. Formally known as the Kirkuk Status Referendum the dilemma of how to go about fixing the Arabization of the Kurdish region during the Saddam era has gone unsolved; a plebiscite was set to begin on November 15, 2007 but was delayed to December 31, 2007, June 31, 2007, and has yet to be confirmed to this day. The DPAK and its successor the Kurdistan Alliance has repeatedly issued that the delays have been for technical and not political reasons. Nonetheless many researchers and political leaders have seen the Kirkuk question as an entrance for future questions to be raised regarding the amount of autonomy the Kurdistan Regional Government has, especially with potential expansion into the governorates of Diyala, Kirkuk, Salah ad Din and Ninawa.

Regarding this issue, the Iraqi Constitution points to the TAL in solving this issue:

- First: The executive authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the Transitional Administrative Law.

- Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.

--- Article 140, Constitution of Iraq

The TAL in turn says:

- A. The Iraqi Transitional Government, and especially the Iraqi Property Claims Commission and other relevant bodies, shall act expeditiously to take measures to remedy the injustice caused by the previous regime’s practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work, and correcting nationality. To remedy this injustice, the Iraqi Transitional Government shall take the following steps:

- B. The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution. In the event the Presidency Council is unable to agree unanimously on a set of recommendations, it shall unamunously appoint a neutral arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.

- C. The permanent resolution of disputed territories, including Kirkuk, shall be deferred until after these measures are completed, a fair and transparent census has been conducted and the permanent constitution has been ratified. This resolution shall be consistent with the principle of justice, taking into account the will of the people of those territories.

--- Article 58, Law of Administration for the State of Iraq for the Transitional Period

When the permanent constitution was passed, Iraqi leaders had set a deadline for the de-arabization of Kirkuk to the pre-Saddam demographics by 2007 but in late 2007 UN Special Representative for Iraq Staffan de Mistura negotiated an extension for 6 months. Since then the Iraqi parliament has sent this issue and deadline to the Constitutional Court to determine whether this determined rule has expired. The al-Maliki government created a Commission on the Normalization of the Status of Kirkuk the implement the de-arabization process. Led by secular Sunni-Arab Hashim Abderrahman al-Shibli, the commission adopted a controversial plan in February 2007 to pay Sunni Arabs in Kirkuk $15,000 along with a new plot of land to return to their homes of origin pre-arabization.

However one of the primary obstacles to this process has come not from the Sunni Arabs but from the Kurds themselves. In comparison to the region of Iraqi Kurdistan with its political and economic stability, many Kurdish families have been reluctant if not downright against moving to Kirkuk, a region known for its natural resources, not necessarily its socio-economic development. Because of its lack of bright employment opportunity, educational institutions, and higher crime rates, many Kurds find little to no reason for moving. This has been a problem for the KRG who has been noted as having “overextended it’s strength” by scholars such as Hiltermann. Because the legitimacy of the Iraqi Kurdistan expansion depends on the demographic
where Kurds reside, the lack of growing strength in Kurdish demographics for Kirkuk has been seen as a wrench thrown into an already precarious situation.

Following demographic normalization, a census and referendum were supposed to be planned for Kirkuk on July and November 2007 respectively. However due to the drawn out nature of the normalization process, these two steps have been delayed indefinitely. Many political groups such as the Shi'ite and Sunni Arab Parties and the Turkmen parties have argued for a delay in the last two steps because of the potential fracturing of Iraq along ethnic guidelines. Even Massoud Barzani, the head of the Kurdistan Democratic Party and the current head of the Kurdistan Regional Government initially agreed in delaying the process three to four months due to the precarious sectarian violence situation in Iraq during this time. The Kurdish parties in the National Governing Council were reported to have agreed to delay the census and referendum to May 2008. However since then there has been widespread frustration by the Kurdish people by the lack of progress.

**Domestic and International Responses**

Many see the potential fracture in Iraqi federalism due to the Kirkuk status referendum. The expansion of Iraqi Kurdistan would inevitably lead to loss of power by the Iraqi central government. The people in the disputed areas would come under control of the Kurdistan Regional Government and many, particularly the Turkmen fear political isolation; Sadettin Ergec, head of the Iraqi Turkmen Front claimed that one of the primary goals of their front was to preserve Kirkuk as the capital of Iraqi Turkmen. Further more, with Iraqi Kurdistan's long-lasting stability since the Kurdish Civil War, many domestic groups see a possibale expansion as a threat not only political but also economically. If Kirkuk, and oil and natural resource heavy region fell under the jurisdiction of the KRG, there would not only be a swift rise in the economic situation of Iraqi Kurdistan, but an inevitable drop in the rest of the Iraqi economy (after removing Iraqi Kurdistan). Although Kurdish leaders have repeatedly denied intentions of secession and independence, many political groups in Baghdad and the rest of Iraq have been wary of the KRG's intentions for some time. As a result, should Iraqi Kurdistan expand into the Kirkuk region, violence in Northern Iraq could erupt.

Nonetheless, some critics argue that the possibility of the KRG holding these areas could provide greater stability for Iraq since the regions of Iraqi Kurdistan would still depend on the Iraqi central government for accessible trade routes and other benefits that could only be granted in the rest of Iraq; this would foster a mutual partnership where both governments would have to promote stability for the sake of both the national and regional economies.

Internationally however, many governments in the region have opposed the referendrum along with any political gain by the Kurdistan Regional Government in general. The heaviest opposition has come from Turkey. As a result, the KRG has been forced into a position where they must carefully choose between the many economic relations that lie between them and Turkey, one of its largest financial investors and routes of import and export. Turkey has been concerned along with the nations of Iran and Syria that a more independent Iraqi Kurdistan would inspire similar political movement within their own borders as the Kurdish people are spread across their own populations. The Saudi Arabin government "reportedly offered the Iraqi Kurdish leaders $2 billion in exchange for delaying the process 10 years."

The United States and several of its allies too have supported the delay as well to be brought up during a stronger period of Iraqi stability and democracy. The United Nations Assistance Mission for Iraq (UNAMI) has introduced several different plans divvying up the disputed areas but so far the Iraqi Governing Council has rejected all of them.

**2010 Parliamentary Elections and the Return to Iraqi Kurdistan**

In the March 7, 2010 Parliamentary Election, the Kurds lost their position as king-maker in the central government. Unlike previous years, the Kurdish parties did not unite under one banner but found dissidents, namely the Gorran Party and the Kurdistan Islamic Union. The Kurdistan Alliance, the successor to DPAK managed to get only 43 of the now increased 325 seat legislature; the other Kurdish factions were able to gain a total of 14 seats in total; these groups have met wide criticism by the major Kurdish parties in Iraqi Kurdistan for not only dividing and weakening political power in Baghdad but also for having different interests and agendas regarding Iraqi Kurdistan's role within the larger Iraqi Federalism. (Goudsouzian) Because of this perceived loss and increased frustration over the al-Maliki administration, Kurdish leaders have considered backing and forming another coalition with who they view to be more moderate Arab leaders such as Adel Abdul Mahdi. Katzman reports the following:

Because Maliki's slate has 89 seats in the Assembly, a Sunni-backed slate of former Prime Minister Iyad al-Allawi (who believes he deserves the chance to form the next government) has 91, and a rival Shiite slate of ISCI/Sadr/other Shiites have 70 seats, the main Kurdish bloc's 43 seats are not sufficient to swing the debate either way. The Kurds are said to find Allawi acceptable, if he were to prevail in this debate, although the Kurds are said to consider some of his parliamentary allies from the northern governorates (Hadba'a Gathering) as unacceptably hardline Sunni nationalists.

While Kurdish leaders have repeatedly rejected the idea of an independent state, it is a heavily contested topic by not only Baghdad but also by foreign nations. With the loss of power in the central government, many suspect Kurdish political efforts will return to northern Iraq where they can further consolidate and build upon the large success they've managed since the 2003 invasion. Recently, they have been under fire for signing foreign contracts with "Genel (Turkey), Hunt Oil (United States), Dana
Gas (UAE), BP (Britain), DNO Asa (Norway), OMV (Austria), SK (South Korea), Talisman (Canada), Addax (Switzerland) and several others." (Katzman). Iraq’s Oil Minister Shahristani, a known hardliner against KRG oil control has publicly stated that these movements were illegal under Iraqi law but nothing has been done by the central government since.

There have been numerous bids for cooperation between Baghdad and Iraqi Kurdistan regarding the sharing of oil pipelines and revenues but for the most part they have all resulted in failure.

Analyzing Iraq’s Federalism from a Constitutional Perspective

Iraq’s new federalist system appears to be constructed based on the model of the United States. The principle is that, although each state has its own constitution, it must exist within the framework of the federal constitution. Article 13 of the Iraqi Constitution states:

1) The Constitution is the preeminent and supreme law and shall be binding in all parts of Iraq without exception.

2) No law that contradicts the this Constitution shall be enacted. Any text in any regional constitution or other legal text that contradicts this constitution should be void. - Article 13, Constitution of Iraq

However, it should be noted that Iraq’s federalism, unlike the United States, features a weak federal government. The supreme status of the national constitution and the federal government is much more symbolic compared to the United States and Russia, where the federal government enjoys de facto supreme authority.

The Constitution actually only granted the federal government exclusive powers in nine discreet areas. Article 110 states that:

The federal government shall have exclusive authorities in the following matters:

First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy.

Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.

Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.

Fourth: Regulating standards, weights, and measures.

Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum.

Sixth: Regulating the policies of broadcast frequencies and mail.

Seventh: Drawing up the general and investment budget bill.

Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions.

Ninth: General population statistics and census. - Article 110, Constitution of Iraq

Other areas, including the most controversial and political important ones such as oil and gas development, customs enforcement, water resources, education, environmental policy, electric energy distribution and health policy, are areas in which the federal government and regional government share power. Recent developments have shown that these "power-sharing areas" are exactly what caused significant conflicts between Baghdad and KRG. Michael. J. Kelly argues that these areas are constitutional "holes" that the Kurds pressed for in order to secure the Kurds "greater share of sovereignty. The designs of the Iraqi Constitution and the Kurdistan regional constitution grant KRG a legally advantaged position in issues such as Kirkuk, control of non-producing oilfields, preservation of pre-existing Kurdish law and regional controls over subjects not expressly included in the federal government's limited area of legislation (Kelly 769 - 770).

Regional Constitution of Iraqi Kurdistan:

http://www.unpo.org/article/538

Constitutionally, Iraq seems to have a very weak federal government and KRG has exclusive power over almost all regional affairs (e.g. KRG even runs its own foreign affairs ministry). Whether such a framework is able to work remains to be a question. Recently, Baghdad seems to seek for a greater authority over oil and trade issues, which has led to some ongoing disagreements and conflicts between the federal government and KRG. In the foreseeable future the power struggle between Baghdad and Arbil will continue to be a theme of Iraqi politics.

Evaluating Iraq’s Consociational Democracy: An Ill-fated System?
The United States' primary strategy to keep a unified Iraq survive is to impose a consociational democracy based on the principle of power-sharing. Donald Horowitz summarizes the four defining characteristics of consociational democracy, which were originally proposed by Arend Lijphart, to be:

1. "grand coalition of all ethnic groups"
2. mutual veto in decision-making
3. ethnic proportionality in the allocation of certain opportunities and offices
4. ethnic autonomy, often expressed in federalism

And "the key element in all of these is the need to mitigate the unfortunate effects of majority rule in an ethnically divided society." (Horowitz 569 - 570).

The current political system of Iraq fulfills all four of the standards with a clear goal to avoid majority dominance: the central government consist of all major ethnic/religious groups; the principle of two-thirds majority in appointments of key offices and passing important legislative bills grants the minority representation veto power; a PR system to guarantee ethnic proportionality in the allocation of seats in the national parliament; and federalism that manifested in Kurdistan's autonomy. In a sense, Iraq is a typical attempt to solve ethnic conflicts via the method of consociational democracy, but whether it can work remains to be a question.

The majority of scholars and experts seem to be pessimistic about the future of Iraq's consociational democracy. Aram Raffat, a political scientist at University of South Australia, gives three reasons to explain why consociational democracy is not viable in Iraq:

1. Historically, consociational democracy is more likely to fail throughout the 20th century. Examples are Cyprus (1960-63), Nigeria (1967-1976), Malaysia (1963 - 1969) and Lebanon (1943 - 1975), where political situations were similar to those of today's Iraq.
2. "There is considerable evidence that an Iraqi consociational democracy has been accepted reluctantly by Shiites, Sunnis and Kurds, because of the demands of the US-led occupiers." In fact, Raffat remarks, Iraq's remaining as a united country "has not been because of Iraqis' willingness", but because of enforcements by the 140,000 coalition troops." (Raffat 269).
3. Obvious absence of consensus among Shiites, Sunnis and Kurds. Some of the most important disagreements between the Kurds and Shiites/Sunnis are: strong or weak federalism; the allocation of oil income; the question of Kirkuk (Raffat 268 - 270).

These three observations expose the vulnerable nature of Iraq's new system.

A more direct proof of the likely failure of the system is a quote by Galawizh Gulam, a freelance journalist in Sulaimaniyah and a supporter of the Kurdistan Alliance. When talking about his attitudes towards the 2010 National Election, he said: "For Kurds, our members of parliament in Baghdad are more like ambassadors to a foreign country, who work to safeguard our rights and our interests," (Al Jazeera: http://www.aljazeera.com/focus/iraqelection2010/2010/03/20103392948591169.html)

What he said represented the mentality of most Iraqi Kurds when they vote for their delegations in Iraq.

A Point of No Return: Will Partition be the Final Solution to the Kurdish Question in Iraq?

From the Kurdish point of view, the current Iraqi political system is a major success. The central authority in Baghdad is weak and continues to be decentralizing, which gradually consolidates the autonomy of Iraqi Kurdistan. But from the Iraqi point of view, political developments after the 2003 U.S. Invasion is a failure. Former U.S. state department official Peter Galbraith argues that in reality Iraq has already be divided into three independent nations, which reluctantly formed a loose union under international (especially the United States') pressure. Now Kurdistan has been qualified to be a sovereign state from nearly all perspectives: It has its own elected government and army to exert absolute authority over Kurdistan's internal affairs; a defining boarder which the Iraqi army is not allowed to cross; and an independent department of foreign relations to deal with international affairs. A striking fact about Kurdistan nowadays is that there is no sign of Iraqi identity there - for instance, the Iraqi national flag cannot be seen anywhere. Moreover, what were written on the Iraqi Constitution is not actually functioning. KRG has the ultimate right to choose whether to follow Baghdad's orders in practice.

Peter Galbraith's interview on Iraq's future, in which he suggests Washington to give up its current Iraq policy and turn to a three-state solution:


The issue of oil export illustrates the true relationship between Baghdad and KRG well:

During the ten years after the U.S. invasion, Iraq did put efforts in solving the Kurdish question by structural reforms based on the principles of democracy and federalism. But the weak central authority in Baghdad, the void of Iraqi identity among the Kurds
and the consolidation of the de facto independence of Kurdistan all indicate a more probable future of partition rather than integration.

Epilogue: Tensions Continue

Latest News on December 11th, 2012: "Kurdistan Prepares for War": Kirkuk remains an issue

Some additional resources:

An article criticizes Iraq's PR system: http://fruitsandvotes.com/?p=3811
Archive that records results of all national elections/referendums after 2003:

http://www.electionguide.org/country.php?ID=104