

CHOOSING AN ELECTORAL SYSTEM

IRAQ'S THREE ELECTORAL EXPERIMENTS, THEIR RESULTS, AND THEIR POLITICAL IMPLICATIONS

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Thank You!**

I. Introduction

The Middle East is going through an unprecedented upheaval, one which many of its participants and keenest observers sincerely hope will end in the establishment of many more democratic regimes in the region. Now that the broad parameters of these transitions are established, people are turning to the hard and sometimes tedious work of building institutions. For those countries having meaningful elections for the first time, the question of what electoral system should be used is extremely important, yet likely underappreciated. Modern history demonstrates that what electoral system is chosen can have a major impact on the results of the election. The trajectory of many of these new countries will therefore depend at least in part on making intelligent, well-informed decisions about what electoral mechanisms should be used. For this reason, the recent experience of Iraq's three-post Saddam electoral systems provides useful fodder for those who will shape the contours of the democracies struggling to emerge in the Middle East today.

Iraq held three general parliamentary elections in the span of the five years from 2005 to 2010. It is on the verge of another election on April 30, 2014. These past elections were critical in cementing Iraq's transition from the authoritarian political system under Saddam Hussein, where rubberstamp "elections" were held, to a new political order. This "new Iraq," while still contested, is proving to be one of the most dynamic and democratic in the Middle East. Iraq's elections, while not ensuring a democratic Iraq, have been an important vehicle for bringing alienated groups into the political process. Elections have also been the primary mechanism through which political power has been distributed.

The elections, although held in close proximity to one another, were held under very different political circumstances. In each case, supporters of the elections hoped for substantially different benefits from them. In the election of January 2005, the goal was to transfer power to an elected government and elect a committee to draft the constitution. In the election of December 2005, the premium was on bringing Sunnis into the political process after they largely did not participate in the January 2005 elections. Four years later, in March 2010, the aspirations were broader; many participants and observers hoped for an election that would produce a more effective government, perhaps one based more on a nationalist identity than on a fragile deal among sectarian blocs.

In each of the three national, parliamentary elections, Iraq has employed a different electoral system. It is not surprising that in a divided country with a fragile political system and little institutional history of elections, the question of what electoral system would be used has fueled heated debates. Political exigencies and group/party expectations have shaped the decisions ultimately made. In January 2005, the urgency of holding a credible election as quickly as possible directly led to the adoption of a

single constituency based system by the U.S.-led Coalition Provisional Authority and its Iraqi partners in the Governing Council. In December 2005, the imperative of ensuring Sunni representation in the parliament, in the face of a galloping Sunni-based insurgency, argued for a multiple constituency system based on Iraq's provinces. The most recent election, in March 2010, was repeatedly delayed from a target date of 2009 as Iraqi parties wrestled with questions of accountability, representation, and fair districting – all of which spurred the adoption of an “open-list” system where, for the first time, Iraqis voted for individuals within parties. The electoral system was a matter of intense debate in 2013, in advance of the 2014 elections. After weeks of hard debate, the parliament amended the existing mechanism for the allocation of seats, yet providing another iteration to the electoral regime.

The very different political environments in which the three past elections were held have made it difficult to compare the results of the elections and their political outcomes. This challenge has been further compounded by the fact that Iraq's three electoral systems have differed in numerous respects, not only by the “top lines” mentioned above. As a result, many “conventional wisdoms” have arisen about the effects of the electoral systems chosen and their political implications. Among these “wisdoms” is the belief that the electoral system of January 2005 contributed to the consolidation of political power by the Islamist parties, with major implications for the subsequent development of Iraq's political system. Another commonly held view is that Sunni Arabs were disadvantaged by the electoral system of January 2005 and that their political interests would have been much better represented had the election utilized provincial districts, not a single electoral district. Finally, many assume that the electoral system of March 2010 – given its use of the open list opposed to the closed list – will lead to more transparent politics. Such wisdoms have affected the debates surrounding what electoral system Iraq should use, the strategies of political parties as they prepare for elections, and – as discussed in the following section – broader implications for the study of election systems and conflict.

This paper seeks to go beyond the “conventional wisdoms” that have arisen in recent years to probe deeply the implications of Iraq's different electoral systems over time. It does so through a combination of political analysis and the reconstruction of election results in each election had the electoral system of the other elections been employed. The paper, therefore, looks at each of the three elections, noting the actual results based on the electoral system chosen at the time. It also examines what the same voting patterns would have produced in terms of seats allocated among parties had the electoral systems of the other two elections been in place at the time of that particular election. This effort – based on the actual polling data from the polling centers – produces election results for nine “elections” – three actual and six counterfactuals. These comparisons allow us to tease out the effects of the election systems on the outcomes more systematically. In addition to this technical analysis, we then consider whether – had everyone voted the same but a different electoral system been used – the political results would have been different. Finally, we seek to draw conclusions for Iraq, as well as for divided societies more generally, about the utility of different elements of electoral systems. We end with considerations that different parties might make when

incorporating the nuances revealed here into their political strategies – both in terms of lobbying for electoral system changes and in terms of plotting their strategies in the next election.

Key Electoral Definitions and Terms

- *Compensatory Seats*: Seats given to lists that do not win any seat in any province but have a collective number of votes that exceed the national threshold.
- *National Seats*: Seats distributed among the winners at the provincial level, according to how many votes or seats they receive nationwide.
- *Surplus or Vacant Seats*: Remaining seats in provinces and nationwide from the first round of allocation. These seats are allocated according to different formulae.
- *Threshold*: The minimum number of votes that political entities should win in order gain one or more seats.
- *Electoral divider*: The minimum number of votes that political entities should win in order to gain one or more seats, as determined by each province.

II. Not Just an Iraqi Issue

Both the real world and the vast literature on elections tell us that the chosen election system has a major bearing on the shape and conduct of politics within a society. An electoral system can affect the development of political parties, the relationship between representatives and their constituents, the extent to which politics are weighted toward local or national issues, and the extent to which politicians are held accountable in the polity.

An electoral system is a significant determinant of how a country is governed – and what the balance is between effective decision making and inclusive decision making. Plurality/majority systems such as First Past the Post (FPTP) are generally associated with producing single party governments and, therefore, governments that can govern without distractions or the need to make multiple and complex compromises. Under such systems, small differences in vote totals can result in dramatic disparities in the portion of seats awarded to each party. In contrast, proportional representation (PR) electoral systems generally prioritize a close link between the votes cast and the representatives elected in parliament. The emphasis of PR systems is on ensuring wide representation in parliament, which often translates into the need for coalition government.

The experience of New Zealand demonstrates how fundamentally the choice of electoral system affects the overall nature of politics. In the 1990s, the country adopted a Mixed Member Proportional (MMP) voting system, a form of PR, to replace the FPTP system,

Main Characteristics of the Three Electoral Systems Used in Iraq 2005-2010*

- *Election of January 2005*
 - 275 parliament seats total
 - Closed list system (voter could only vote for a party list)
 - One single national district
 - No compensatory seats
 - National threshold, i.e. party is eligible to win a seat only if number of votes received surpasses a pre-determined nationwide threshold.
 - No seats reserved for religious minorities
- *Election of December 2005*
 - 275 parliament seats total
 - Closed list system (voter could only vote for a party list)
 - 18 electoral districts (each province is one district)
 - 45 Compensatory/national seats (about 16% of the total seats)
 - No threshold, i.e. no minimum number of votes required for eligibility to win a seat.
 - No seats reserved for religious minorities
- *Election of March 2010*
 - 325 parliament seats total
 - Open list (voters chose a list and a candidate)
 - 18 electoral districts (each province is one district)
 - No compensatory seat for party lists that do not win seats at provincial level
 - 7 national seats (about 2% of the total seats)
 - 8 seats reserved for religious minorities

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*Note: All electoral systems listed above used a system of proportional representation (PR).

which had long been a central feature of New Zealand politics. This shift resulted in profound changes in how the politics of the country are conducted. From 1935 to 1993, the FPTP system had produced an absolute majority in parliament of either one of the two largest parties, leading to a system of alternating parties in government. Since the change in the electoral system, New Zealand elections have routinely failed to produce a majority for *any* party; in the wake of the reforms, coalition building became a central feature of the country's politics.¹

Because of the large impact that the electoral system has on the politics of a country, electoral systems are not seen as only the purview of technocrats. Often, their structure is part and parcel of peace agreements and other political negotiations.² The selection or crafting of an electoral system is usually a deliberate and conscious one in post-conflict or highly divided societies. The exact impact of an electoral system cannot be predicted completely, as the effects of an electoral system will interact with the culture, cleavages, and history in a particular country when shaping its politics. But, generally, post-conflict or highly divided societies chose PR systems because the leaders want to prioritize inclusivity and broad representation over effectiveness; often, fragile peaces can be disturbed if a party contesting an election wins far fewer seats than anticipated, or if there is a large (and often incomprehensible) discrepancy between the votes cast and seats awarded, as is so often the case in plurality/majority systems.

In other cases, particularly when electing a president, countries are likely to choose an Alternative Vote system (a variant of a plurality/majority system) or a Two Round System (in which a second vote is held if one candidate does not secure the majority of votes in the first round). Such systems create incentives for moderation among candidates, who know that in order to win, they will need to secure votes (or second preferences) from countrymen outside their direct and most obvious constituency. In some cases, such as that of Nigeria, additional requirements stipulate that winning candidates not only receive a majority of votes cast nationwide, but also gain at least one-third of the vote in at least two-thirds of all the provinces. Such provisions not only build in incentives for moderation, but then help ensure broader based legitimacy, particularly in divided societies.³

Beyond generally shaping the overall nature of politics, electoral systems can also determine the outcome of elections.⁴ In the United States, the peculiarities of electing the president through the electoral college has meant that on four occasions, the winner

¹ However, as is often the case, New Zealand's electoral reforms also brought unanticipated results. In November 2011, the country will hold a referendum on whether it should maintain the MMP system or opt for another system. See <http://www.cis.org.au/publications/policy-monographs/article/1746-superseding-mmp-real-electoral-reform-for-new-zealand> for one view.

² See Jarrett Blanc, Aanund Hylland, and Kare Vollan, *State Structure and Electoral Systems in Post-Conflict Situations*, Center for Transitional and Post-Conflict Governance, 7 July 2006.

³ See Donald Horowitz, *Ethnic Groups in Conflict*, University of California Press, 2000.

⁴ For an excellent treatment of these issues, and overview of different electoral systems, see The Institute for Democracy and Electoral Assistance, *Electoral System Design: The New International IDEA Handbook*, Sweden, 2005.

of the election was not necessarily the candidate who won the majority of the popular vote.⁵ A different electoral system would have produced a different American president in these four elections. In South Africa, the historical elections of 1994 were held under a PR system, in contrast with the FPTP system that had been employed in the country's previous elections. Had the ANC kept with the FPTP system, its 62% of the vote would have likely translated into more than a two-thirds majority in the National Assembly, allowing the ANC to draft the new constitution without consulting other parties.⁶ The ANC, believing such an outcome could jeopardize the long term viability of the reforms, opted for a PR system, which did result in a much more widely representative parliament.⁷

Putting Iraq and its electoral systems in this broader context helps illuminate two questions. First, did the choice of Iraq's electoral systems serve the needs of a highly divided society emerging from conflict? Did it shape the politics of the country in a desirable way? As mentioned above, the adoption of PR systems is often driven by the perceived need to create inclusive government. As discussed in greater detail below, Iraq's choice of a PR type electoral system was initially driven more by pragmatic issues such as timing. Still, the PR systems – in combination with additional specific provisions in the interim and permanent constitutions mandating power-sharing – did have the effect of ensuring that the Shi'a majority community, even when voting nearly as a bloc, was unable to impose its will on Iraq's other communities. The results of all three elections required the construction of a coalition for any party or individual to govern, which has had positive and negative effects. Nevertheless, had a plurality/majority system been chosen for Iraq, it would have almost certainly produced very strong majorities for the Shi'a community and would have greatly exacerbated Iraq's internal conflict.

The second question that arises is whether the changes made to the electoral system in the three elections were significant enough to shape the emerging politics of the country and the specific outcomes of the elections. This question is particularly interesting because the changes made between the three elections were not on the scale of the reforms made by New Zealand; Iraq kept some variant of a PR system in all three elections. As described in the remainder of this paper, however, even small changes within the same family of electoral systems can have strategic consequences. In fact, the experience of Iraq suggests that marginal changes can in some cases be as important as much more striking shifts.

⁵ These four times were when the following presidents were elected: John Quincy Adams in 1824, Rutherford B. Hayes in 1876, Benjamin Harrison in 1888, and George W. Bush in 2000. For more on the electoral college, see Alan R. Grant, *The American Political Process*, Routledge, NY, 2004, pp. 238-246.

⁶ The Institute for Democracy and Electoral Assistance, *Electoral System Design: The New International IDEA Handbook*, Sweden, 2005, p. 63.

⁷ For more on electoral systems and their applicability to different countries' circumstances, see Larry Diamond and Marc Plattner, *Electoral Systems and Democracy*, (Baltimore: John Hopkins University Press, 2006).

III. The January 2005 Election

Iraq's January 2005 parliamentary election, the first election of its kind since the removal of Saddam, was the product of complex and high stakes debates about Iraq's political future. An agreement reached between the CPA and the Governing Council on November 15, 2003 closed the door on an open-ended occupation and set the date for the restoration of Iraqi sovereignty by the end of June 2004. During most of the negotiations in the run up to the agreement, all sides expected the CPA to transfer sovereignty to an *elected* government.⁸ The United Nations, however, insisted that the logistical difficulties of holding a credible election in Iraq – given the lack of constituent boundaries or a reliable voter registry – were insurmountable in the short time frame. This adjustment created a major political backlash which risked Iraq's most revered Shi'a clerical leader, Ayatollah Sistani, condemning the U.S. sponsored political transition. Many U.S. and Iraqi officials feared such action would instigate a Shi'a based insurgency, pushing the already precarious efforts to stabilize Iraq to certain death. With the help of UN envoy Lakhdar Brahimi, Sistani's opposition was tempered, but only with the promise of holding nationwide, parliamentary elections no later than the end of 2004.⁹ These political arrangements forced the CPA and the Governing Council to accept the recommendation of the United Nations of the only electoral system it claimed would allow for a credible election in that short time frame: an election held where Iraq was one giant electoral constituency. With all of Iraq being one single national district, the logistical requirements of holding the election would be greatly diminished.¹⁰ Other arguments employed by the UN in favor of the single electoral unit were that a single national district would provide greater flexibility to candidates and leave them less vulnerable to attack.¹¹ The electoral system used in the January 2005 election also had the virtue of being easy to understand. There were no national or compensatory seats; parties and lists that surmounted the national threshold won seats, while those that did not gained no representation in parliament.

This decision in favor of a single district was controversial at the time.¹² Some inside the U.S. government argued vociferously in favor of a multi-district model, arguing that the single constituency favored the parties which could mobilize on a large scale and had foreign (e.g. Iranian) backing. By their accounts, small, more liberal, secular parties

⁸ During the negotiation of the November 15 Agreement, the focus was on the election of a constitutional assembly – not parliament – because Ayatollah Sistani was insistent that the constitution be drafted by an elected assembly.

⁹ This date was later shifted to the end of January 2005.

¹⁰ See United Nations, Iraq Electoral Factsheet January 2005, <http://www.un.org/News/dh/infocus/iraq/election-fact-sht.htm>.

¹¹ See United Nations. Iraq Electoral Factsheet January 2005, <http://www.un.org/News/dh/infocus/iraq/election-fact-sht.htm>

¹² The overall timing of the election was also controversial, as many viewed the election as premature or rushed.

would be squeezed out by a national threshold that was very high (because it would be simply determined by the total number of votes cast divided by the total number of seats in parliament). As 2004 wore on, and the Sunni-based insurgency intensified and Sunni leaders called for a boycott of the January 2005 elections, others pointed out that the single district formula would severely disenfranchise Sunnis who were unlikely to vote, either due to the boycott or widespread intimidation not to participate in the elections. Although the shortage of time available to prepare for elections was the predominant factors in the decision to opt for a single constituency, supporters of this decision also argued that such a system would *favor* small parties by allowing them to amass presumably small numbers of votes from all parts of the countries to surmount the national threshold and gain representation.

The results of the January 2005 elections (see table A), seemed to confirm the fears of those who had opposed the single constituency. The Shi'a religious United Iraqi Alliance dominated the election, winning 140 of 275 seats. The next big winner was the ethnically based Kurdish Alliance with 75 seats and the more secular Iraqiya List pulling in 40 seats. Nine smaller parties – representing Iraq's religious, sectarian, ideological or ethnic minorities – garnered the remaining 20 seats among themselves. Some critics have postulated that this outcome amounted to 'delivering Iraq to Iran' and set the tone for the subsequent 'Islamization' of the Iraqi state.¹³

How much of this outcome (in terms of seat allocation) can be attributed to the electoral system? How much should we attribute to other, less tangible factors, such as the timing of the election in Iraq's overall political development, the political context of the moment, the influence of religious institutions in Iraqi life in the immediate aftermath of Saddam's fall, or the preferences of Iraq's voters at the time?¹⁴ We construct two counterfactuals to demonstrate what would have occurred, assuming that every vote in Iraq was cast for the same party, but under a different electoral system.¹⁵

¹³ See Robin Wright. "Iraq Winners Allied to Iran are Opposite of the US Visions," *The Washington Post*, 14 February 2005; Kenneth Katzman, *Iran-Iraq Relation*, Congressional Research Service, April 15, 2010 at <http://fpc.state.gov/documents/organization/142761.pdf>; and Barry Deske, "The Rise of Islamic Insurgency in Iraq," *The Journal of Conflict Studies*, Vol. 25, No. 1, 2005 at <http://journals.hil.unb.ca/index.php/jcs/article/view/190/334#relno46>.

¹⁴ In November 2004, liberal Iraqi politician Mr. Chaderchi voiced his concerns about disparities in the electoral process in saying, "Due to lack of security, our party members cannot campaign and meet with public. But the religious parties use their mosques during Friday prayer and other religious occasions for their campaign. It is an unfair contest." Interviewed by one of the authors, Razzaq al-Saiedi, November 2004, Baghdad, Iraq.

¹⁵ This methodology, of course, does not allow for the possibility that parties, operating under a different electoral system, would have campaigned differently and perhaps elicited different voting patterns.

TABLE A: Actual and Counterfactual Electoral Outcomes Depending on the Electoral System Used for January 2005 Elections

		Column A: (Actual Results) Closed List proportional Representation, Single National District	Column B: Counterfactual 1 (CF1) Closed List proportional Representation, Parallel System District-based	Column C: Counterfactual 2 (CF2) Open List Proportional Representation, District-based
	Entities	Total seats	Total seats	Total seats
1	United Iraqi Alliance (UIA) <i>Shi'a sectarian</i>	140	134	148
2	Kurdistan Alliance (KA) <i>Kurdish sectarian</i>	75	63	63
3	Iraqiya List (IL) <i>secular</i>	40	50	43
4	Iraqis Party (IP) <i>secular</i>	5	11	10
5	Iraqi Turkmen Front (ITF) Ethnic minority	3	4	2
6	Popular Union (PU)(The Iraqi Communist Party) <i>secular</i>	2	2	0
7	Rafidayn List (Christians)	1	1	3 (For all Christians)
8	Liberation and Conciliation Bloc (LCB) <i>Sunni sectarian</i>	1	1	2
9	National Democratic Alliance (NDA) <i>secular</i>	1	1	0
10	Islamic Action Organization (IAO) <i>Shi'a sectarian</i>	2	1	0
11	Kurdistan Islamic Group (KIG)	2	1	0

		Column A: (Actual Results) Closed List proportional Representation, Single National District	Column B: Counterfactual 1 (CF1) Closed List proportional Representation, Parallel System District-based	Column C: Counterfactual 2 (CF2) Open List Proportional Representation, District-based
	Entities	Total seats	Total seats	Total seats
	Kurdish <i>sectarian</i>			
12	National Independent Elites and Cadres (NIEC) <i>Shia sectarian</i>	3	2	1
13	Independent Democrats Rally (IDR) <i>secular</i>	0	1	0
14	National Unity Gathering (NUG) <i>secular</i>	0	1	0
15	Iraqi Islamic Party (IIP) <i>Sunni sectarian</i>	0	1	0
16	Iraqi National Gathering (ING) <i>secular</i>	0	1	0
17	Religious Minorities (Shabak, Sabe'a, Yezedi)	0	0	3
Total		275	275	275

Those lamenting the results of January 2005 have two broad criticisms. Table A sheds light on the partial validity of those criticisms, but more interestingly demonstrates that other factors beside the single district element of the electoral system were much more influential in determining the outcome.

First, those arguing that a multi-constituency system based on Iraq's 18 districts would have produced a result more supportive of a secular or moderate political landscape will be disappointed by Table A, as it is inconclusive on this point alone. An examination of the two counterfactual elections, in fact, shows that while one district based system (Column B – representing the system used in the December 2005 elections) produced an outcome more beneficial to smaller parties, the second district based system (Column C – representing the system used in the March 2010 elections) produced a result *more*

favorable to larger parties and *less* favorable to smaller ones. Again, both counterfactuals were constructed using provincial based systems, in contrast to the single district electoral system actually used in January 2005.

What accounts for these differences and these unclear results? Let's begin by comparing the actual results with those of the counterfactual created in column B (the December 2005 system). In the counterfactual, the UIA loses 4.2% of the seats gained in reality, with the more secular Iraqiya gaining 25% more seats and the nine smaller parties plus three others gaining 30, rather than 20 seats. This result is due to three factors. First, as some experts predicted, smaller parties found advantage in this particular provincial based system in one of two ways. Geographically concentrated parties that had been unable to reach the *national* threshold were in some cases able to reach provincial thresholds and claims seats. In other instances in CF1, even geographically concentrated parties that did *not* even reach the provincial threshold won seats because of the method of distributing surplus seats.¹⁶ Second, the move to a provincial system broke the key link between turnout and representation. When the country was one single district, the higher the voting turnout of any group, the greater its representation would be;¹⁷ under a provincial system, a certain number of seats are allocated to each district, regardless of the number of voters that cast ballots in that district. When this link was severed when we imposed the December 2005 provincial system on the voting patterns of January 2005, we found parties in non-Shi'a, non-Kurdish parts of Iraq (which were not inclined to vote for the UIA or the Kurds) do comparatively well. Finally, the December 2005 electoral system has a special provision that effectively ensured that any party winning shallow support in a wide number of constituencies, had a reasonable chance of gaining a "compensatory" seat. These seats were allocated first among parties whose collective votes nationwide reached a sort of "national threshold" but whose parties did not win any seats in the districts, effectively re-creating the benefit of a single large district to those looking to "pool" votes across the country.

In contrast to these more favorable results for smaller parties under CF1, the creation of a counterfactual using the district-based electoral system from March 2010 (CF2) shows the larger sectarian and ethnic parties winning even *more* seats and the smaller parties faring even worse than in the actual election of January 2005. In CF2, the Shi'a dominated bloc UIA increases its seats by 5.7%, while Iraqiya's gain is only about 7.5%, and the smaller parties for the most part are decimated except where legislation created a specific quota for them. The Kurds win the same number of seats (63) in both counterfactuals, down from 75 in the actual results.

¹⁶ In CF1, the National Unity Gathering party (NUG) gained only 631 votes in Anbar province, which was enough to win a seat in Anbar even though the number of votes was below the Anbar threshold of 1,528. Another small party, the Independent Democratic Rally (IDR), received 13,592 votes in Baghdad, while it won 23,302 nationwide; in CF1, the IDR wins a seat in Baghdad, even though it gained fewer votes than the Baghdad threshold.

¹⁷ The total number of seats allocated to Kurds was 77, which is 28% of the total number of National Assembly seats. However, only 18.7 % of the total registered voters in Iraq at the time were Kurdish.

Clearly, some of the same dynamics are at work in CF2 that shaped CF1. Most notably, the break in the linkage between the turnout and representation damages the Kurds' outcome. But the key to understanding the results in CF2 is not the move to a provincial based system or to an open list system, but the peculiarities of the mechanisms used to allocate seats within the district or at the national/compensatory seat level. Both such mechanisms favored larger parties and discriminated against smaller ones. The December 2005 electoral system awarded surplus or vacant seats based on the largest remainder method among *all* parties that contested the election in a province regardless the number of votes they gained. In contrast, the March 2010 system only awarded these seats to parties that had won at least one seat outright.¹⁸ This system thereby eliminated all those parties that won perhaps a sizable number of votes, but not enough to claim one seat initially and removed their chances to win a seat through the national mechanism. Meanwhile, the national seats are allocated based on the number of seats (not votes) received by parties, which means only those parties who won representation at the provincial level would have the chance to win seats from among the national seats.¹⁹ Not only did this approach deal a blow to small parties, but it created an advantage to larger ones, the results of which explain the boost to the UIA seats in CF2.

In sum, the creation of CF1 and CF2 through the use of the votes cast in January 2005 demonstrates that focusing simply on whether the electoral system utilized provincial districts or involved one national district is to fall foul to a red herring. Making a far bigger difference is the actual mechanisms used to allocate seats *within* the districts and at the national/compensatory level.

The second frequent criticism of the January 2005 system is that it directly contributed to the disenfranchisement of the Sunni population. In reality, what occurred is that the single district system combined with the Sunni lack of participation to deliver very few Sunni members of parliament. Under this system, as turnout is linked to outcome, only 17 of 275 members of parliament were Sunni, and four of these people were outlier members of the UIA and were elected on the tails of the Shi'a majority party.

The question is whether more individual representatives of Sunni interests would have been elected had a provincial based system been in place, even in the face of a Sunni boycott. Here, the analysis *does* rest more on the single district versus a provincial based system. Had either the December 2005 (CF1) or the March 2010 (CF2) electoral system been in place, there would have been more representatives from the areas in which Sunnis resided, such as Anbar and Ninewa. In the December 2005 election, 28 parliamentary seats were dedicated to these two provinces alone; in March 2010, this

¹⁸ Council of Representatives Regulation Number 21 for 2101, section three, article 1, paragraph 2:

"If a political entity receives a number of valid votes that is less than the electoral divider, no seat shall be allocated to that entity and is considered an Excluded Entity."

¹⁹ For example, the People Union Party won 69,920 votes, which exceeded the national threshold. Yet the PUP won neither a national seat nor a compensatory seat (there are no compensatory seats in the March 2010 election).

number was 45. Under CF1 or CF2, regardless of the number of people who cast votes inside these provinces, the parliament would have included the same number of representatives from these areas. (In both CF1 and CF2, each province would have a different threshold for winning a seat, based on the number of votes cast in that province.)

We cannot, however, necessarily conclude that a greater number of parliamentarians from the area would automatically mean greater Sunni empowerment, given the boycott of the election. Assuming that the form of the election system would have had no impact on whether Sunni groups boycotted the election, votes cast in the same manner in January 2005, but under a different electoral system would have brought 21 more members of secular parties and Iraqiya to parliament. Such parties would have likely been more skeptical of the UIA political agenda and more sympathetic to Sunni political objectives, but may not have constituted a serious Sunni voice within the new parliament.

Political Impact

Now that we have analyzed the differences in seat outcomes had alternative electoral systems been used in the January 2005 election, it is worth asking whether such numerical changes would have translated into meaningful political differences. We can quite easily dismiss that possibility with CF2, the January 2005 election held under the March 2010 system, as the trend toward larger sectarian parties and away from smaller (and often) more secular parties, was further strengthened, not diminished.

More interesting to contemplate are the political ramifications of CF1, the January elections held under the electoral system employed in December 2005. In this scenario, as mentioned above and as evident in Table A, there would have been a marginal decline in the seats held by the UIA, a significant decline in those held by the Kurdistan Alliance, and a doubling – from a very small base – of the smaller and/or secular parties. Sunni and non-sectarian parties would have claimed about 36 seats, instead of 17. Would this have changed the results of the government formation process, which stems from the allocation of seats in parliament?²⁰ Most likely not. Even with their diminished tallies, the combination of the UIA and the Kurdistan Alliance would have handily reached the two-thirds threshold required to select a Presidency Council and determine the prime minister designate. It is conceivable that the secular-leaning Iraqiya would have had slightly more leverage with 50 seats rather than 40, or that the representation of a handful of additional people from smaller parties may have created pressures for greater representation in the Cabinet. But, as it turned out in practice, the victorious UIA and KA, under pressure from the United States and cognizant on their own of the need to create some buy in to the political process for the Sunni community, allocated a disproportionate number of cabinet posts to Sunnis than the actual election

²⁰ According to Articles 42 and 45 of the Iraqi Constitution, the parliament should elect the president by a two-thirds majority; the president then charges the nominee of the largest bloc to be the prime minister and to form the cabinet. The prime minister-designate is required to win approval by the absolute majority of the parliament.

results seemed to warrant. Although there were only 17 Sunni members in the National Assembly, seven Sunnis gained ministerial posts in the cabinet; most of these Sunnis were not necessarily spokesmen for the Sunni sect, but had tribal or secular platforms consistent with the Iraqiya Party or the Iraqis Party.²¹

While the government formation process and the face of the actual government would have likely been the same, it is possible that members of the Sunni community would have had a larger say in the constitutional process – which was the main focal point of the new government. Shortly after the election was complete, the Iraqis formed a Constitutional Committee, drawing on members of parliament based on the representation of their parties in the assembly. In its initial form, this body contained only two Sunnis, given their meager showing in the elections. Intense U.S. pressure, however, resulted in 15 Sunnis being welcomed into the Constitutional Committee as appointed members.²² Despite this eventual inclusion, one could argue that such appointees never carried the clout of elected members; elected members might have wielded greater influence within the constitutional making body. Moreover, more elected Sunni MPs could have protested the exclusion of their community from the “kitchen-cabinet” meetings of those drafting the constitution. While this is feasible, given the disarray of the Sunni community during the constitutional negotiations and the dysfunction of the overall negotiations, it still seems unlikely that enhancing the legitimacy of a small set of actors would have made a fundamental difference to the constitutional bargains struck and, therefore, Iraq’s political trajectory.²³

IV. The December 2005 Elections

The national parliamentary elections of December 2005 took place in a very different political landscape. The eleven months between the first election in January 2005 and the second one, in December 2005, were ones of much political activity and import. Despite the efforts to mitigate the exclusion of the Sunni community from Iraq’s formal political institutions in the first election, political attitudes and sectarian differences hardened over this period of time. During these months, the Iraqis completed the drafting of their constitution, which was ratified narrowly in a national vote in October 2005. A sliver of the Sunni community—namely the IIP party—supported the

²¹ This however would have been the case had CF1 materialized as well, given that the additional Sunni members of parliament – as noted above – would likely come from these two parties (Iraqiya and Iraqis). The seven Sunnis appointed to the cabinet were highly vetted by the Shi’a and Kurd groups; this would have been the case regardless of whether there had been more Sunnis elected to parliament.

²² The constitution draft committee consisted of 55 members: 25 from UIA, 15 from Kurdish parties, 10 from Iraqiyya list and 5 from small parties in the parliament. Later 15 Sunni (not from the parliament) joined the committee; however, they did not have the right to veto.

²³ For a commentary on the constitution-making process, see International Crisis Group, *Unmaking Iraq: A Constitutional Process Gone Awry*, 26 September 2005. <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-syria-lebanon/iraq/B019-unmaking-iraq-a-constitutional-process-gone-awry.aspx>

ratification of the constitution, based on the promise that the constitution would be reviewed shortly after its adoption. This tentative and narrow Sunni support enabled the constitution to meet the complex ratification requirements, even though large numbers of Sunnis opposed the constitution's endorsement of federalism, perceived the document as downplaying the Arab character of Iraq, and – in the eyes of some – sanctioned further de-Ba'athification.

These developments, combined with others, had multiple impacts on the Sunni community. One can argue that they fueled the violent opposition to the new Iraqi political order and the Coalition forces which supported it, thereby inflaming the insurgency. But they also communicated the message to many Sunnis that their withdrawal from the political process – and the boycott of the January 2005 elections in particular – did not stop the consolidation of the new Iraqi political order as many seemed to hope it would. Instead, many Sunnis concluded, their boycott of the process only facilitated the entrenchment of a new Iraqi order which they saw as having limited compatibility with their interests. Having made this assessment, wide sections of the Sunni community decided to participate in the December 2005 parliamentary election in full force.

For this reason, some new political parties came on the scene, most notably Tawafuq, a coalition of the main Sunni parties including the Iraqi Islamic Party, the Dialogue Front, and the People of Iraq Conference, and Hewan, another Sunni party. In addition to these new parties, the UIA, a Shi'a sectarian electoral coalition, also competed, as well as the Kurdistan Alliance and a number of smaller parties having sectarian, ethnic, or secular orientations.

The election of December 2005 differs not only in actors, but also in terms of the electoral system used. The main impetus behind the change in the electoral system was the perception of many Shi'a politicians that fraud in Kurdish areas during the previous election had led to over-representation of Kurds in the previous parliament; a push for a provincial based electoral system to replace the single national electoral district was intended to minimize the potential for fraud to recreate this situation of over-representation in the next election.²⁴ Despite the fact that the United Nations argued that a switch to a provincial based system would damage the representation of minorities and objected to changing the electoral system so close to the planned election, a new electoral system was agreed to on October 5, 2005.²⁵ Although the new system for the December 2005 election was based on the province as the electoral district, certain provisions – such as the creation of 45 “national or compensatory” seats out of the total of 275 seats and new mechanisms for the allocation of seats *within* the districts – were developed to assist the minorities and smaller parties.

It is this combination – the new political contenders and the new electoral system – that explain the results presented in Table B. As was done for the January 2005 election,

²⁴ Former UNAMI legal advisor. Phone interview with author Razzaq Al-Saiedi, Austria, November 18, 2010.

²⁵ Ibid.

Table B presents, in the first column, the actual results of the election, as well as two counterfactual scenarios. Column 2 of Table B present the election results for December 2005 had each voter cast his ballot in the same manner, but had the electoral system of January 2005 been used (CF3). Similarly, column 3 shows what would have been the results of the December 2005 election had the electoral system employed in March 2010 been used (CF4).

TABLE B: Actual and Counterfactual Electoral Outcomes Depending on the Electoral System Used, December 2005 Election

Entities		Column 1: (Actual results) Closed List Proportional Representation, Parallel System District- based	Column 2: Counterfactual 3 (CF3) Closed list Proportional Representation, Single District	Column 3: Counterfactual 4 (CF4) Open List Proportional Representation on District- based
		Total seats	Total seats	Total seats
1	United Iraqi Alliance (UIA)	128	120	136
2	Kurdistan Alliance (KA)	53	63	56
3	Iraqiya List (IL)	25	23	16
4	Iraqi Consensus Front (Tawafuq)	44	44	47
5	Iraqi National Dialogue (Hewar)	11	12	11
6	Liberation and Conciliation Bloc (LCB)	3	3	0
7	Progressives (Risaliyoon)	2	3	1
8	Iraqi Turkmen Front (ITF)	1	2	1
9	Islamic Union of Kurdistan (IUK)	5	4	1
10	Rafidayn List (Christian)	1	1	3 (for all Christians)
11	Mithal al-Alousi List for Iraqi Nation	1	0	0
12	Minorities components (Shabak, Sabe'a, Yezedi)	1(for Yezedi)	0	3
Total		275	275	275

An examination of the actual election results in relation to CF3 and CF4 reinforces some of the findings of the previous section. Most importantly, the analysis underscores how the mechanism for allocating seats *within* the districts is much more important than the shift from a single constituency system to a multiple, provincial based one in determining the results. As was the case in the previous section, the system of December 2005 (the actual system here) was much more friendly to smaller and/or secular parties than the March 2010 system, even though both are provincial based systems. This difference, again, is due to two factors. First, in the December 2005 system, surplus or vacant seats were allocated among *all* parties that received votes, even if they had not initially made it over the provincial threshold. In the March 2010 system, parties that did not make it over the provincial threshold (i.e. secure at least one seat), are eliminated *before* surplus or vacant seats are assigned; even if a party secured only one vote short of the threshold, it would stand no chance of receiving a surplus/vacant seat under the March 2010 system. This system clearly favors the larger parties and explains to a large extent why CF4 favors the UIA over the other scenarios. It also favors the Kurdistan Alliance, as a large coalition, which does better in CF4 than in the actual election results in December 2005; the Kurds, however, do the best in CF3, as the single constituency system is the only one in which they can translate their high voter turnout into additional seats. (The minority parties are only able to secure three seats in CF4 because of a provision of the March 2010 system reserving three seats for these groups.)

As seen in the previous section, there is some evidence that the December 2005 system is superior to the January 2005 system from the perspective of small or secular parties because it enables a couple of them to gain seats they would have not claimed had the single constituency system been used. As seen in earlier counterfactuals, small parties that were geographically concentrated – such as that of Mithal al-Alousi and the Yezedis – won seats thanks to the mode of allocating vacant seats to parties that had not cleared effective thresholds. (see Table B).

In addition, under the December 2005 system, all parties had a chance of winning one or more “national” or compensatory seats. If a party did not win any seats, but amassed enough votes across the country’s provincial districts to exceed a national threshold, it was entitled to a compensatory seat. This circumstance, however, was rare; there was only one case of this in the actual December 2005 election, when the Rafidayn Party won a single compensatory seat.²⁶ The remaining 44 seats were considered national seats and were therefore then allocated among the parties who won seats on the provincial level according to the number of votes they received overall.

²⁶ The compensatory/national seats are allocated on two levels. First, seats are allocated to those parties who do not win any seats in any province. The remaining seats are then allocated to the parties who win provincial seats based on the number of votes they received; these seats are called the national seats. Therefore, parties like Kurdistan Alliance and others would be partially compensated by the national seats for the wasted votes due to the district based electoral system.

Perhaps most interestingly, the analysis of the actual December 2005 results and the two counterfactuals associated with them reinforces the conclusion that Sunni exclusion in January 2005 was mostly the result of boycott of the election, not the electoral system. Table B demonstrates that, with the voting patterns of December 2005 (full Sunni participation), the Sunni based parties of Tawafuq and Hewar would have received virtually the exact same number of seats, regardless of the electoral system used. (The 2010 electoral system gives Tawafuq even a few more seats because it was one of the top vote receivers). This suggests that Sunnis – *if* voting in full force as they did in December 2005 and *if* having Sunni parties to vote for – would have been adequately represented in the outcome of the January 2005 election, despite the electoral system.

Political Impact

If another electoral system had been used in the December 2005 elections, would have the political impact been significant? It is unlikely that the government formation process would have proceeded in a different manner, as neither CF3 nor CF4 would have rendered the alliance between the dominant UIA and Kurdish Alliance insufficient form a government. In fact, whereas in reality, the two parties needed marginal help to amass 184 seats (two-thirds of parliament), in CF4, they would have surmounted the threshold on their own. The politics, however, of this period mitigated against a strict Shi'a-Kurdish coalition government and the Iraqis spent considerable time and effort to create a government of “national unity” that included, however awkwardly, elements of Tawafuq as well as the UIA and the Kurdish Alliance. For these reasons, it is reasonable to conclude that the composition of the government would have remained largely the same, regardless of electoral system used in December 2005. Among the parties that formed the government, their proportions are largely the same, suggesting that the allocation of ministers would have not varied significantly across scenarios. The one exception could be with the Kurds, who, under CF3 would have received 10 more or almost 20% more seats than in reality. This stronger position in parliament may have allowed them to lobby for an additional ministry, but likely without strategic consequences.²⁷

Putting aside government formation, one might ask whether the dynamics of the parliament would have been different under CF3 or CF4. In CF4, Iraqiya would have nine fewer (36%) seats than in the actual outcome. The Kurds, as mentioned in CF3, would have nearly a 20% stronger presence in parliament. While these shifts would not have constituted a major change in the character of the parliament, it is possible that they could have changed the outcome of some of the strategic legislation passed during the years 2006-2010. For instance, the Provincial Powers Law Number 21, which helped delineate the authorities of the provinces vis-à-vis the central government, passed with the minimum number of parliamentarians present to constitute a quorum. Other sensitive matters – such as the lifting of the immunity of parliamentarian Muhammed

²⁷ This of course depends on the ministry. Based on the point system used to allocate seats, the Kurds had six portfolios, in addition to the president position: deputy prime minister, foreign affairs minister, water resources minister, industry minister, construction minister, and environment minister.

Al-Dynior and approval of the agreement between Iraq and the UK to train the Iraqi navy – also were decided upon with a base quorum. Even a small difference in the composition of parliament could have either influenced whether such matters could have been brought to vote or the nature of the vote taken.

V. The March 2010 Elections

The government formed in the wake of the December 2005 elections lasted a full four-year term, although experienced several permutations over that course of time.²⁸ The intervening years between 2006 and 2010 were tumultuous ones, including a sharp descent into sectarian violence throughout 2006-2007 and a striking improvement in the security situation from 2008 onward. With the restoration of security in 2008 and 2009 came a new brand of politics. The 2009 provincial council elections revealed a strong voter shift toward more nationalist (and less sectarian) candidates. Iraqis from north to south began to focus on issues related to the delivery of services and the standard of living, and grew disillusioned with Baghdad politics and its heavy dose of sectarianism and sectarian spoils. As Iraq grew stronger, more Iraqis voiced concern about the level of influence of foreign countries on Iraqi politics.

Such shifts, preferences, and concerns shaped the run up to the 2010 election and led to significant changes in the entities competing. For the first time, the UIA and the KA were fractured. A small Kurdish opposition group spun off from the KA and formed Goran, the Change Party. The split was more dramatic within the Shi'a. Despite the exhortations of Iran, and the likely strong preferences of Sistani, Prime Minister Maliki chose to run on his own ticket, apart from and in many cases against the rump of the UIA (newly called the National Alliance, NA). Former Prime Minister Ayad Allawi rejuvenated Iraqiya, a mixed Sunni-Shi'a nationalist party which nonetheless absorbed most of the earlier Sunni-dominated Tawafuq bloc. Whereas the outcome of the earlier two elections was somewhat predictable in the sense that most voters cast their ballots on sectarian lines, and most sectarian groups had coalesced behind a major party, the outcome of the 2010 election was much harder to predict.

In addition to a changed landscape in terms of the competing parties, the 2010 election differed from the earlier elections in its own unique electoral system. Unlike the changes in the system for the December 2005 election which were adopted fairly smoothly, the modifications made for the 2010 election system were bitterly contested. The question of whether Iraq should organize elections as a single national district or use multiple electoral districts once again came to the fore, with the added complication of adjustments in seats to the districts based on population growth without a census. A new debate emerged over whether the system should be built upon an open list system for the first time, opposed to the closed list systems employed in the two previous elections. Particularly problematic was the issue of the province of Kirkuk: should it be a special

²⁸ Due to disagreements, Sunnis moved in and out of government (as did the Sadrists), but the Presidency Council, PM, and other key ministers remained the same.

case and, if so, what justified its separate treatment? Also at stake was the question of whether Iraqis living abroad would be allowed to vote.

After one veto by the Presidential Council, a new electoral system was agreed to on December 7, 2009. Like the previous election, it was based on districts at the provincial level. But it differed in many other substantial ways from the previous system. It embraced an open list system, boosted the number of total parliamentary seats to 325 from 275, and allocated approximately 95% of these seats (310 out of 325) to be distributed at the provincial level.²⁹ In contrast to the previous election, no compensatory seats were allowed; the only seats awarded outside provincial contests were the seven national seats allocated to the parties winning the largest number of seats at the provincial level. The remaining eight seats were reserved for minorities. Another seemingly technical, but extremely important, difference was the mechanism through which seats were awarded within the provinces; the surplus seats were only awarded to parties which had won at least one seat from the outset.

Different parties, different voter attitudes, and a different electoral system collectively led to dramatically different results than seen in the previous two elections. Rather than seeing the Shi'a UIA collect the overwhelming plurality of votes, in 2010, voters were split – almost evenly – between several major parties. Iraqiya won the most seats with 91, with Prime Minister Maliki's party coming closely behind with 89. The National Alliance (the rump UIA) won 70 seats, while the Kurdish Alliance gained 43. A handful of smaller parties claimed the remaining 24 seats, with 8 having been reserved for the minorities.

The electoral system clearly favored the larger parties, more so than either than CF5 (the counterfactual created using the January 2005 single district system) or CF6 (the counterfactual created using the December 2005 system). In fact, there are only nine parties, apart from those with reserved seats, in the parliament resulting from the 2010 election. In CF6, there would have been significantly more at 16. Of the additional seven parties to claim a seat in parliament in 2010 had the December 2005 electoral system been used (CF6), all have non-sectarian backgrounds and are leftists, Iraqi nationalists, or liberals.

In CF5, the big parties like the IL, SLL and INA would lose seats. This is attributable to the method used to calculate the seat's allocation in the March 2010 election. This method prevented any party from winning a provincial seat unless they met or exceeded the provincial threshold, which caused the big parties to be overrepresented because they gained the advantage of the wasted votes of the loser parties. The situation with the Kurds, however, differs. From table C, we see all Kurdish parties (KA, Goran, IUK and KIG) would win more seats in CF5 because, due to their high turnout, they are always better off within the single district system.

²⁹ In contrast, in the previous December 2005 election, 84% of the seats were distributed at the provincial level, allowing for a greater number of compensatory and national seats.

In the real results of the March 2010 election, only nine parties won seats (not including the seats reserved for minorities). In CF5, we would see 14 parties represented in parliament. Many small parties who are nationally spread in more than one province, such as Free People (Ahrar) and Popular Union, would be advantaged by the single district system. The same goes for the mid-sized parties like the Tawafuq and UIC.

In CF6, all big major parties, including the Kurdistan Alliance, would lose seats. The CF6 is a district based system; however the difference in the seat allocation formula plays a major role in affecting the outcome for the big parties. The total number of winning parties would be raised to 15 from the original nine. As we saw in tables A and B, the system of December 2005 used in CF6 generally favored parties geographically concentrated, while the single district system used in CF5 favors the parties (especially mid-sized parties) that are geographically spread. In table C, we see a similar trend with some critical distinctions. The Mouhammed al-Shabaki list, which is geographically concentrated in Ninawa province, would win a seat only in CF5. However, the small size parties would do better in CF5. The reason is that in the 2010 election those parties, mostly non-sectarian, tried to maximize their reach across multiple provinces.³⁰

³⁰ For example, CANFC won a decent amount of votes in Baghdad, Babel, and Basra. The same occurred with the NUC, which also won sufficient votes in Baghdad, Ninawa and Salahdin. On the other hand, one aspect that might not have been an advantage for the small parties in the CF6 is that winning one seat (or more) does not help them to win any compensatory seats even though their total vote might be twice, or even more, in excess of the national threshold.

TABLE C: Actual and Counterfactual Electoral Outcomes Depending on the Electoral System Used March 2010

Entities		Real Results Open List Proportional Representation , District-based	Counterfactual 5 (CF5) Closed List Proportional Representation, One national district	Counterfactual 6 (CF6) Closed List Proportional Representation, Parallel System District-based
		Total seats	Total seats	Total seats
1	Iraqiya List (IL)	91	82	83
2	State of Law List (SLL)	89	81	85
3	Iraqi National Alliance(INA)	70	61	63
4	Kurdistan Alliance (KA)	43	49	43
5	Iraqi Consensus Front (Tawafuq)	6	9	11
6	The Unity of Iraq Coalition (UIC)	4	9	13
7	The Changing List (Goran)	8	14	11
8	Islamic Union of Kurdistan (IUK)	4	7	6
9	Kurdistan Islamic Group (KIG)	2	4	4
10	Mithal al-Alousi List for Iraqi Nation	0	2	1
11	National Unity Coalition (NUC)	0	2	1
12	Popular Union	0	2	1
13	Free People (Ahrar)	0	1	1
14	The Coalition of Action and National Free Salvage (CANFS)	0	2	1
15	Minorities (Christian	5	0	0

	parties)			
16	Minorities(Shabak, Sabela, Yezedi)	3	0	1 Shabak(Engineer Mohammed Al-Shabaki)
Total		325	325	325

Political Impact

The counterfactuals created by using the actual votes cast in 2010 with the electoral systems of January 2005 and of December 2005 demonstrate how the election system chosen can be of strategic importance. While CF5 results in some shifts of seats among parties, none of these shifts appear to have significant political implications. In contrast, CF6 reverses the actual winner of the most number of seats with the party that came in second place in the actual elections. The Iraqiya party drops from 91 seats to 83, while the Prime Minister's State of Law party drops from 89 to 85, two seats more than Iraqiya in CF6. While the difference between the parties is only two seats, the political implications would have been enormous. In reality, the Iraqis wrestled for close to nine months after the 2010 election to form a government. A major reason for this stalemate was a disagreement over which party had the constitutional right to form the government. PM Maliki argued he had that right, based on a post-electoral coalition with the Iraqi National Alliance. Iraqiya argued otherwise, stating that it was entitled to form the government on the grounds that it had won the highest number of seats in the election. As seen in CF6, had the December 2005 electoral system been in place at the time of the 2010 election, there would have been no debate on this point, as Maliki would have claimed the right to form the government *both* on the basis of winning the most seats in the election and on the subsequently less important point that the formation of a coalition with the National Alliance further bolstered his winning margin.

While other problems might have arisen in the context of forming the government, one can be confident that the Iraqi government would have been formed more quickly, with less damage to Iraq's international reputation and to the confidence that Iraqis have in their government. Of even greater importance, perhaps, is that the CF6 scenario might have strengthened Iraq's democratic institutions in so far as these institutions might have emerged undamaged by the process. Instead, the opposite occurred. The new Iraqi government will gain legitimacy by its inclusiveness and based on its ability or inability to deliver real services to Iraqis. In reality, however many Iraqis and outsiders have commented on how the manner in which the election aftermath was handled – and the insistence of the State of Law in forming a government despite the fact that another party won more seats – undermined Iraq's fragile institutions.

In contemplating the political impact of the electoral system choice, one must finally consider whether the composition of the government formed would be any different under the various scenarios. It is of course difficult to predict, and Maliki and Iraqi

leaders would have likely – as they have in the past – been wise enough to appoint a reasonably inclusive government even had the election outcome allowed a simpler government based on an alliance between the largely Shi'a and Kurdish parties of the State of Law, the National Alliance, and the Kurdistan Alliance.³¹ Yet, perhaps ironically, the close election results in the actual March 2010 election and the ambiguity over who had the right to form the government created substantial pressures for a government of unity. In the wake of the government formation, the question remained, however, whether this government could govern effectively, given the diffusion of power and the wide variety of ideologies included in it.

Finally, the results of March 2010 need to be understood in the context of the shift from a closed list system to an open list system. In the closed list system used in Iraq's first two elections, voters cast their ballot for a coalition or a party, not an individual. Which specific individuals enter parliament to represent their party depends on the ranking of the candidates *within* the party list, which is largely determined by the party's leaders. In contrast, with the open list system, voters can specify *both* the party for which they are voting and the specific individual within that party. This system means that who enters parliament depends on two factors: the personal popularity of the individual on the ballot *and* the less appreciated factor of how or whether a party instructs its members to vote.

Iraq's March 2010 open list election clearly demonstrates the importance of the party in directing votes in an open list system. Many analysts cited the strong showing of the Sadrist party in parliament as an indication of the reemergence of this once-militant group. Certainly, having 40 parliamentarians gave the party substantial influence in the legislature, particularly when contrasted with the 20 seats won by the once extremely powerful rival party to the Sadrists, the Islamic Supreme Council of Iraq (ISCI) and its allies, such as the Badr organization and others. But is it correct to conclude that the Sadrist movement is twice as popular as ISCI and its allies?

A look at the voting patterns – and the idiosyncrasies of the open list system – sheds further light on this question. With approximately 705,000 votes, ISCI actually received more absolute votes than the Sadrists, who received about 675,000.³² But the Sadrists won twice as many seats in the parliament because its party leaders instructed their constituents to distribute their votes among their candidates. In contrast, many of ISCI's votes were concentrated in a small number of individuals, whose final tallies far exceeded the number of votes necessary to be elected under the March 2010 system. In

³¹ The rules of government formation differed slightly in 2010 than in previous elections, as the constitution stipulated that the 2010 election would mark the end of the "transitional period." One of the practical implications of this change is that the election of the president no longer required a 2/3 vote in parliament, only a majority vote. With the increase in seats, a majority in parliament would be 163 votes. The State of Law, the National Alliance, and the Kurdistan Alliance together had 199 seats in CF6.

³² Because the only figures available are those of the total number of votes gained by the overall National Alliance (of which ISCI and the Sadrists were components), we need to rely on the political parties to provide the number of votes. These figures have been given by ISCI.

the earlier closed list elections, the votes a party received due to a highly popular single individual benefited his entire party; in the March 2010 open list system, the excess votes also served the party, but in a different way. In the 2010 open list election system, the excess votes of strong candidates also stayed within his or her party and helped win seats for people within the party who may not have personally met the threshold. In the close list systems, it was not so obvious when an unpopular person obtained a seat in parliament via the party list system. But under the 2010 open list system, it was clear when some candidates gained seats in parliament on account of excess votes from a popular figure, even when they personally had garnered few votes. For example, one State of Law MP gained a seat even though he received only 2,108 votes because he benefited from the excess votes received by the most popular candidate in his bloc, Nuri al-Maliki, who received 624,247 votes.

This open list system had a further anomaly, given that many of the “parties” were actually coalitions. As a result, the excess votes of popular candidates benefited the overall coalition, not his particular party. For instance, Ibrahim al-Ja’afari of the Reform Movement component of the Iraqi National Alliance received 101,053 votes in Baghdad, but became the only person from his movement or party to gain entry into parliament. The excess votes he won have advantaged not his party associates, but others in the broad coalition. In this case, Ja’afari’s votes help win the Sadrists 12 seats in Baghdad; in one instance the Sadrists winning a seat had received only 8,538 votes. If the Reform movement had run individually (without joining the Iraqi National Alliance coalition), the party would have won two seats, while the Sadrists would have lost three of their 12 seats.

VI. Conclusions

The detailed study of Iraq’s three national parliamentary elections, its three different electoral systems, and the construction of six counterfactual election results allows us to make some striking, practical conclusions. First and perhaps most important, this study confirms what other such studies have found: that the electoral system chosen in any particular instance can have profound effects on the outcome of that election, not only in the sense of seats gained, but, in parliamentary systems like Iraq, in the process and dynamics of governmental formation. As seen in section V, had the election system used in the December 2005 election been employed for the March 2010 parliamentary election, Prime Minister Maliki’s party, the State of Law, would have emerged as the winner by two seats, in contrast to the actual elections, where his party won two seats fewer than the Iraqiya party. Such an outcome, though tiny in the shifting of seats, would have unequivocally given Prime Minister Maliki the right to form the next government, eliminating the nine months of political wrangling and stalemate that occurred after the actual elections.

Second, this study also suggests some recommendations for those crafting electoral strategies, once they have determined their goals. This study reveals that such policymakers and the debates in which they engage are frequently off-target in their

focus on broad parameters; often, it is the small details that make the biggest difference in the final outcome. For instance, the debate over whether a single district system or a multi-district system based on the provinces would better advantage small, secular parties now seems misguided. This study reveals that the actual mechanisms for allocating seats within a district are far more influential in determining the scope of representation than the shift from a single district to multiple ones. As discussed in detail above, the district based system of 2010 was much more favorable to larger parties – and harmful to smaller ones – than the single district system of January 2005 on account of the mechanisms used to distribute seats within the provinces.

Thirdly, this study provides some valuable insights to parties looking to advocate for an electoral system that best meets their needs – one that increases their representation in parliament. In this case, the first issue to consider is whether the turnout of the electorate of the party in question is likely to be higher than that of the party's competitors. If so, then the single district system, which equates turnout with representation, is likely to be the most advantageous. As demonstrated throughout every stage of the analysis above, the Kurds, who traditionally have higher turnout rates than other groups in Iraq, consistently fared best in the single district system. Conversely, if the party has reason to believe its constituency will be more modest in its turnout – either due to boycotts or factors such as difficult weather or terrain – than the single district system should be avoided; the link between turnout and representation becomes less important the smaller the electoral unit and the allocation of seats to it.

As mentioned above, in all district based systems, the party should be attentive to the mechanism by which seats are allocated within the district. A large party stands to accrue considerable gains from a system by which surplus seats are only allocated among parties winning at least one seat in the first calculation (those who are able to surmount the provincial vote threshold). Similarly, a large party will be favored by a system that only distributes national seats among those who have already won at least one seat in parliament. Smaller parties will obviously want to advocate for district-based systems that allocate surplus seats to even those who have not accrued enough votes to win a single seat outright; they will also want to pay attention to whether there are compensatory seats and, if so, what the rules are for distributing them. It would be in the interest of smaller parties to have the compensatory seats distributed not only to those who did not win a single seat (as was the case in the December 2005 election), but also to those who won a small number of seats – maybe one or two.

Smaller parties may find themselves debating whether a single district system or a multiple district system is in their best interest. As this study has shown, in some cases, smaller parties reaped greater rewards from a single district; in others a multiple district system *with a favorable mechanism for the allocation of seats*, was superior. What determines which is best relates to the characteristics of the party. A single district system is likely to be better for smaller parties whose votes are spread across a geographic space; such a party would likely have many “wasted” votes in a district system as it could have small numbers of voters in several districts, not reaching the threshold – or placing top in the queue for surplus seats with a high fraction of the

threshold – in any province. The disadvantage to geographically disbursed small parties in a district-based system can be minimized through a mechanism to distribute compensatory seats. In the December 2005 system, any party that did not win *any* seat in the provinces was able to pool all of its votes nationwide to compete for a compensatory seat. This mechanism could be further modified to allow all parties – not just those that did not win a single seat – to pool “wasted” votes in competition for compensatory seats.

A small party with a high geographic concentration, in contrast, may prefer a district-based system. In such instances, these concentrated parties may not have enough votes to surmount the national threshold under a single district system, but could surmount a provincial threshold in a location where its support was amassed.

The size of small parties – how small is small – might also be an important factor to consider, particularly when advocating for certain policies on the distribution of compensatory seats. If the compensatory seats are only awarded to parties that get no seats at the provincial level, as was the case in December 2005, then a larger, small party (like the Turkmen Front)³³ with a geographic spread might find itself penalized; it could win one (or more) seats at the provincial level, making it ineligible for a compensatory seat, yet very unlikely to receive any national seats because those seats are allocated to parties that receive the most votes overall. In this instance, the Turkmen Front essentially forfeits a large number of “wasted” votes.

Fourth, this study has important implications for parties, not only by pointing to what electoral system they should lobby for, but by suggesting strategies they should employ to win elections once the electoral system is finalized. All three elections, and the six counterfactuals constructed around them, clearly show the importance of building coalitions with other parties to increase chances of representation. This recommendation is, of course, more applicable the smaller the party.

The study, however, goes further to offer advice on what kind of coalition partners a party should seek. Ideological outlook and personalities will obviously continue to play a major role in what coalitions are possible and desirable. But this study suggests the value of taking other factors into account, such as the geographic concentration of the potential coalition partners. This is best illustrated by imagining small Party A, whose support base is geographically focused, and small Party B, whose supporters are more geographically disbursed. The wisdom of their alliance could depend on the electoral system used. Under Iraq’s January 2005 single district electoral system, both parties might stand equal chance of winning a seat separately, given that their votes will be counted the same way. Together, they would undoubtedly stand a better chance of winning one seat or more. But in the December 2005 system, the coalition might not be as obvious a choice. If they ran separately, each could win a seat, with Party A reaching a provincial threshold and Party B winning a compensatory seat. If they formed a coalition, there are some circumstances under which they might win only one seat; if the

³³ In the December 2005 election, the Turkmen Front won 87,993 votes, which was about twice the national threshold; however, it won only one seat in Kirkuk province.

coalition won a seat in a district, it would be ineligible to win compensatory seats under the December 2005 system, thereby landing the coalition only one seat rather than two under the January 2005 system.³⁴ The coalition likely makes more sense under the March 2010 electoral system. The combined power of the parties would increase the chances that they would surmount the provincial threshold and win seats in the provinces; and given that there were no compensatory seats in the March 2010 election, there is no risk of losing out on such a seat.

Another takeaway from the study is the importance of giving parties and candidates adequate time to study the intricacies of the electoral system and adjust their strategies accordingly. Building sensible coalitions and figuring out ways to maximize the impact of constituent votes across candidates can be complex and time consuming. On all three occasions, political wranglings about the shape of the electoral system meant that parties and candidates had a very short period of time between the finalization of the system and the actual elections to prepare their strategies. For the most recent elections held in 2010, there was only three months between the passage of the electoral law and the holding of the election. Other counterfactual calculations show that if small parties with similar ideologies – such as the party of Mithal Al-Alousi, People Union, and Ahrar – had built a coalition, that coalition would have won one seat in Baghdad; instead, none of the three parties won a single seat running separately.

In conclusion, the electoral system chosen for elections, particularly in nascent, fragile democracies like Iraq, must be treated as a strategic matter. Yet, the formulation of electoral systems is often done without adequate transparency or appreciation for their importance. Because electoral laws are often set by parliament, larger parties are in a position to strengthen and perpetuate a system that favors larger parties as long as the responsibility for crafting the election law remains with the parliament and political parties. This is what happened in Iraq in the shift from the December 2005 election to the March 2010 one. Ideally, a society could agree on the objectives it would like to be met in its election – such as full representation of groups or greater cohesion of entities (i.e. larger parties). Some respected body – possibly the executive or parliament – could articulate these principles and present them to a non-political body, which would have the responsibility for constructing the actual system, perhaps with international help, to best meet the articulated principles. If such an arrangement is not politically feasible, a country should consider the use of supra-majorities in parliament to pass changes to the electoral law.

As many countries in the Middle East move to build the institutions of their futures, the question of what election law should be used will loom large in countries embracing democracy for the first time. The Iraq experience underscores the importance of choosing an electoral system with care, and understanding how the most-seemingly technical parameters – such as the mechanism for how seats are allocated within provinces – can have a significant impact on the nature of the parliament that is produced. Particularly given that, in some cases such as Egypt and Libya, elections may

³⁴ In the December 2005 election, only seven parties (out of the 12 winning parties) won national seats.

be used to select people to write or modify country constitutions, it is essential that new election laws are consistent with the principles espoused by the new leaders and the newly-empowered people – and are clearly understood by those competing in elections for the first time.